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S. HRG. 113–515, Pt. 8

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

MARCH 12, APRIL 1, MAY 13, and MAY 20, 2014

Serial No. J–113–1

Part 8

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CONTENTS

MARCH 12, 2014, 9:30 A.M.

STATEMENTS OF COMMITTEE MEMBERS

	Page
Durbin, Hon. Dick, a U.S. Senator from the State of Illinois presenting Staci Michelle Yandle, Nominee to be District Judge for the Southern District of Illinois	5
Grassley, Hon. Chuck, a U.S. Senator from the State of Iowa, prepared statement	246
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement	245

PRESENTERS

Casey, Hon. Robert P., Jr., a U.S. Senator from the State of Pennsylvania presenting Cheryl Ann Krause, Nominee to be Circuit Judge for the Third Circuit	3
Heller, Hon. Dean, a U.S. Senator from the State of Nevada presenting Richard Franklin Boulware II	9
Murray, Hon. Patty, a U.S. Senator from the State of Washington presenting Hon. Salvador Mendoza, Jr., Nominee to be District Judge for the Eastern District of Washington	2
Reid, Hon. Harry, a U.S. Senator from the State of Nevada presenting Richard Franklin Boulware II	11
Toomey, Hon. Patrick J., a U.S. Senator from the State of Pennsylvania presenting Cheryl Ann Krause, Nominee to be Circuit Judge for the Third Circuit	4

STATEMENTS OF THE NOMINEES

Witness List	25
Boulware, Richard Franklin, II, Nominee to be U.S. District Judge for the District of Nevada	7
biographical information	77
Krause, Cheryl Ann, Nominee to be U.S. Circuit Judge for the Third Circuit	7
biographical information	26
Mendoza, Hon. Salvador, Jr., Nominee to be U.S. District Judge for the Eastern District of Washington	8
biographical information	117
Rodriguez, Leon, Nominee to be Director of the U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security	10
biographical information	198
prepared statement	242
Yandle, Staci Michelle, Nominee to be U.S. District Judge for the Southern District of Illinois	10
biographical information	162

QUESTIONS

Questions submitted to Nominees Richard Franklin Boulware, II, Cheryl Ann Krause, Hon. Salvador Mendoza, Jr., and Staci Michelle Yandle by Senator Cruz	282
Questions submitted to Richard Franklin Boulware, II, by Senator Grassley	254
Questions submitted to Cheryl Ann Krause by Senator Grassley	249

Page

Questions submitted to Hon. Salvador Mendoza, Jr., by Senator Grassley 258
Questions submitted to Leon Rodriguez by:
Senator Feinstein 248
Senator Grassley 266
Follow-up questions submitted by Senator Grassley 273
Senator Hatch 280
Questions submitted to Staci Michelle Yandle by Senator Grassley 262

ANSWERS

Responses of Richard Franklin Boulware, II, to questions submitted by:
Senator Cruz 307
Senator Grassley 299
Responses of Cheryl Ann Krause to questions submitted by:
Senator Cruz 296
Senator Grassley 283
Responses of Hon. Salvador Mendoza, Jr., to questions submitted by:
Senator Cruz 319
Senator Grassley 310
attachment 321
Responses of Leon Rodriguez to questions submitted by:
Senator Feinstein 347
Senator Grassley 348
Follow-up questions submitted by Senator Grassley 371
Senator Hatch 345
Responses of Staci Michelle Yandle to questions submitted by:
Senator Cruz 343
Senator Grassley 335

LETTER RECEIVED WITH REGARD TO RICHARD FRANKLIN BOULWARE, II

American Bar Association, January 17, 2014, letter 396

LETTERS RECEIVED WITH REGARD TO CHERYL ANN KRAUSE

American Bar Association, February 6, 2014, letter 389
Bibas, Stephanos, et al., March 7, 2014, letter 393
Brest, Paul, et al., March 10, 2014, letter 391
Clarification by Cheryl Ann Krause to the U.S. Senate Committe on the Judicary, March 13, 2014, letter 395

LETTER RECEIVED WITH REGARD TO HON. SALVADOR MENDOZA, JR.

American Bar Association, January 17, 2014, letter 398

LETTERS RECEIVED WITH REGARD TO LEON RODRIGUEZ

Grifa, Lori, January 15, 2014, letter 408
Hawkins, Dennis R., Esq., January 27, 2014, letter 410
Honda, Hon. Michael M., a Representative in Congress from the State of California, February 14, 2014, letter 412
Johnson, J. Alan, January 9, 2014, letter 402
Manger, J. Thomas, January 14, 2014, letters 404
Major Cities Chiefs Association, January 14, 2014, letter 414
Wallenstein, Arthur M., January 14, 2014, letter 406

LETTER RECEIVED WITH REGARD TO STACI MICHELLE YANDLE

American Bar Association, January 17, 2014, letter 400

Page

MISCELLANEOUS SUBMISSION FOR THE RECORD

Ros-Lehtinen, Ileana, a Representative in Congress from the State of Florida, prepared statement with regard to Leon Rodriguez, Nominee to be Director of the U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security 415

Page

CONTENTS

APRIL 1, 2014, 10:04 A.M.

STATEMENTS OF COMMITTEE MEMBERS

Coons, Hon. Christopher, a U.S. Senator from the State of Delaware 417
Grassley, Hon. Chuck, a U.S. Senator from the State of Iowa 418

PRESENTERS

Nelson, Hon. Bill, a U.S. Senator from the State of Florida presenting Hon. Beth Bloom, Nominee to be District Judge for the Southern District of Florida; Paul G. Byron, Nominee to be District Judge for the Middle District of Florida; Hon. Darrin P. Gayles, Nominee to be District Judge for the Southern District of Florida; and Hon. Carlos Eduardo Mendoza, Nominee to be District Judge for the Middle District of Florida 418
Rubio, Hon. Marco, a U.S. Senator from the State of Florida presenting Hon. Beth Bloom, Nominee to be District Judge for the Southern District of Florida; Paul G. Byron, Nominee to be District Judge for the Middle District of Florida; Hon. Darrin P. Gayles, Nominee to be District Judge for the Southern District of Florida; and Hon. Carlos Eduardo Mendoza, Nominee to be District Judge for the Middle District of Florida 419

STATEMENTS OF THE NOMINEES

Witness List 433
Bloom, Hon. Beth, Nominee to be U.S. District Judge for the Southern District of Florida 422
biographical information 434
Byron, Paul G., Nominee to be U.S. District Judge for the Middle District of Florida 422
biographical information 505
questionnaire update letter, March 25, 2014 559
Gayles, Hon. Darrin P., Nominee to be U.S. District Judge for the Southern District of Florida 423
biographical information 575
Mendoza, Hon. Carlos Eduardo, Nominee to be U.S. District Judge for the Middle District of Florida 423
biographical information 631

QUESTIONS

Questions submitted to all Nominees by Senator Cruz 694
Questions submitted to Hon. Beth Bloom by Senator Grassley 680
Questions submitted to Paul G. Byron by Senator Grassley 684
Questions submitted to Hon. Darrin P. Gayles by Senator Grassley 688
Questions submitted to Hon. Carlos Eduardo Mendoza by Senator Grassley ... 690

ANSWERS

Responses of Hon. Beth Bloom to questions submitted by:
Senator Cruz 703
Senator Grassley 695
Responses of Paul G. Byron to questions submitted by:
Senator Cruz 715
Senator Grassley 706
Responses of Hon. Darrin P. Gayles to questions submitted by:
Senator Cruz 722
Senator Grassley 718
Responses of Hon. Carlos Eduardo Mendoza to questions submitted by:
Senator Cruz 730
Senator Grassley 724

Page

LETTER RECEIVED WITH REGARD TO HON. BETH BLOOM

American Bar Association, February 6, 2014, letter 732

LETTER RECEIVED WITH REGARD TO PAUL G. BYRON

American Bar Association, February 6, 2014, letter 734

LETTERS RECEIVED WITH REGARD TO HON. DARRIN P. GAYLES

American Bar Association, February 6, 2014, letter 736
Chacón, Rául J., Jr., March 31, 2014, letter 744
Keys, Carol F., Esq., March 31, 2014, letter 738
Poston, Rebekah J., March 31, 2014, letter 742
Rosier, Patricia, Esq., April 1, 2014, letter 749
Strader, Yolanda P., March 31, 2014, letter 739
Wilkie D. Ferguson, Jr. Bar Association, March 31, 2014, letter 746

LETTER RECEIVED WITH REGARD TO HON. CARLOS EDUARDO MENDOZA

American Bar Association, February 6, 2014, letter 751

MISCELLANEOUS SUBMISSIONS FOR THE RECORD

Nelson, Hon. Bill, a U.S. Senator from the State of Florida,
prepared statement with regard to Hon. Beth Bloom, Nominee to be District Judge for the Southern District of Florida 753
prepared statement with regard to Paul G. Byron, Nominee to be District Judge for the Middle District of Florida 754
prepared statement with regard to Hon. Darrin P. Gayles, Nominee to be District Judge for the Southern District of Florida 753
prepared statement with regard to Hon. Carlos Eduardo Mendoza, Nominee to be District Judge for the Middle District of Florida 754

Page

CONTENTS

MAY 13, 2014, 9:30 A.M.

STATEMENTS OF COMMITTEE MEMBERS

Blumenthal, Hon. Richard, a U.S. Senator from the State of Connecticut 755
Grassley, Hon. Chuck, a U.S. Senator from the State of Iowa 756
Leahy, Hon. Patrick J. Leahy, a U.S. Senator from the State of Vermont, prepared statement 1280

PRESENTERS

Chambliss, Hon. Saxby, a U.S. Senator from the State of Georgia presenting Hon. Julie E. Carnes, Nominee to be Circuit Judge for the Eleventh Circuit; Jill A. Pryor, Nominee to be Circuit Judge for the Eleventh Circuit; Leslie Joyce Abrams, Nominee to be District Judge for the Middle District of Georgia; Hon. Michael P. Boggs, Nominee to be District Judge for the Northern District of Georgia; Mark Howard Cohen, Nominee to be District Judge for the Northern District of Georgia; Leigh Martin May, Nominee to be District Judge for the Northern District of Georgia; and Hon. Eleanor Louise Ross, Nominee to be District Judge for the Northern District of Georgia 757
Isakson, Hon. Johnny, a U.S. Senator from the State of Georgia presenting Hon. Julie E. Carnes, Nominee to be Circuit Judge for the Eleventh Circuit; Jill A. Pryor, Nominee to be Circuit Judge for the Eleventh Circuit; Leslie Joyce Abrams, Nominee to be District Judge for the Middle District of Georgia; Hon. Michael P. Boggs, Nominee to be District Judge for the Northern District of Georgia; Mark Howard Cohen, Nominee to be District Judge for the Northern District of Georgia; Leigh Martin May, Nominee to be District Judge for the Northern District of Georgia; and Hon. Eleanor Louise Ross, Nominee to be District Judge for the Northern District of Georgia 759

STATEMENTS OF THE NOMINEES

Witness List 807
Abrams, Leslie Joyce, Nominee to be U.S. District Judge for the Middle District of Georgia 768
biographical information 1010
Boggs, Hon. Michael P., Nominee to be U.S. District Judge for the Northern District of Georgia 768
biographical information 1044
questionnaire update letter, April l0, 2014 1107
Carnes, Hon. Julie E., Nominee to be U.S. Circuit Judge for the Eleventh Circuit 760
biographical information 808
Cohen, Mark Howard, Nominee to be U.S. District Judge for the Northern District of Georgia 769
biographical information 1133
May, Leigh Martin, Nominee to be U.S. District Judge for the Northern District of Georgia 770
biographical information 1181
Pryor, Jill A., Nominee to be U.S. Circuit Judge for the Eleventh Circuit 762
biographical information 908
questionnaire update letter, January 3, 2013 964
questionnaire update letter, January 10, 2014 989
Ross, Hon. Eleanor Louise, Nominee to be U.S. District Judge for the Northern District of Georgia 771
biographical information 1234

QUESTIONS

Questions submitted to all Nominees by Senator Cruz 1312
Questions submitted to Leslie Joyce Abrams by Senator Grassley 1292

Page

Questions submitted to Hon. Michael P. Boggs by:
Senator Blumenthal 1335
Follow-up questions submitted by Senator Blumenthal 1339
Senator Coons 1333
Senator Feinstein 1321
Senator Franken 1331
Senator Grassley 1296
Senator Leahy 1313
Follow-up questions submitted by Senator Leahy 1319
Questions submitted to Hon. Julie E. Carnes by Senator Grassley 1281
Questions submitted to Mark Howard Cohen by:
Senator Grassley 1301
Senator Leahy 1316
Questions submitted to Leigh Martin May by Senator Grassley 1305
Questions submitted to Jill A. Pryor by Senator Grassley 1286
Questions submitted to Hon. Eleanor Louise Ross by Senator Grassley 1308

ANSWERS

Responses of Leslie Joyce Abrams to questions submitted by:
Senator Cruz 1381
Senator Grassley 1374
attachment 1384
Responses of Hon. Michael P. Boggs to questions submitted by:
Senator Blumenthal 1585
Follow-up questions submitted by Senator Blumenthal 1596
Senator Coons 1580
Senator Cruz 1542
Senator Feinstein 1553
Senator Franken 1577
Senator Grassley 1529
Senator Leahy 1545
Follow-up questions submitted by Senator Leahy 1593
attachment one 1605
attachment two 1622
attachment three 1638
attachment four 1652
attachment five 1662
attachment six 1667
Responses of Hon. Julie E. Carnes to questions submitted by:
Senator Cruz 1353
Senator Grassley 1342
Responses of Mark Howard Cohen to questions submitted by:
Senator Cruz 1678
Senator Grassley 1671
Senator Leahy 1681
Responses of Leigh Martin May to questions submitted by:
Senator Cruz 1693
Senator Grassley 1687
Responses of Jill A. Pryor to questions submitted by:
Senator Cruz 1371
Senator Grassley 1356
Responses of Hon. Eleanor Louise Ross to questions submitted by:
Senator Cruz 1701
Senator Grassley 1695

LETTER RECEIVED WITH REGARD TO LESLIE JOYCE ABRAMS

American Bar Association, March 12, 2014, letter 1706

LETTERS RECEIVED WITH REGARD TO HON. MICHAEL P. BOGGS

Advocacy For Action, Inc., January 10, 2014, letter 1713
American Bar Association, December 20, 2013, letter 1708
Draper, Lucy Hargrett, January 9, 2014, letter 1712
Fort, Hon. Vincent D., Georgia State Senate, January 15, 2014, letter 1715

Page

Human Rights Campaign (HRC), May 14, 2014, letter 1723
Johnson, Hon. Henry C. "Hank," Jr., a Representative in Congress from the State of Georgia, May 20, 2014, letter 1718
Lambda Legal, May 9, 2014, letter 1725
Leadership Conference on Civil and Human Rights, The, May 12, 2014, letter 1734
Murry, Dorian, May 8, 2014, letter 1717
NARAL Pro-Choice America et al., February 20, 2014, letter 1720
National Council of Jewish Women (NCJW), May 12, 2014, letter 1728
People For the American Way, May 14, 2014, letter 1729
Scott, David, a Representative in Congress from the State of Georgia, January 3, 2014, letter 1710

LETTER RECEIVED WITH REGARD TO HON. JULIE E. CARNES

American Bar Association, December 20, 2013, letter 1703

LETTERS RECEIVED WITH REGARD TO MARK HOWARD COHEN

American Bar Association, December 20, 2013, letter 1736
Levitas, Elliott H., March 20, 2014, letter 1738

LETTER RECEIVED WITH REGARD TO LEIGH MARTIN MAY

American Bar Association, December 20, 2013, letter 1740

LETTER RECEIVED WITH REGARD TO JILL A. PRYOR

American Bar Association, February 16, 2012, letter 1705

LETTER RECEIVED WITH REGARD TO HON. ELEANOR LOUISE ROSS

American Bar Association, December 20, 2013, letter 1742

Page

CONTENTS

MAY 20, 2014, 10 A.M.

STATEMENTS OF COMMITTEE MEMBERS

Durbin, Hon. Dick, a U.S. Senator from the State of Illinois 1745
Feinstein, Hon. Dianne, a U.S. Senator from the State of California presenting André Birotte, Jr., Nominee to be District Judge for the Central District of California 1750

PRESENTERS

Landrieu, Hon. Mary, a U.S. Senator from the State of Louisiana presenting John W. deGravelles, Nominee to be District Judge for the Middle District of Louisiana 1746
McCaskill, Hon. Claire, a U.S. Senator from the State of Missouri presenting Hon. Ronnie L. White, Nominee to be District Judge for the Eastern District of Missouri 1747
Nelson, Hon. Bill, a U.S. Senator from the State of Florida presenting Hon. Robin L. Rosenberg, Nominee to be District Judge for the Southern District of Florida 1748
Norton, Hon. Eleanor Holmes, a Delegate in Congress from the District of Columbia presenting Randolph D. Moss, Nominee to be District Judge for the District of Columbia 1749

STATEMENTS OF THE NOMINEES

Witness List 1769
Birotte, André, Jr., Nominee to be U.S. District Judge for the Central District of California 1752
biographical information 1770
deGravelles, John W., Nominee to be U.S. District Judge for the Middle District of Louisiana 1754
biographical information 1854
Moss, Randolph D., Nominee to be U.S. District Judge for the District of Columbia 1754
biographical information 1948
questionnaire update letter, May 15, 2014 2024
Rosenberg, Hon. Robin L., Nominee to be U.S. District Judge for the Southern District of Florida 1755
biographical information 2161
White, Hon. Ronnie L., Nominee to be U.S. District Judge for the Eastern District of Missouri 1757
biographical information 2226

QUESTIONS

Questions submitted to all Nominees by Senator Cruz 2312
Questions submitted to André Birotte, Jr., by Senator Grassley 2289
Questions submitted to John W. deGravelles by Senator Grassley 2294
Questions submitted to Randolph D. Moss by Senator Grassley 2299
Questions submitted to Hon. Robin L. Rosenberg by Senator Grassley 2304
Questions submitted to Hon. Ronnie L. White by Senator Grassley 2308

ANSWERS

Responses of André Birotte, Jr., to questions submitted by:
Senator Cruz 2323
Senator Grassley 2313
Responses of John W. deGravelles to questions submitted by:
Senator Cruz 2335
Senator Grassley 2326

Page

Responses of Randolph D. Moss to questions submitted by:
Senator Cruz 2348
Senator Grassley 2337
Responses of Hon. Robin L. Rosenberg to questions submitted by:
Senator Cruz 2358
Senator Grassley 2351
Responses of Hon. Ronnie L. White to questions submitted by:
Senator Cruz 2369
Senator Grassley 2360

LETTER RECEIVED WITH REGARD TO ANDRÉ BIROTTE, JR.

American Bar Association, April 4, 2014, letter 2371

LETTER RECEIVED WITH REGARD TO JOHN W. DEGRAVELLES

American Bar Association, March 14, 2014, letter 2373

LETTER RECEIVED WITH REGARD TO RANDOLPH D. MOSS

American Bar Association, April 4, 2014, letter 2375

LETTER RECEIVED WITH REGARD TO HON. ROBIN L. ROSENBERG

American Bar Association, February 26, 2014, letter 2377

LETTERS RECEIVED WITH REGARD TO HON. RONNIE L. WHITE

American Bar Association, November 8, 2013, letter 2379
Aron, Nan, May 19, 2014, letter 2386
Fraternal Order of Police–Missouri State Lodge, May 13, 2014, letter 2381
Leadership Conference on Civil and Human Rights, The, May 19, 2014, letter 2382
People For the American Way, May 19, 2014, letter 2384

Page

ALPHABETICAL LIST OF NOMINEES

Abrams, Leslie Joyce, Nominee to be U.S. District Judge for the Middle District of Georgia 768
Birotte, André, Jr., Nominee to be U.S. District Judge for the Central District of California 1752
Bloom, Hon. Beth, Nominee to be U.S. District Judge for the Southern District of Florida 422
Boggs, Hon. Michael P., Nominee to be U.S. District Judge for the Northern District of Georgia 768
Boulware, Richard Franklin, II, Nominee to be U.S. District Judge for the District of Nevada 7
Byron, Paul G., Nominee to be U.S. District Judge for the Middle District of Florida 422
Carnes, Hon. Julie E., Nominee to be U.S. Circuit Judge for the Eleventh Circuit 760
Cohen, Mark Howard, Nominee to be U.S. District Judge for the Northern District of Georgia 769
deGravelles, John W., Nominee to be U.S. District Judge for the Middle District of Louisiana 1754
Gayles, Hon. Darrin P., Nominee to be U.S. District Judge for the Southern District of Florida 423
Krause, Cheryl Ann, Nominee to be U.S. Circuit Judge for the Third Circuit .. 7
May, Leigh Martin, Nominee to be U.S. District Judge for the Northern District of Georgia 770
Mendoza, Hon. Carlos Eduardo, Nominee to be U.S. District Judge for the Middle District of Florida 423
Mendoza, Hon. Salvador, Jr., Nominee to be U.S. District Judge for the Eastern District of Washington 8
Moss, Randolph D., Nominee to be U.S. District Judge for the District of Columbia 1754
Pryor, Jill A., Nominee to be U.S. Circuit Judge for the Eleventh Circuit 762
Rodriguez, Leon, Nominee to be Director of the U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security 10
Rosenberg, Hon. Robin L., Nominee to be U.S. District Judge for the Southern District of Florida 1755
Ross, Hon. Eleanor Louise, Nominee to be U.S. District Judge for the Northern District of Georgia 771
White, Hon. Ronnie L., Nominee to be U.S. District Judge for the Eastern District of Missouri 1757
Yandle, Staci Michelle, Nominee to be U.S. District Judge for the Southern District of Illinois 10

NOMINATIONS OF CHERYL ANN KRAUSE, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT; RICHARD FRANKLIN BOULWARE II, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA; HON. SALVADOR MENDOZA, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON; STACI MICHELLE YANDLE, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ILLINOIS; AND LEON RODRIGUEZ, NOMINEE TO BE DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY

WEDNESDAY, MARCH 12, 2014

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

The Committee met, pursuant to notice, at 9:30 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Amy Klobuchar, presiding.

Present: Senators Klobuchar, Durbin, and Grassley.

Senator DURBIN [presiding]. I am pleased to call this nominations hearing of the Senate Judiciary Committee to order. I know that we have votes scheduled around 10:30, so we will do our best to accommodate everyone's schedule.

I am stepping in here for Senator Klobuchar who will be arriving momentarily.

I want to give a warm welcome to all the nominees. We also welcome family and friends who accompany them, and you will have an opportunity to introduce them shortly.

We have five nominees under consideration today. First I want to call upon Senators Murray and Casey to introduce the nominees from their home States. Senator Patty Murray.

PRESENTATION OF HON. SALVADOR MENDOZA, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON, BY HON. PATTY MURRAY, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator MURRAY. Well, Mr. Chairman, thank you very much. It is my privilege today to introduce to this Committee Judge Salvador Mendoza, Jr., who has been nominated by the President to be the next United States District Judge for the Eastern District of Washington. I want to welcome Judge Mendoza. His wife, Mia, is with him today; his mother, Maria; and his long-time legal assistant, Monica; who have traveled out here from what we call "the other Washington." And I especially want to welcome to this Committee his mother, who is visiting our Nation's capital for the very first time to witness her son testify before this Committee as a nominee of the President of the United States. Maria, I know how proud you must be. And we are honored that she is with us today as well.

Mr. Chairman, it is not every day that I get to introduce a nominee who also happens to be a former intern in my office. And it is also not every day that a man who is the son of a migrant farm worker and who himself worked on the farms in Yakima Valley is called on by the President to become the first Latino Federal judge in the Eastern District of Washington. So as a Senator from Washington State, I am incredibly proud to introduce him to this Committee today, because through his life's story, Judge Mendoza represents the very best of our State's honest, hardworking spirit.

Madam Chairman, through his work ethic, his commitment to his community, and his belief in equal opportunity, Judge Mendoza is a leader and a role model for families throughout our State and particularly young men and women born into poverty and difficult circumstances. In fact, in his application to serve as Federal judge, he discussed his own upbringing, and I want to quote it to you. He said: "I worked and studied hard to better myself and my family. I understood then what I believe now: that both the quality of the educational system coupled with a strong system of justice will lift up the entire community."

Madam Chairman, I could not agree more, and it comes as no surprise that throughout his professional life, Judge Mendoza has stayed true to those words. From serving as a trustee for Columbia Basin College to helping coordinate the annual Tri-Cities Youth and Justice Conference, to helping to create the first drug court for Benton and Franklin counties, Judge Mendoza has given his time and experience investing in institutions that each and every day lift up communities throughout our State. He is currently a superior court judge, but his judicial career spans private practice, service as an Assistant Attorney General, and years of experience in superior, district, municipal, and juvenile court. He is an experienced practitioner in Federal court and served from 2010 to 2013 as lawyer representative to the Ninth Circuit Judicial Conference. And through his many years of legal practice and judicial experience, Judge Mendoza will come to the Federal bench well prepared.

He has described his judicial philosophy as guided by the principles of patience, respect, and humility—the same principles that have guided his life and legal career and principles that will serve

him well as a member of the Federal judiciary. So I want to thank Judge Mendoza for his willingness to serve Washington State as a Federal judge. I have said time and again that as a country we are best when good people are willing to give of themselves in service to others. It is service to others that has defined Judge Mendoza throughout his career and will continue to define him as he assumes the duty of this new office. I am very proud to be here today to support his nomination. Thank you, Madam Chair.

Senator KLOBUCHAR [presiding]. Thank you very much, Senator Murray.

Senator Casey, you are here to introduce Cheryl Ann Krause.

PRESENTATION OF CHERYL ANN KRAUSE, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT BY HON. ROBERT P. CASEY, JR., A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator CASEY. Madam Chair, thank you very much. I am honored to be here along with Senator Toomey to speak in favor of the nomination of Cheryl Ann Krause to be a member of the United States Court of Appeals for the Third Circuit, one of our great circuits in the United States.

I would say first that Cheryl's life has been a commitment to excellence, a commitment to public service, and I think it is a great American story of hard work and achievement. The academic credentials that she brings to this job are substantial. She attended Stanford University Law School. She clerked for—and the University of Pennsylvania, graduating summa cum laude, undergrad. I wanted to make sure I got that Pennsylvania, University of Pennsylvania academic credential in there. It is significant.

After law school, Cheryl served Justice Anthony Kennedy on the Supreme Court of the United States, later served as a prosecutor in the United States Attorney's Office for the Southern District of New York for 5 years, where, among other things, she was fighting public corruption cases and dealing with all kinds of prosecutions involving international bank fraud, securities fraud, all the range of prosecutorial achievements that she was able to amass in those years.

I think also when you look at her work as a lawyer in the private sector, as a Federal prosecutor, it is a life and a degree of excellence that you often do not see. But I think it is infused by a deep and abiding commitment to public service. And when any of us make a determination about the person we should vote for on a district court or appellate court, we, of course, consider a range of credentials and questions. One, of course, is experience. I think when it comes to experience in the private sector or as a Federal prosecutor, as well as a whole other range of experiences, very few people would be able to outdistance what Cheryl brings to this nomination.

Second, we ask that the nominees have the kind of commitment to public service and the integrity to serve as a judge on either the district or appellate court.

And, third, I think—and these are broad categories, but we hope as well that they can be a judge that will not just judge fairly but

will bring a judicial temperament to their work as a judge. I think on that measure as well Cheryl stands out.

So I think whether it is a combination of academic credentials, her broad experience in the public and private sector, and especially her experience as a prosecutor, but I think overall a commitment to public service is the reason that I and so many others have decided to support her nomination with enthusiasm and with a degree of intensity that is, I think, pretty rare in this town. And I am grateful to have worked with Senator Toomey bringing this nomination forward, along with the White House and the Obama administration, and so we are grateful.

And I will say finally that Cheryl's family is here. I know they will be introduced later. We are especially grateful they are here, led by Colonel Bradford R. Everman, her husband, who has made a deep commitment to the security of the United States, and we are grateful for his service as well.

Senator KLOBUCHAR. Thank you very much, Senator Casey.

Senator Toomey.

PRESENTATION OF CHERYL ANN KRAUSE, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT BY HON. PATRICK J. TOOMEY, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator TOOMEY. Thank you, and good morning, Chairman Klobuchar, Senator Grassley, Senator Durbin. Thanks very much for giving me this opportunity to help to introduce Cheryl Ann Krause.

I would like to point out that she was nominated by President Obama on February 6th, and so I appreciate the timely scheduling of this hearing and the progress we are making.

I also want to take a moment to thank Senator Casey for the collaborative efforts that he and I have engaged in. We have had eight successful confirmations since I have taken office. We still have two very well qualified district court nominees, Ed Smith and Gerald McHugh, who are awaiting Senate confirmation, which I hope will occur soon. And we have eight more district court vacancies that we are working on, but I would just point out that this is a case of some terrific bipartisan cooperation that is, in fact, making real progress for Pennsylvania, and I appreciate Senator Casey's work in this area.

As Senator Casey has already described, Cheryl Ann Krause has a very, very impressive personal and professional background. She clearly has a wealth of legal experience in public service and private practice. Her commitment to the community has been very impressive. Her work for children with disabilities, a Penn Law School project that supervises law students representing indigent defendants. As Senator Casey pointed out, she comes from a family that is committed to public service, her husband having spent years as a fighter pilot for the U.S. military.

When I met with Ms. Krause, I found her to be a very, very impressive candidate, clearly very, very intelligent, very knowledgeable about the law, a very thoughtful and careful person. I can tell you from the many folks with whom I have discussed her candidacy, she has an outstanding reputation in the legal community

and beyond for excellence, for competence, and most importantly to me, for an impeccable character.

So I am confident that she will make a strong addition to the Third Circuit court, and I thank this Committee for its time and hope that they favorably report out this nominee.

Thank you.

Senator KLOBUCHAR. Thank you very much to both of you. I know you want to stay for our entire hearing, but I am sure you have other business. Thank you for coming.

Next, Senator Durbin, thank you for starting this hearing out. I had another commitment. He is here to introduce Staci Michelle Yandle, to be United States District Judge for the Southern District of Illinois.

PRESENTATION OF STACI MICHELLE YANDLE, 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, Madam Chair. I am pleased to introduce Staci Yandle, nominated to serve as district court judge in the Southern District of my State. She has been nominated to fill the vacancy in the Benton courthouse when Judge Phil Gilbert assumes senior status on March 15th.

Staci Yandle was born in Centreville, which, coincidentally, is the home town of my wife. That had nothing to do with her selection.

[Laughter.]

Senator DURBIN. But it did not hurt. She currently lives in Carlyle. She received her undergraduate degree from the University of Illinois and her law degree from the Vanderbilt University School of Law. Over the course of her legal career, Ms. Yandle has gained extensive litigation experience. Currently she has her own solo practice in O'Fallon, Illinois, which she has operated since 2007, before that working for two prominent law firms in southern Illinois—Carr Korein Tillery and The Rex Carr Law Firm.

Ms. Yandle has handled a wide variety of litigation matters, including employment, education, medical injury, civil rights, nursing home abuse. Most of her cases, she has either been sole counsel or lead counsel. She served as an arbitrator in the 20th Judicial Circuit Court in Illinois on approximately ten occasions. She was appointed to serve on the Illinois Advisory Committee to the U.S. Commission on Civil Rights from 1992 to 1996, and also appointed to serve by the Governor on the Illinois Gaming Board from 1999 to 2001; currently served on the board of the Illinois Bar Foundation; and she has also worked as an adjunct law professor at the St. Louis University School of Law; has a distinguished record of pro bono service in our area; spent over 50 hours per year representing indigent clients and nonprofit corporations, including the nonprofit Delta Economic Development Corporation, which operates a child-care center in my home county of St. Clair.

Ms. Yandle's nomination is also historic in several respects. Never before in Illinois history has there been an Article III Federal judge who is openly a member of the LGBT community. Upon confirmation, Staci Yandle will be the first. Upon confirmation, she

will also be the first African American Federal judge ever to serve in the Southern District of Illinois. And up to this point, no woman has ever served as a Federal judge in the Southern District. I believe that Ms. Yandle will be preceded by Nancy Rosenstengel, whose nomination is currently pending on the Senate floor, and she was the first woman ever nominated to serve on that court.

In short, Staci Yandle's confirmation marks another important milestone in the journey toward equality of opportunity for all Americans. Ms. Yandle was recommended to me by a bipartisan screening committee that I established. I am pleased that she has been nominated here before the Committee today, and I am going to work with my colleagues to move her name through the confirmation process.

One thing I want to note for the record which is very important only in southern Illinois, but extremely important in that place: Some are wondering what is going to happen to the Benton courthouse. I want to make it very clear that even after Judge Gilbert becomes a senior judge, I am committed to continuing the active status of a Federal judgeship in Benton, which Ms. Yandle will serve in that capacity if approved by the U.S. Senate.

Finally, I will mention that Ms. Yandle is joined here today by her mother, Sylvia Yandle; her brother, Brian Yandle, and his wife, Sheila; and her nephew, Darell Yandle. Welcome to all.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you very much, Senator Durbin.

We have a series of five votes that start at 10:30, and so we are going to change this up a little bit and have all of the nominees come up at the same time. And before that starts, I wanted to introduce Mr. Leon Rodriguez, who has been nominated to serve as Director of U.S. Citizenship and Immigration Services in the Department of Homeland Security. He is currently the Director for the Office for Civil Rights at the U.S. Department of Health and Human Services. He previously served as the Deputy Assistant Attorney General and Chief of Staff for the Justice Department's Civil Rights Division. He was born in Brooklyn, New York. Mr. Rodriguez earned his B.A. from Brown University in 1984 and his J.D. from Boston College Law School in 1988.

I also know that both Senator Reid and Senator Heller are going to come in about 15 minutes to say some good words of introduction for Mr. Boulware, who is nominated to be United States District Judge for the District of Nevada, and so we are looking forward to their coming to join our Committee. So we will have to make a little room or bring up some chairs when they join us.

But before you all come up, Senator Grassley, did you have any words before we start?

Senator GRASSLEY. I will put it in the record.

Senator KLOBUCHAR. Excellent.

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

Senator KLOBUCHAR. Okay. So why don't all the nominees come up, and we will swear you in.

Okay. Do you want to stand? 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. KRAUSE. I do.
Mr. BOULWARE. I do.
Judge MENDOZA. I do.
Ms. YANDLE. I do.
Mr. RODRIGUEZ. I do.
Senator KLOBUCHAR. Thank you very much. Thank you for being with us today, and we will start out with Ms. Krause. If you want to take a moment to introduce anyone from your family that is here with you today, we would love to meet them.

STATEMENT OF CHERYL ANN KRAUSE, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT

Ms. KRAUSE. Thank you, Senator Klobuchar and Ranking Member Grassley, and thanks to the Committee for the opportunity to be considered today.

My appreciation to both Senators Casey and Toomey for their gracious words and introduction, and also to the President for the profound honor of this nomination.

With me in support today are many family and friends who have traveled from Pennsylvania and elsewhere. We have here my husband, Bradford Everman, who is my constant support and inspiration to public service.

With me also are my son, Johnny, and 15-month-old Estelle, who, if left to their own devices, would have more to say to this Committee than me, and so I think will be excused shortly.

Senator KLOBUCHAR. She is looking good now, though.

Ms. KRAUSE. My sister, Elizabeth Krause, and her children, Zoe and Eli; my brother and sister-in-law, Aaron and Stephanie Krause, and their children, Sophie and Bryce; and many other family and friends who have come here.

I would also like to note that coming from my firm Dechert are a number of partners and associates who are here supporting me and who are watching from afar, and I thank them all for their support.

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

Senator KLOBUCHAR. Well, thank you very much. I appreciate it. Mr. Boulware.

STATEMENT OF RICHARD FRANKLIN BOULWARE II, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA

Mr. BOULWARE. Thank you, Senator Klobuchar. Thank you to this Committee. Thank you to the Ranking Member as well for being here. I also want to thank my home State Senators, Senator Reid and Senator Heller. I want to thank Senator Reid for recommending me for this nomination, and I want to thank Senator Heller for his support.

With me today I have family and friends. I have my family here: my brother and his wife, Yvette, and their daughter, Elizabeth. I have my father, Frederick Boulware, and his wife, Pamela Callahan; and, of course, I have my family, three very vibrant and young children: my youngest, Zafeen, who is back there, who I am sure you will hear talking; my son, Kahlil—she is 4 going on 35.

[Laughter.]

Mr. BOULWARE. My son, Kahlil, who is 5 years old, my oldest daughter, Oniana; and, of course, the love of my life and my partner, Nancy.

The one person who is not here today is my mother, so I want to thank her, too.

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

Senator KLOBUCHAR. That is very nice. Very nice. And I do see that Senator Heller has arrived. He wants to say a few good words about you, and maybe he wants to settle in here, and we will have Mr. Mendoza, Judge Mendoza say a few words, and then we will go to Senator Heller, and he can say a few good words about Mr. Boulware.

Judge Mendoza, good to see you.

STATEMENT OF HON. SALVADOR MENDOZA, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON

Judge MENDOZA. Thank you. Good morning, and I would really like to thank the Committee for scheduling this hearing so promptly after the nomination.

I want to thank, of course, Senator Murray for those kinds words that she had this morning, and also Senator Cantwell for her continued support. Along with them, of course, I would like to thank Governor Inslee for his support as well.

I would like to thank President Obama for this incredible nomination, this incredible opportunity. I am certainly honored.

Here with me today is my wife, who is an excellent lawyer, an excellent wife, and an incredible mother.

Senator KLOBUCHAR. Which one is your wife? I see three women with smiles.

[Laughter.]

Judge MENDOZA. The people that are not here are my three children: Carmen, who is 4; my son, Danny, who is 6, and Anthony, who today turns 9 years old, so Happy Birthday, Anthony, if you are watching.

And an important person in my life who is here with me is my mother. My father and she—my father passed away in 2008, but both of those two individuals taught me an in credible amount of what it means to be a good human being, and I appreciate that.

Also with me today is my long-time legal assistant, Monica Villanueva, who is not only my legal assistant but a very good friend of mine.

Also, I have my three brothers who are not here, were not able to make the trip: Hector, who is taking care of my three kids and Josey; and my brothers, Robert—Bobby—and Raul.

The person who is also not here is my sister, who passed away a year and a half ago, but I know that she is with me at this moment, and when I lost her, I lost my best friend, and I just would like her name to be in the record.

My friends who are home watching, I appreciate them, especially Norma Rodriguez, Mario Anteriano, and Scott Johnson.

I would also like to thank my colleagues on the superior court bench who have been amazing supporters and mentors.

Also, my friends at the Supreme Court, State of Washington, Justice Gonzalez, Justice McCloud, and Justice Johnson, who have been very strong supporters.

Additionally, and finally, I would like to thank the Federal bench of the Eastern District of Washington, especially Chief Judge Peterson, Judge Suko, and Judge Shea.

Thank you.

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

Senator KLOBUCHAR. Well, thank you very much.

Senator Heller, you are here to say a few good words about Mr. Boulware.

PRESENTATION OF RICHARD FRANKLIN BOULWARE II, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA, BY HON. DEAN HELLER, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator HELLER. I am. Thank you, Senator Klobuchar, and also to the Ranking Member, Mr. Grassley, for holding this meeting. And I want to congratulate all the nominees who are here with us today. Congratulations, Richard. It is good to see you again.

Mr. BOULWARE. Thank you, Senator. It is good seeing you as well.

Senator HELLER. Judicial nominations and subsequent confirmations for qualified individuals are one of the most important and unique responsibilities we hold as Members of the U.S. Senate. Through the role of advice and consent, I believe each nominee must be carefully considered, and I am pleased to say that I believe we are continuing to accomplish this goal in this Congress through bipartisan support.

In Nevada, where our delegation is certainly not one-sided, it is critical for us to work together to find qualified candidates who will uphold America's principles of impartiality under the law. I believe Mr. Boulware embodies these characteristics and serves as an example that, with a bilateral effort, we can find middle ground in instances where it is necessary.

That being said, I believe Richard Boulware will make an excellent district court judge for the State of Nevada. After sitting down with him, discussing his nomination at length, I found him to be an extremely impressive nominee.

A graduate of Harvard University, Mr. Boulware went on to earn his law degree from Columbia University in 2003. He currently serves as Assistant Public Defender, Federal Public Defender for the District of Nevada in Las Vegas.

He also has extensive experience arguing before the Ninth Circuit Court of Appeals. This trial experience, coupled with his impressive academic accomplishments while clerking for the U.S. district court, I believe will serve him well on the bench. Outside of his professional duties, he is currently serving his local school system as a member of the Superintendent's Educational Opportunities Advisory Committee.

Again, congratulations, and thank you again for the opportunity, Madam Chairwoman, for introduced this Nevadan, outstanding Nevadan, to this Committee, and I look forward to his testimony as

well as the Committee's consideration for Mr. Boulware's nomination.

Thank you.

Senator KLOBUCHAR. Thank you very much, Senator.

Ms. Yandle.

STATEMENT OF STACI MICHELLE YANDLE, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ILLINOIS

Ms. YANDLE. Thank you, Senator Klobuchar. I would like to thank you, Madam Chair, Ranking Member Grassley, and Members of this Committee for scheduling this hearing and allowing us the opportunity to speak with you today.

I would like to thank Senator Durbin for his introduction and for his support. I certainly would like to thank President Obama for his nomination and for this honor.

I would also like to thank various members of my community, my friends, family, who are not in the room with us today, but I certainly want to thank them for their continued support.

I would like to thank and introduce the members of my family who are in the room with me today: first and foremost, my mother, Sylvia Yandle, who traveled here with me from southern Illinois. I would like to thank my brother and my sister-in-law—I actually normally refer to her as my sister, but we are on the record and I will be technically correct. She is my sister-in-law, Sheila Yandle. They traveled here from North Carolina; and my nephew, Darell, who traveled here from Detroit.

I would also like to acknowledge and thank someone else who is not in the room. That is my father, Robert Yandle, who is deceased, and, frankly, has been deceased for quite some time, but who is ever present with me, and he is certainly—I feel his presence today, and I would like to acknowledge that as well.

Thank you.

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

Senator KLOBUCHAR. Thank you very much, Ms. Yandle.

Mr. Rodriguez.

STATEMENT OF LEON RODRIGUEZ, NOMINEE TO BE DIRECTOR OF THE U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. RODRIGUEZ. Thank you, Chairwoman, and what a great honor it is to be here this morning.

I want to start by acknowledging my spectacular wife, Dr. Jill Schwartz. She is a research physician dedicated to the eradication of some of the most devastating diseases that we face in our society.

I would also like to acknowledge my children: Talia and Elias Rodriguez, who are in the center aisle here today.

Also with me today is former CIS Director, actually the founding Director of Citizenship and Immigration Services, Eduardo Aguirre, who was appointed by President Bush to stand up the new agency, along with his Deputy Director, Michael Petrucelli.

Also here are our good friends Bicky Borman and Gerald Kell, and my current chief of staff, Juliet Choi.

I would like to acknowledge the members of my staff from the Office for Civil Rights, some of whom I know are watching us this morning.

And, finally, I would like to acknowledge my parents, who are watching us from Rody, Incorporated, in Miami, the small business they started in 1966. That business is still alive and well today, and Isaac and Sara Rodriguez are watching us as they do their work.

And, finally, I would like to salute the great American stories of the other nominees here today. Their stories illustrate the long road that we all travel to days like this one, and it is stories like theirs that really inspire me to do hopefully, in the event of my confirmation, a job like Director of Citizenship and Immigration Services, which is such a great path to offer opportunities to new Americans.

So thank you, Chairwoman, for this great opportunity.

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

Senator KLOBUCHAR. Well, thank you so much, Mr. Rodriguez. We welcome your family. We welcome all the nominees' families.

And now we have our Majority Leader, kind of the head of our family, Majority Leader Reid here to say some good words about Mr. Boulware.

PRESENTATION OF RICHARD FRANKLIN BOULWARE II, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA, BY HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Thank you, Madam Chair. I have had the good fortune over the years to be able to appoint people to different positions. I do not know how many judges, but 10 or so in Nevada. And it is always very difficult when family members are involved in a selection because you are always afraid: Am I showing too much favoritism? Is the person really qualified? Well, in this instance, I have known his Mom and Dad for many, many years, and they should be very proud of him, as I am, because his qualifications are unparalleled. This is a good man and a good candidate to be a judge for life.

I am happy to introduce to the Committee Richard Boulware. He is an intelligent, talented young lawyer, and I have no doubt he will distinguish himself as a judge. He has worked very hard. He is the first African American man to be on the Federal bench in Nevada, but not the first African American. He has some really big shoes to fill with Johnnie Rawlinson, who was on the district court, as she has now really distinguished herself on the Ninth Circuit.

He has been a public defender in Nevada since 2007. Before that, he was a public defender in New York for 4 years, worked at the prestigious firm of Covington and Burling in New York. He grew up in Las Vegas, attended Harvard University as an undergraduate, and then took some time off. He checked out the private sector. He clerked for a district court judge in the Southern District of New York, and prior to entering law school, he owned a consulting business.

He told me the reason he decided to go back to school, to go to law school, is he was watching impeachment proceedings on television of President Clinton, and he said, "I need to be a part of that, part of the legal profession." And so that is what he did. He went back to law school, Columbia, where he distinguished himself as a great scholar, a good student. He is really well qualified in every aspect. And he is not just naked from being in the court all the time. He has entered public service in many different ways: a leadership role in the NAACP in Las Vegas; he has also served as a volunteer attorney for U.S. Vets, an organization that serves homeless veterans of the armed forces since 2009. I would hope there were not homeless vets in Nevada, but that is not true. There are lots of them. It is commendable that he would devote his time to help these people who are really in need.

He is past president of the Las Vegas chapter of the National Bar Association, has extensive experience trying criminal cases in the Federal court system. I have talked to many of the Federal judges who understand what an advocate he is for the rights of the accused.

He has received the Medal of Justice Award from the State Bar of Nevada. He received the Dedicated Service Award last year from the Nevada Attorney General's Criminal Justice Program. So I am very impressed with him, and I know that he will be an outstanding judge. And I feel very good and proud of him and his family, most of whom are here today.

Senator KLOBUCHAR. Thank you very much, Majority Leader Reid. Okay.

Senator REID. I was afraid Senator Grassley was going to ask me some questions.

[Laughter.]

Senator KLOBUCHAR. Yes, I know. Senator Grassley—can the reflect Senator Grassley is very good at asking questions. He asks a lot of questions. But that is not the case. You can leave and do your duties, Majority Leader Reid.

Okay. We are going to begin here, and the reason Senator Grassley was talking to me was just about making sure that Senator Durbin would go after me, and then he was going to allow him to go after I do. And, in fact, Senator Durbin, maybe you want to go first. That is fine. All right.

I am going to start here with you, Ms. Krause, and I am a former prosecutor like you, and I wonder if you could talk a little bit about how you think that experience will impact you on the bench. And also the pro bono work that you do, if you could talk about that.

Ms. KRAUSE. Yes, thank you very much, Senator. If I may, as a preliminary matter, I realize in my excitement to be here I omitted two of perhaps the most important people in the room: my parents, Robert and Marilyn Krause.

Senator KLOBUCHAR. Good call.

[Laughter.]

Ms. KRAUSE. They have made the trip here from Pennsylvania as well, and it is a great joy to me to be able to share this day with them.

Senator KLOBUCHAR. Okay.

Ms. KRAUSE. Yes, Senator, I did serve as a prosecutor for many years, and I have continued with public service through my pro bono work in private practice.

As a prosecutor, I had the opportunity to do both trial and appellate work, and that has given me a great appreciation for the importance of the record, how to read a transcript, issues of credibility of witnesses and motion practice in the district court, many of the things that, if I am fortunate enough to be confirmed as an appellate judge, will give me a good foundation for reviewing and understanding the record.

I think further in both that commitment to public service and the honor there of serving as a representative of the United States, I was held to highest ethical standards and, of course, a mandate on prosecutors to think not only as an advocate, which, of course, is an important part of that job, but also the mandate to do justice. And if I have the privilege of serving on the Third Circuit Court of Appeals, of course, being fair, impartial, seeing all sides, and serving the public with the highest ethical standards would be paramount.

Senator KLOBUCHAR. Thank you.

Mr. Boulware, you also served as a public defender, and could you talk about that experience and how that will help you on the bench?

Mr. BOULWARE. Thank you, Senator Klobuchar, for the question.

I think one of the things that it has given me an opportunity to do the most is participate in criminal trials. I have participated in at least 15 Federal criminal trials, including jury and non-jury trials, in two different districts, in both the District of New York and the District of—the Southern District of New York and the District of Nevada.

I have also been able to participate in a variety of different types of Federal cases from white-collar complex cases, which I have been the lead attorney on with respect to my office for the past 3 years, but a variety of different types of cases that come to the public defender's office.

So I believe that diversity of experience, in particular the trial experience, as my nomination is for a trial court, I believe all of that, if I am fortunate enough to be confirmed, will serve me well as a district court judge.

Thank you.

Senator KLOBUCHAR. Very good. You also should note you were born in Rochester, Minnesota, since I had no one to introduce——

Mr. BOULWARE. Yes, I was born——

Senator KLOBUCHAR. The home of the great Mayo Clinic.

Mr. BOULWARE. Yes, I was born actually at the Mayo Clinic.

Senator KLOBUCHAR. You had a good hospital.

Mr. BOULWARE. Yes.

Senator KLOBUCHAR. Excellent. It worked out well for you.

Okay. Judge Mendoza, as a judge, do you want to talk a little bit about how being a judge, your current job as judge is going to differ from this one?

Judge MENDOZA. Thank you, Senator, for that question. Yes, as a judge currently, one of the duties that I have is being civil presiding judge for both of our counties, in Benton and Franklin Coun-

ty. As a practitioner, I primarily handled criminal law, so it is important to have both the criminal law experience and the civil law experience, and that will suit me well, if I am confirmed to this position.

I think it is also important to note that I was a deputy prosecutor and an Assistant Attorney General, and I think those experiences would also help me. I think it is important to bring a wealth of experience to the position.

Thank you.

Senator KLOBUCHAR. Thank you very much.

Ms. Yandle, I have a feeling that Senator Durbin is going to ask you a question. Would that be right? Good. So I am going to use the remaining time that I have to ask Mr. Rodriguez a few questions. Again, it is an important job that you are going to be taking here. USCIS is an agency of 18,000 employees and contractors. Can you talk about how your management experience as county attorney and other positions is going to help you out there?

Mr. RODRIGUEZ. I appreciate that question. In particular, as county attorney for Montgomery County, I was on the senior leadership team of a county with a $2 billion annual budget, a $2 billion capital budget, 10,000 employees, an organization that had much of the same complexity as Citizenship and Immigration Services does. My prosecutorial positions really prepared me for the fraud investigation aspects and the national security aspects of the CIS Director's job.

Senator KLOBUCHAR. Very good. And I have a specific concern, and maybe you heard about this, about the plans to move—and this was, of course, before you were in your job—the U.S. Citizenship and Immigration Service office in Minnesota from its current location near The Mall of America, which is a very accessible location—accessible by bus, accessible by light rail, one of the biggest shopping malls in the country actually. And it obviously was a good location, and what your office decided to do or your soon-to-be office was that they moved the location, and it would be 3 miles from a metro transit stop. Obviously a lot of people that use this service do not have cars, and they are not able to afford cabs. And it has actually become quite an issue. Our newspaper, our major newspaper has editorialized about it a number of times, and the worst part about it, Mr. Rodriguez, is I like that they told the truth, but the GSA admitted that they actually made a mistake. They thought they saw a sign for a bus, and they thought it was a real public transit bus, but it was just some private bus service that hardly goes there.

And so it is a glaring error, and last year, this office had 28,000 visitors, processed more than 13,000 applications for naturalization, and they have already now gotten a contract with this new place, and it is a huge problem. Could you commit to working with me and the GSA to address these concerns about what is happening here? Because it is kind of an outrage.

Mr. RODRIGUEZ. I can assure the Senator, first, that I am aware of the situation and that I can commit to working with you to find a resolution. In my current job, the work we do is all about accessibility to Government services, and so this is really core to my professional identity to tackle these sorts of issues.

Thank you, Senator.

Senator KLOBUCHAR. Okay. Well, I appreciate that. I am looking forward to working with you on it.

With that, we will turn it over to Senator Durbin.

Senator DURBIN. Thanks a lot, Senator Klobuchar.

Let me for the record ask my nominee here, Staci Yandle, a question. I am familiar with your career and what you have done, and you have spent a lot of time representing the little guy, plaintiffs trying to recover in lawsuits where the odds are against them, pro bono defendants and clients, and folks who are usually considered to be the least likely to succeed under our system of justice. And that is one of the things that attracts me to you, and you know that.

When Chief Justice John Roberts had his confirmation hearing before the Committee, here is what he said: "If the Constitution says that the little guy should win, the little guy is going to win in a court before me. But if the Constitution says that the big guy should win, well, then the big guy is going to win."

What do you think of Chief Justice Roberts' statement?

Ms. YANDLE. I think his statement is absolutely correct, and I think that is the proper role of a district court judge. It would be certainly what I would value as well. Based on my years of experience, as you mentioned, Senator, trying cases on behalf of plaintiffs, it has given me actually a very keen appreciation for the importance of impartiality and judicial integrity. I have gotten that appreciation from the other side of the bench. And so it is extremely important, and I agree with what Justice Roberts said. If confirmed, and in any matter that comes before me, based on the law and the applicable precedent, should, as you put it, the little guy win based on the law, they will; and should the corporation prevail based on the law, they will.

Senator DURBIN. One of the questions asked of you by Senator Kirk—and we were all together yesterday when he asked this question—was about a constitutional amendment, the Tenth Amendment, the role of the Federal Government, the role of the States, and it is something that we talk about night and day around here as part of the ongoing conversation. And he asked what your approach would be, what your views would be as a district court judge on that amendment.

Ms. YANDLE. Yes, and that was the Tenth Amendment, which guarantees, of course, the rights to the State where there is an absence of Federal right. And what I indicated was I have not engaged in any type of constitutional analysis about the strength or weakness of the Tenth Amendment. However, the Tenth Amendment as well as any other part of the Constitution, if there were a matter to come before me if I were confirmed, I would look first for Supreme Court guidance. Lacking that, I would look for any guidance from the Seventh Circuit. And I would certainly apply the law.

Senator DURBIN. Thank you.

Mr. Rodriguez, it was 13 years ago when I introduces a bill called the DREAM Act in this Committee, and my cosponsor was Senator Orrin Hatch. It has been a long, long journey. Four years ago, I wrote a letter to President Obama, co-signed by Senator

Lugar; a year later another letter, co-signed by, I believe, a dozen of my colleagues. In each of those, I asked for the President to consider an Executive order that would spare the DREAM Act-eligible young people in America from deportation. The President issued that Executive order, and it is known as DACA, and it defers deportation of those eligible for the DREAM Act, specifically those who came to the United States under the age of 16 and who have no serious criminal record, finished high school, and at least hold out the promise to be real assets to this Nation.

Well, we are now moving forward with that, and some still criticize it. In fact, there has even been a vote in the House of Representatives to repeal this DACA provision, the Executive order of the President. A half million have come forward, roughly, and signed up with the Government, registered as promised, and now are leading otherwise normal lives. I just was told that nine of them have been admitted to medical school in the city of Chicago. I was with another just a week ago who is now a teacher in the suburbs of Chicago. They have been given their chance.

I would like to ask you two things. First, what is your view about this prosecutorial discretion as it relates to DACA or other deportations? And, second, will you be prepared when the 2-year period ends and these and many others who have been given DACA seek renewal to have the administrative resources there so they can do that in a timely fashion?

Mr. RODRIGUEZ. Senator, I really appreciate your calling attention to the many wonderful young people who have participated in the DACA program. They speak to the great American promise that I discussed during my opening statement. These are students, these are strivers. And as you have observed many of them are now pursuing professions; a number of them have indicated their interest in serving in our armed forces if that opportunity were to become available to them.

And so I certainly will commit to doing everything that I can and having the goal, in the hopeful event of my confirmation, to making that process work and to finding the appropriate resources to making that process work.

Thank you.

Senator DURBIN. If I could do one followup, the question was raised about the critics have said the President did not have the authority to issue this Executive order. I have felt that the issue of prosecutorial discretion has been fairly clear in the past. In fact, justice Kennedy recently said, "A principal feature of the removal system is the broad discretion exercised by immigration officials." This is from Justice Kennedy in a recent case striking down one of the controversial Arizona immigration laws.

Would you comment on this issue of prosecutorial discretion?

Mr. RODRIGUEZ. Well, certainly I have spent a significant portion of my career as a prosecutor, primarily in the criminal justice context, in some cases in administrative context as well. There is prosecutorial discretion in all of those contexts. It is not unlimited. It is not uncabined. But there is prosecutorial discretion that would apply in all of the contexts that the Senator is describing.

Thank you.

Senator DURBIN. Thank you. Thanks to all the nominees.

Senator KLOBUCHAR. Thank you very much, Senator Durbin.

Senator Grassley.

Senator GRASSLEY. I will start with you, Ms. Krause. First of all, congratulations to all of you. I would have said that in my statement, but I put it in the record.

Senator DURBIN. Is your microphone on?

Senator GRASSLEY. My microphone is on, yes. Maybe I am not—you can always hear me.

You have written about conditions of supervised release that courts have imposed on convicted cyber criminals and argued that restrictions on cyber criminals' Internet use was extreme in certain cases. So then the question: Under what circumstances do you believe it is appropriate for courts to require a cyber criminal to obtain permission before possessing or using an Internet-capable device like a computer or a smartphone?

Ms. KRAUSE. Thank you, Senator. That article was one summarizing the law of many different circuits and pointing out that in some cases there had been complete bans that had been overturned; whereas, the standard—and certainly the standard articulated by the Third Circuit in *United States v. Freeman*—is that there be a relationship of the least restrictive necessary to serve the penological interest.

I think that those restrictions would need to be considered on a case-by-case basis, and they may range from needing to seek permission or limited restrictions up to and including a complete ban in certain cases like the *Mitnick* case, which I described in that article as well.

Senator GRASSLEY. Okay. Now, you are just going to love when I ask you about something you wrote when you were a third-year law student. That would be your views on Title VII, reviews in which you stated your belief that, "Discrimination remains a widespread social problem." Basically you said that although overprejudice was gone, a more subtle form of discrimination still persists. Based on that you, argued that a certain affirmative difference, the after-acquired-evidence defense, should be limited in Title VII cases.

Now, I already recognize that you wrote that as a law student, but I would like to know whether your views have changed since 1993. Do you still believe that discrimination remains a widespread social problem?

Ms. KRAUSE. Senator, that article from 1994 related to the use of the after-acquired-evidence defense, and I still believe that Title VII should be enforced. It is the enactment of Congress' considered policy determination that there remains the need for protection of civil rights, including in the workplace.

The position that I took there that it was Congress' view that the protections as embodied in Title VII still needed to be pursued ultimately was adopted by the Supreme Court in *McKennon v. Nashville Banner Publishing Company*, where, I might add, they actually cited to that article.

I believe as a judge, if I have the privilege of being confirmed, that issues about Title VII would need to be addressed on a case-by-case basis, considering the applicable law and Supreme Court

precedent, as well as Third Circuit precedent, applied to the facts of the particular case or controversy that might come before me.

Senator GRASSLEY. Do you have happen to believe that whether or not affirmative defenses that courts have recognized in Title VII cases should be limited or unavailable in order to combat discrimination in society?

Ms. KRAUSE. I do not have a view on that as a general matter, Senator. With that particular affirmative defense, the Supreme Court concluded, consistent with the EEOC and others that had looked at the issue, that it was not appropriate for that to be used as a complete defense, although it did cutoff damages.

Senator GRASSLEY. So you would follow the Supreme Court? That is an obvious answer.

Ms. KRAUSE. Senator, I would follow the Supreme Court in that, as in all things, if I have the honor of being confirmed.

Senator GRASSLEY. One last question that I offer a lot of judges, both district as well as circuit, or even Supreme Court nominees. You have had a distinguished career as a lawyer and appellate advocate, but never served in a judicial capacity. Lawyers use many resources in formulating arguments that judges might necessarily rely on in deciding your cases. So then this is about the issue of whether or not you as a judge ever think it is proper to rely on foreign law or on views of the world community, as some judges have stated it, in determining the meaning of the Constitution or Federal statutes.

Ms. KRAUSE. Thank you, Senator. No, I view the U.S. Constitution as well as statutes of Congress, of course, as domestic law, and I would look to domestic law sources to interpret them. I am aware that in certain cases, for example, in discussing the jury system, the Supreme Court on occasion has looked to British common law and referred to foreign law in some circumstances.

Obviously, I would abide by the precedent of the Supreme Court in the holdings of those cases, but my approach, if I am confirmed would be to apply to domestic sources of interpretation to U.S. law.

Senator GRASSLEY. For the district nominees, I am going to submit questions in writing, and I am now going to go to Mr. Rodriguez. So if you would answer those when we submit them, I would appreciate it.

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

Senator GRASSLEY. Mr. Rodriguez, you were a board member of CASA de Maryland, a group that advocates for Latinos and immigrants. While I have strong disagreement over some of the stances that this organization has taken over the years regarding immigration policy, I would like to discuss several events that occurred while you were on the board, and especially in light of the job that you have been nominated for.

While you were a member of that board, the organization published a booklet entitled, "Warning: Protect Yourself from Immigration Raids." That was March 2007. The booklet was designed to inform undocumented workers how to avoid or minimize the chance of triggered lawful deportation proceedings. It encouraged undocumented workers not to give law enforcement a name of an individual, even while acknowledging that it is a crime in some juris-

dictions not to do that. Some press accounts also noted how illustrations could be perceived as disparaging law enforcement.

So my question: As a board member, did you have any knowledge of this booklet before it was published in March 2007? Then I will go on to another question.

Mr. RODRIGUEZ. Senator, I was not aware of that publication.

Senator GRASSLEY. Thank you. After the booklet was reported in the press, did you take any steps, either privately or publicly, to encourage the organization to retract the pamphlet?

Mr. RODRIGUEZ. Senator, what I might point out is that actually I separated from board service in May 2007. When I became county attorney for Montgomery County, I discontinued basically all of my nonprofit involvements at that time. So I did not become aware of this publication, Senator, honestly until you referenced it today.

Senator GRASSLEY. So you were gone 2 months after it was published.

Mr. RODRIGUEZ. That is correct.

Senator GRASSLEY. Okay. Let me go on then. As a board member, that organization, CASA, entered a lawsuit filed on behalf of undocumented immigrants. That lawsuit sought to prevent Maryland's Motor Vehicle Administration from complying with the Federal law REAL ID Act. That Act was enacted following September the 11th and was one of the recommendations of the 9/11 Commission. Among other things, it required States to strengthen their identity verification procedures to ensure State forms of identification could be used for Federal purposes, such as boarding an aircraft.

Do you personally oppose the REAL ID Act?

Mr. RODRIGUEZ. Senator, I do not have a specific opinion on the REAL ID Act. Certainly if those are questions that this body is considering, I would look forward to working with the Senator in the hopeful event of my confirmation to discuss that Act.

Senator GRASSLEY. Well, this might be an easier one for you to answer. Do you believe that States should fully comply with the Federal law, the Federal REAL ID Act?

Mr. RODRIGUEZ. It is certainly my view, and a core part of what I did as county attorney advising Montgomery County, that States and localities should comply with Federal law. And certainly whatever Federal law there might be, it is my view that States and localities are obligated to comply with those laws.

Senator GRASSLEY. Okay. And then I think that answer probably applies to this question, but let me ask it anyway. Do you believe a State that is attempting to comply early with an upcoming Federal mandate deadline should be prevented from compliance until the 11th hour?

Mr. RODRIGUEZ. Senator, it is difficult to specifically—without knowing all the facts applicable to a particular situation, it is difficult to offer a legal judgment on whether the Federal Government does or does not have the authority in the context that you describe. All of these situations tend to be factbound, and so I would not venture to offer an opinion on that subject today.

Senator GRASSLEY. Okay. Now, here is one that I think you can answer. If confirmed, you will have to help enforce the immigration law. Even though the REAL ID law is not under the jurisdiction

of the Customs and Immigration Service, you may play a role in its continued implementation. If confirmed, will you use your position as Director to administratively obstruct the REAL ID law?

Mr. RODRIGUEZ. Senator, you can have my assurance that in my role as CIS Director I will uphold the laws of the United States.

Senator GRASSLEY. Thank you.

I wanted to ask a question about congressional oversight. While you were chief of staff at Civil Rights, the U.S. Commission on Civil Rights conducted an investigation into the decision to decline to prosecute a case from Philadelphia concerning racial intimidation of voters on election day. On May 14, 2010, then Assistant Attorney General Thomas Perez testified before the Commission and answered questions concerning this inquiry.

In regard to your working with him, did you help prepare Mr. Perez for his testimony before the Commission that day?

Mr. RODRIGUEZ. I was part of the team. I did not play a central role in preparing him for his testimony.

Senator GRASSLEY. At one point in the questioning, a Commissioner asked Mr. Perez whether any political leadership was involved in the decision not to pursue this particular case of voter intimidation. Mr. Perez responded, "No." However, a FOIA lawsuit later revealed that the Department of Justice was aware of more than 50 emails between political appointees and career attorneys regarding the Government's "decisionmaking process" to decline to prosecute the case. A Federal judge even commented that these internal DOJ documents "appeared to contradict Assistant Attorney General Perez's testimony before the Commission that political leadership was not involved." That is what the judge said in the decision to dismiss this case.

At the time of Mr. Perez's testimony, then, the question to you is: Were you aware of these emails' existence?

Mr. RODRIGUEZ. I am aware generally about—is my—I am on. I am aware generally of the issue that the Senator describes. It was my understanding that the decisions were made by career staff that there certainly were communications with political leadership about the decisionmaking process that was being undertaken at that particular point in time by the career staff. That is my general understanding. I am not specifically aware of the context of the emails that the Senator describes.

Senator GRASSLEY. Also during this investigation, the Department of Justice and the Civil Rights Division refused to comply with the Commission's lawful subpoenas. Were you involved in the deliberation to refuse to honor the Commission's subpoenas?

Mr. RODRIGUEZ. I actually—I was involved in the process of gathering large numbers of documents and information to comply with the Commission's subpoena. And my recollection is we delivered thousands of pages of documents to the Commission.

Senator GRASSLEY. Here is a question that is very important to me because I concentrate on oversight as a Member of Congress. Do you believe that it is acceptable for an agency or agent of the Federal Government to refuse to comply with a lawfully issued subpoena?

Mr. RODRIGUEZ. No, I do not believe that it is within the authority of a Federal agency to refuse to comply with a lawfully issued

subpoena. I do note that there are occasions where there are certain constitutional and statutory privileges that may shield certain information or documents from production, and I would assume that when those privileges are asserted, they are asserted in good faith.

Senator GRASSLEY. Let me ask you this next question, but let me preface it with something like this, that in all the years I have been in Congress, there is not a person like you or anybody else that has come before us for a political appointee that has not always said yes, will you respond to our letters, will you come before us to testify, will you cooperate with oversight, all those things. And invariably they never live up to it.

So what is your view of the oversight authority of Congress?

Mr. RODRIGUEZ. So I think the Senator's question is how can I assure you that I mean it when I say that. Is that correct, Senator?

[Laughter.]

Senator GRASSLEY. Yes. Thank you for understanding me.

[Laughter.]

Mr. RODRIGUEZ. And I think particularly for an agency like USCIS, where the role that we play touches every single State, every single congressional district, I think our partnership with this body and with the House of Representatives is really critical, one, to our discharge of our duties as an executive agency, but really our ability to effectively do our business as Citizenship and Immigration Services.

I need you to fully understand what we are doing, the challenges that we face, the opportunities that we are seeking. And so I really view it as in the interest—in the hopeful event of my confirmation, in the interest of my agency to have an open relationship with your office and to provide you the information that you need to fulfill your oversight role.

Senator GRASSLEY. You know, this may sound like I think this is a problem just with this administration. Do you understand, I think this is a problem throughout Republican and Democrat administrations, and there is a culture in these administrations to thumb their nose at the Congress, not to respond any more than they have to, have to write five or six letters before you really get the answers you want. I have had people at the start of this administration before I even knew what this administration might do, give a whole file of letters unanswered from the Bush administration that I thought surely they would help us get answered so that they would not be blamed for not answering our letters, you know.

My last question on another subject. You told Senator Durbin that you would put more resources into DACA. That tells me you will continue the program. Will you expand the program beyond its current form? And, second, news reports have suggested that DACA has taken resources away from other immigration programs, including family and employment visas. Are you saying DACA does not have enough resources today? Won't adding more just harm other programs further?

Mr. RODRIGUEZ. Yes, well, what I meant to say in responding to Senator Durbin's question is that we will do what we need to do to make sure across the board, throughout our functions as Citizenship and Immigration Services, that we have the resources that we

need, that we are efficiently allocating the resources that we have to discharge all of our functions, and that we discharge our obligations as to all of our lines of business.

I was not meaning to forecast the future of DACA or to say what I would do in the future about DACA. I cannot prejudge those situations without yet being confirmed, and I do hope that I will be confirmed. What I can say is that if I am confirmed, I view it as part of my stewardship of the agency to make sure that the agency is proper resourced to do everything that it does and that no one line of business suffers over any other line of business.

Senator GRASSLEY. Okay. You have answered my questions well. I may not agree with you. You may have too much leeway in some instances. But if you answer my letters, you are going to satisfy me more than a lot of——

[Laughter.]

Mr. RODRIGUEZ. So, Senator, you should also know that I have a particular—I am a former false claims prosecutor, and so I wanted to take an opportunity——

Senator GRASSLEY. You are okay then.

[Laughter.]

Mr. RODRIGUEZ. Well, I wanted to thank you for your leadership on the whistleblower provisions of the False Claims Act.

Senator GRASSLEY. Well, thank you. And thank you, Madam Chairman.

Senator KLOBUCHAR. Well, thank you, Senator Grassley.

Has anyone else done anything with false claims? No, you do not have to answer. That is fine.

I want to thank you all—and, Mr. Rodriguez, I just wanted to put something on the record, and we do not have to go into it. Maybe we can later in writing. But Congresswoman Ros-Lehtinen from the House of Representatives, a Republican, put in a good letter of support for you and your nomination, and specifically mentioned the work that Senator Grassley had asked about with CASA de Maryland and your good work there, and I wanted to put this on the record, and just wondered why you got involved in that organization and the kind of work that you saw yourself as doing in the organization. I know Senator Grassley had a serious question about a booklet and some things, but I am giving you that chance to talk a little bit about the organization.

Mr. RODRIGUEZ. I come to really my entire professional and personal life with the perspectives that came from being the son of immigrants. My parents came here fleeing from the Castro dictatorship in Cuba. My grandparents actually went to Cuba fleeing anti-Semitism and poverty in Turkey and Poland. So it is profoundly part of our identity as a family to understand what it means to be starting fresh in a new country, what those hardships are. And so I always have an affinity to any enterprise, be it a Government agency of 18,000 people or a small community nonprofit, to support people who are trying to pull themselves up by their boot straps and make a good life here in America and to help their families realize the dreams of this country. So those are really my motivations.

Senator KLOBUCHAR. Well, thank you. That was a very nice way to end this excellent hearing. I know many of you are pursuing

your dreams in these jobs, and we want to thank you for your patience here with our rather interrupted proceeding here and there. And also your family members, I did not hear any babies crying. I do not know what happened to that baby, but I do not know, fell asleep, whatever. And we want to thank you for being here, and we will keep the record open for a week for further questions, and this hearing is adjourned. Thank you, and thank you, Senator Grassley.

[Whereupon, at 10:39 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, March 12, 2014
Dirksen Senate Office Building, Room 226
9:30 a.m.

Panel I

Cheryl Ann Krause, to be a United States Circuit Judge for the Third Circuit

Panel II

Richard Franklin Boulware II, to be a United States District Judge for the District of Nevada

Salvador Mendoza, Jr., to be a United States District Judge for the Eastern District of Washington

Staci Michelle Yandle, to be a United States District Judge for the Southern District of Illinois

Leon Rodriguez, to be Director of the United States Citizenship and Immigration Services, Department of Homeland Security

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Cheryl Ann Krause
   (Cheryl Krause Zemelman)

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

   United States Circuit Judge for the Third Circuit

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

   Dechert LLP
   Cira Centre
   2929 Arch Street
   Philadelphia, Pennsylvania 19104

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

   1968; St. Louis, Missouri

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

   1990 – 1993, Stanford Law School; J.D. *(with highest honors)*, 1993

   1985 – 1989, University of Pennsylvania; B.A. *(summa cum laude)*, 1989

   1987 – 1988, University of London, King's College (University of Pennsylvania junior year abroad program); no degree

   Summer 1984, Summer 1986, Harvard University (Harvard Summer School); 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.

2006 – Present
Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
Partner

2010 – Present, 2003 – 2006
University of Pennsylvania Law School
3400 Chestnut Street
Philadelphia, PA 19104
Lecturer in Law

2003 – 2006
Hangley Aronchick Segal & Pudlin
One Logan Square
18th & Cherry Streets
27th Floor
Philadelphia, PA 19103
Shareholder

1997 – 2002
United States Attorney's Office for the Southern District New of York
One Saint Andrews Plaza
New York, NY 10007
Assistant United States Attorney

Fall 2002
Columbia Law School
435 West 116th Street
New York, NY 10027
Lecturer in Law

1996 – 1997
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017
Associate

1995 – 1996, 1991
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305

Lecturer and Visiting Scholar (1995 – 1996)
Research Assistant to Professor Gerald Gunther (1991) (unpaid)

September 1995 – May 1996, Summer 1992, Summer 1991
Heller Ehrman White & McAuliffe LLP
(Formerly Heller Ehrman LLP)
333 Bush Street
San Francisco, CA 94104
Law Clerk (not yet admitted to bar) (September 1995 – May 1996)
Summer Associate (Summer 1992, Summer 1991)

1994 – 1995
United States Supreme Court
One First Street, Northeast
Washington, DC 20543
Law Clerk to the Honorable Anthony M. Kennedy

1993 – 1994
United States Court of Appeals for the Ninth Circuit
125 South Grand Avenue
Pasadena, CA 91105
Law Clerk to the Honorable Alex Kozinski

Summer 1992
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
Summer Associate

1989 – 1990
Krokidas & Bluestein
600 Atlantic Avenue
Boston, MA 02210
Paralegal

Other Affiliations (uncompensated):

2013 – Present
Autism Speaks Legal Resource Center
1 East 33rd Street
4th Floor
New York, NY 10016
Advisory Board Member

2007 – Present
Philadelphia Board of Ethics

1441 Sansom Street
Philadelphia, PA 19102
Outside Counsel

2007 – Present
Committee of Seventy
Eight Penn Center
1628 JFK Blvd
Suite 1002
Philadelphia, PA 19103
Director

2005 – Present
Professional Women's Roundtable
P.O. Box 1155
Havertown, PA 19083
Advisory Board Member

2003 – Present
Stanford Law School Alumni Association
Office of External Relations
559 Nathan Abbott Way
Stanford, CA 94305
Regional Representative

2006
Women's Law Project
125 South Ninth Street, # 300
Philadelphia, PA 19107
Director

1996 – 1998
Stanford Law Society of New York
Stanford Law School
Office of External Relations
559 Nathan Abbott Way
Stanford, CA 94305
Founder and Chair

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

I have not served in the United States Military. I was not required to register for Selective Service. I am registered as service member spouse with the United States Air Force.

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

Professional Honors

Best Lawyers in Criminal Defense: White Collar, THE BEST LAWYERS IN AMERICA (2011 – Present)

SuperLawyer, Philadelphia Magazine (2005 – Present)

Thaddeus Stevens Award, Public Interest Law Foundation of Philadelphia, on behalf of Dechert LLP (2012)

Certificate of Appreciation, United States District Court for the Eastern District of Pennsylvania (2012)

Sam Klein Pro Bono Award, Dechert LLP (2011)

Pro Bono Roll of Honor, Pennsylvania Court of Common Pleas, First Judicial District (2009)

Women of Distinction, Philadelphia Business Journal and the National Association of Women Business Owners (2007)

Resolution of Appreciation, Board of Ethics of the City of Philadelphia (2007)

Up and Coming Lawyer for Litigation: White Collar Crime and Government Investigations, Chambers USA (2006 – 2007)

Pennsylvania Lawyer on the Fast Track, American Lawyer Media, The Legal Intelligencer and Pennsylvania Law Weekly (2005)

Certificate of Appreciation, National School of Magistrate Judges, French Ministry of Justice (2002)

Secretary of Agriculture's Group Honor Award for Excellence, Department of Agriculture (2000)

Numerous certificates of appreciation and commendations from the Drug Enforcement Administration, Federal Bureau of Investigation, United States Postal Inspection Service,

United States Department of Agriculture, and United States Department of Veterans Affairs (1998 – 2002)

Academic Honors

Order of the Coif, Stanford Law School (1993)

Steven M. Block Civil Liberties Award, Stanford Law School (1993)

Winner of the Marion Rice Kirkwood Moot Court Competition (First Prize for Oral Advocacy and First Prize for Best Brief), Stanford Law School (1993)

Mr. and Mrs. Duncan L. Mattenson, Sr. Award (1993)

Second Prize, State Bar of California Student Writing Competition (1993)

Stanford Law and Policy Review, Senior Features Editor (1992 – 1993)

First Year Honors Award (highest G.P.A.), Stanford Law School (1991)

Phi Beta Kappa, University of Pennsylvania (1989)

Dean's List, University of Pennsylvania (1985 – 1989)

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

American Bar Association

Criminal Law Committee of the Federal Bar Association, Philadelphia Chapter
Executive Committee (2005 – Present)
Treasurer (2009)

Federal Bar Association

National Association of Criminal Defense Lawyers

Pennsylvania Association of Criminal Defense Lawyers

Pennsylvania Bar Association

Philadelphia Bar Association

The Association of the Bar of City of New York
Committee of Professional and Judicial Ethics Member (2001 – 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, 2003
New York, 1997
Connecticut, 1996

There have been no lapses in membership.

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

United States Court of Appeals for the Third Circuit, 2008
United States Court of Appeals for the Second Circuit, 1998
United States Court of Appeals for the Eighth Circuit, 1997
United States District Court for the Middle District of Pennsylvania, 2004
United States District Court for the Eastern District of Pennsylvania, 2003
United States District Court for the Southern District of New York 2002
United States District Court for the Eastern District of New York, 2002

My membership in the United States Court of Appeals for the Second Circuit lapsed in 2011 after the Court instituted a new re-registration requirement. I re-registered and was admitted in 2013, retroactive to my original admission in 1998. There have been no other lapses in 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.

American Bar Association, Young Lawyers' Division, White Collar Crime Section Steering Committee, Philadelphia Chapter (2004 – 2006)

American Inns of Court, University of Pennsylvania Law School Chapter (2003 – 2005)
Barrister

Autism Speaks Legal Resource Center (2013 – Present)
Advisory Board

Board of Ethics of the City of Philadelphia (2007 – Present)
Outside Counsel

Committee of Seventy (2007 – Present)
Board of Directors (2007 – Present)
Policy Committee Member (2007 – 2010)
Co-Chair of Elections Subcommittee (2007 – 2010)

Criminal Justice Act Panel of the United States District Court for the Eastern District of Pennsylvania (2005 – 2008)

Leadership Philadelphia (2006 – 2007)

People-to-People Criminal Defense Lawyer Delegation to China (2005)
Delegate

Professional Women's Roundtable of Philadelphia (2005 – Present)
Advisory Committee

Stanford Law School Alumni Association (2003 – Present)
Regional Representative

Stanford Law Society of New York (1996 – 1998)
Founder and Chair

The Veterans Consortium Pro Bono Program (2005 – 2008)
Volunteer Attorney

Union League of Philadelphia (2004 – Present)

Women's Law Project (2006)
Board of Trustees

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

The Union League of Philadelphia discriminated on the basis of race and sex

many years before I became a member. In 1972, the League admitted its first African American member, and in 1986 the League admitted its first female member. 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.

Cheryl A. Krause & Elisa T. Wiygul, *USA, in* GLOBAL LEGAL INSIGHTS- BRIBERY & CORRUPTION 220 (Johnathan Pickworth & Deborah Williams eds., 1st ed. 2013). Copy supplied.

Jonathan Pickworth, Cheryl Krause, Karen Coppens & Lloyd Firth, *Deferred Prosecution Agreements: A Powerful New Tool for UK Prosecutors?,* DECHERT ONPOINT (Dechert LLP), May 3, 2013. Copy supplied.

Defense Strategies and Compliance Issues in the New Insider Trading Environment, THE CHAMPION, September/October 2012, at 46. Copy supplied.

Cheryl Krause, Jennings Durand & Ethan Fogel, *Partnering With Law Students to Serve the Community*, THE LEGAL INTELLIGENCER, March 27, 2012. Copy supplied.

Jonathan Pickworth, Jacques Sivignon, Cheryl Krause, Karen Coppens & Marieke Minkkien, *Who Leads the Way in Anti-Corruption Enforcement: A Comparison between the UK, the United States and France*, THOMPSON-REUTERS (Dechert LLP), February 2012. Copy supplied.

Cheryl A. Krause & Justin C. Danilewitz, *U.S. Department of Justice Releases First FCPA Advisory Opinion of 2011*, DECHERT ONPOINT (Dechert LLP), August 2011. Copy supplied.

Cheryl A. Krause, Justin C. Danilewitz & David S. Caroline, *SEC Releases First Deferred Prosecution Agreement in Tenaris FCPA Case*, DECHERT ONPOINT (Dechert LLP), June 2011. Copy supplied.

Cheryl A. Krause, Justin C. Danilewitz & David S. Caroline, *SEC Adopts Final Whistleblower Rules*, DECHERT ONPOINT (DECHERT LLP), May 2011. Copy supplied.

Edward L. Pittman, Cheryl A. Krause, Thomas C. Bogle & Justin C. Danilewitz, *Recent SEC Sweep Highlights the Need for U.S. Investment Advisers Seeking Business from Sovereign Wealth Funds to Develop Policies for FCPA Compliance,* DECHERT ONPOINT (Dechert LLP), February 2011 (reprinted in 12 J. OF INVESTMENT COMPLIANCE, 2011, at 11). Copy supplied.

Cheryl A. Krause & Elisa T. Wiygul, *FCPA Compliance: The Vanishing 'Facilitating Payments' Exception?*, 2 FIN. FRAUD LAW REP., September 2010, at 730. Copy supplied.

David M. Howard, Cheryl A. Krause & William Gibson, *Private Commercial Bribery: The Next Wave of Anti-Corruption Enforcement?*, DECHERT ONPOINT SPECIAL ALERT (Dechert LLP), April 2010 (reprinted in 2 FIN. FRAUD LAW REP., September 2010, at 710). Copy supplied.

Paul Huey-Burns, Cheryl Krause & Adam Moore, *The SEC's Cooperation Framework*, 14 WALL STREET LAWYER, March 2010. Copy supplied.

Richard Heffner, Cheryl Krause & Paul Huey-Burns, *Enforcement: A Comparison Between the FSA and SEC*, *in* HEDGE FUNDS AND THE LAW 79, (Sweet & Maxwell ed. 2009). Copy supplied.

Cheryl Krause & Justin C. Danilewitz, *Second Circuit Rejects Opportunity to Limit Application of Vicarious Liability Doctrine to Corporate Criminal Defendants*, DECHERT ONPOINT (Dechert LLP), February 2009. Copy supplied.

Cheryl A. Krause & Sarah Wager, *The New Age of Data Security Breaches: A Practical Look At Corporate Exposure And Ways To Minimize Risk*, 1 BLOOMBERG L. REP: PRIVACY & INFORMATION, November 2008, at 5. Copy supplied.

Cheryl A. Krause & Luke A.E. Pazicky, *An Un-Standard Condition: Restricting Internet Use As A Condition Of Supervised Release*, 20 FED. SENT'G REP., February 2008, at 201. Copy supplied.

Classmates, STANFORD LAWYER, Fall 2006, at 37, 67. Copy supplied.

Choosing Philadelphia, LEGAL INTELLIGENCER (Jan. 27, 2003). Copy supplied.

Cheryl Krause Zemelman, Cynthia L. Jackson & Dale L. Bratton, *Reductions in Force and Plant Closings*, ADVISING CALIFORNIA EMPLOYERS (1995 – 2005). Copy supplied.

The After-Acquired Evidence Defense to Employment Discrimination Claims: The Privatization of Title VII and the Contours of Social Responsibility, 46 STAN. L. REV. 175 (1993). Copy supplied.

Employer Responses to Sexual Harassment: The Right to Privacy and the Limits of Non-Fraternization Policies, 9 CAL. LAB. & EMPL. Q. 5, SUMMER, 1993, at 5. 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 April 2009, I met with the City Solicitor for the City of Philadelphia on behalf of the Committee of Seventy to present an analysis of the City's Deferred Retirement Option Plan and Pension Code. As a follow-up to that meeting, I submitted a letter to the City Solicitor summarizing our meeting, which I have supplied.

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

In my capacity as a board member of the Committee of Seventy, I provided background research on two issues, *i.e.,* nepotism in city government and outside employment by city workers, that was incorporated into testimony presented by the President of the Committee of Seventy to the Philadelphia City Council on May 12, 2010. Testimony supplied (relevant excerpts at pages 19 – 21).

On April 12, 2010, in my capacities as a board member of the Committee of Seventy and as an attorney, I prepared and corresponded with the Philadelphia City Commissioners concerning a petition I filed on behalf of 26 concerned voters to divide electoral divisions in Philadelphia that significantly exceeded the maximum number of electors permitted under Pennsylvania law. Press release and email with petition supplied.

On July 22, 2009, I attended a public meeting of the Philadelphia Board of Ethics in my capacity as outside counsel and described the proposed Public Communications Guidelines for the Board of Ethics, which I had drafted. Minutes and Guidelines supplied.

On April 16, 2008, I attended a public meeting of the Philadelphia Board of Ethics in my capacity as outside counsel and provided an update on the status of an Emergency Petition for Special Injunction and Preliminary Injunction that I had filed on behalf of the Board in connection with an enforcement action. 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.

I have not kept a comprehensive list of the presentations I have made. The following list is my best effort to recreate my history of speaking engagements based on a diligent search of my files and the Internet. It is possible I have omitted presentations for which I did not retain records.

October 23, 2013: Panelist, "International Developments in Anti-Corruption Enforcement," CLE presented by Dechert LLP in New York, New York. PowerPoint presentation supplied.

August 13, 2013: Panelist, "A Price Worth Paying?," Association of Corporate Counsel, New York, New York. I provided commentary on a dramatic film illustrating the challenges to boards of directors in dealing with compliance issues and internal investigations. Notes supplied.

June 4, 2013: Speaker, "Trade Secret and Non-Compete Update," Delaware Valley Chapter of the Association of Corporate Counsel, Philadelphia, Pennsylvania. PowerPoint Presentation supplied.

May 7, 2013: Instructor, Joint Deposition Program presented by Dechert LLP and Pepper Hamilton, LLP, in Philadelphia, Pennsylvania. Syllabus supplied.

November 9, 2012: Panelist, "Troubling Trends in SEC Enforcement: Is it an Examination or an Enforcement Action and Has Your Chief Compliance Officer Been Converted to the SEC's Chief Enforcement Officer?," White Collar Practice Conference of the Pennsylvania Association of Criminal Defense Lawyers, Philadelphia, Pennsylvania. Notes and handout supplied.

October 11, 2012: Thaddeus Stevens Award, Public Interest Law Center of Philadelphia ("PILCOP"), accepted by me in Philadelphia, Pennsylvania, on behalf of Dechert LLP, for, among other things, successful class action litigation I brought in partnership with PILCOP on behalf of a class of students with autism in the Philadelphia School District. I have no notes, transcript, or recording. The address of PILCOP is United Way Building, Second Floor, 1709 Benjamin Franklin Parkway, Philadelphia, Pennsylvania 19103.

September 7, 2012: Speaker, "Global Anti-Corruption Training: FCPA and UK Bribery Act," CLE sponsored by Dechert LLP, Philadelphia, Pennsylvania. PowerPoint presentation supplied.

June 13, 2012: Panelist, "An International Perspective of Anti-Corruption Enforcement: The FCPA and UK Bribery Act," Marcus Evans Eighth FCPA and Anti-Corruption Compliance Conference, Washington, DC. PowerPoint presentation supplied.

June 4, 2012: Instructor, Joint Deposition Program presented by Dechert LLP and Pepper Hamilton, LLP. Philadelphia, Pennsylvania. Syllabus supplied.

March 12, 2012: Panelist, "Initial Responses to a Government Subpoena: Strategy, Privilege and Immunity Issues," Pennsylvania Bar Institute, Philadelphia, Pennsylvania. Video supplied.

November 29, 2011: Guest Lecturer at Supreme Court Process and Practice seminar for Professors Amy Wax and James Feldman, University of Pennsylvania Law School, Philadelphia, Pennsylvania. I discussed my clerkship experience and procedures for handling cases at the United States Supreme Court. I have no notes, transcript, or recording. The address of the University of Pennsylvania Law School is 3501 Sansom Street, Philadelphia, Pennsylvania 19104.

November 18, 2011: Moderator, "In *Galleon's* Wake: Insider Trading After The Trial of Rajaratnam," White Collar Practice Conference of the Pennsylvania Association of Criminal Defense Lawyers. PowerPoint presentation with notes supplied.

September 14, 2011: Speaker, "Recent Developments in Insider Trading Law and the Requirement of *Mens Rea*," Ethics and Compliance Officers' Association, New York, New York. PowerPoint presentation supplied.

June 23, 2011: Panelist, "Corruption Without Borders: Practical Guidance for Companies with Domestic and International Business Operations," Association of Corporate Counsel, New York, New York. PowerPoint presentation supplied.

April 15, 2011: Speaker, "Global Anti-Corruption Compliance and Enforcement: Implications for Money Managers," American Bar Association Institutional Investors Committee, Boston, Massachusetts. PowerPoint presentation supplied.

March 15, 2011: Speaker, "The Right of Employers to the Honest Services of Their Employees: What Survives Skilling?," Ethics and Compliance Officers' Association Webcast. PowerPoint presentation supplied.

November 5, 2010: Speaker, "Internal Investigations: Developments in Global

Anticorruption Enforcement and the Impact on International Investigations," CLE presented by Dechert LLP, Philadelphia, Pennsylvania. PowerPoint presentation supplied.

October 8, 2010: Speaker, "The First Amendment Right of Corporations to Engage in Free Speech: *Citizens United v. Federal Election Commission* and its Implications," CLE presented by Dechert LLP, Philadelphia, Pennsylvania. PowerPoint presentation supplied.

September 30, 2010: Speaker, "The Internationalization of Anti-Corruption Compliance and Enforcement," Association of Corporate Counsel, New York, New York. PowerPoint presentation supplied.

September 23, 2010: Introduced Liz Dow at the Professional Women's Roundtable Anniversary Event and Award Dinner in Radnor, Pennsylvania. Notes supplied.

July 28, 2010: Speaker, "The First Amendment Right of Corporations to Engage in Political Speech: *Citizens United v. Federal Election Commission* and its Implications," CLE sponsored by the City of Philadelphia Law Department in Philadelphia, Pennsylvania. PowerPoint presentation supplied.

April 20, 2010: Participant, Roundtable Discussion on Women in the Profession, American Lawyer Media, The Legal Intelligencer, in Philadelphia, Pennsylvania. Transcript of excerpts supplied.

October 30, 2009: Panelist, "Developments in Criminal Procedure," The Seventh Constitutional Law Conclave, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. Notes supplied.

June 9, 2009: Speaker, "FCPA For Financial Services Firms," Securities Industry and Financial Markets Association, Anti-Money Laundering Committee, New York, New York. Notes supplied.

May 15, 2009: Introduced Kevin Puvalowski, the United States Treasury Deputy Special Inspector General for the Troubled Asset Relief Program, at a meeting of the Criminal Law Committee of the Federal Bar Association, Philadelphia Chapter. I have no notes, transcript or recording. The address for the Criminal Law Committee is c/o Marianna Rossman, 1500 Walnut Street, 21st Floor, Philadelphia, Pennsylvania 19102.

May 12, 2009: Volunteer Judge for Law Day mock trial training for law students, sponsored by the Judicial Outreach Committee of the United States District Court for the Eastern District of Pennsylvania. I have no notes, transcript or recording. The address of the United States District Court for the Eastern District of Pennsylvania is 601 Market Street, Philadelphia, Pennsylvania 19106.

February 12, 2009: Panelist, "The Perils of Proffers," Federal Bar Association; Criminal Law Committee of the Federal Bar Association, Philadelphia Chapter, Philadelphia, Pennsylvania. PowerPoint presentation supplied.

May 7, 2008: Panelist, "Trade Secrets and Non-Compete Agreements: Key Issues and Strategies – Criminal Consequences of Theft of Trade Secrets," CLE presented by Dechert LLP in Philadelphia, Pennsylvania. PowerPoint presentation supplied.

February 26, 2008: Guest Lecturer at clerkship seminar for United States District Court Judge Michael Baylson, University of Pennsylvania Law School, Philadelphia, Pennsylvania. I discussed the experience of clerking for judges in the federal judiciary. I have no notes, transcript, or recording. The address of the University of Pennsylvania Law School is 3501 Sansom Street, Philadelphia, Pennsylvania 19104.

January 13, 2008: Guest Lecturer at White Collar Crime seminar for Adjunct Professor Matthew Biben, addressing the United States Sentencing Guidelines, University of Pennsylvania Law School. I have no notes, transcript, or recording. The address of the University of Pennsylvania Law School is 3501 Sansom Street, Philadelphia, Pennsylvania 19104.

December 3, 2007: Remarks upon my acceptance of the Women of Distinction Award presented by the Philadelphia Business Journal and the National Association of Women Business Owners, Philadelphia, Pennsylvania. I have no notes, transcript or recording. The address of the Philadelphia Business Journal is 400 Market Street, Suite 1200, Philadelphia, Pennsylvania 19106.

November 7, 2007: Participant in Civil Rule 56 Conference of the Advisory Committee on Civil Rules of the Administrative Office of the United States Courts, Washington, DC. I offered comments on proposed amendments to Rule 56 of the Federal Rules of Civil Procedure. I have no notes, transcript or recording. The address of the Administrative Office of the United States Courts is One Columbia Circle, Northeast, Suite 7-240, Washington, DC 20544.

October 26, 2007: Course Planner and Moderator, "Terrorism," The Sixth Constitutional Law Conclave, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. Notes supplied.

October 15, 2007: Panelist, "Women in the Profession," Drexel Law School. I spoke about the importance of role models and the challenge of balancing work and family life in the legal profession. I have no notes, transcript or recording. The address of Drexel Law School is 3320 Market Street, Philadelphia, Pennsylvania 19104.

April 18, 2007: "Navigating the Challenges of Global Securities Enforcement," presented by Dechert LLP, New York, New York. Notes supplied.

October 17, 2006: Panelist, "Managing A Foreign Corrupt Practices Act Investigation," CLE presented by Dechert LLP in New York, New York. PowerPoint presentation supplied.

May 4, 2006: Panelist, "Combating Computer Crime: What Corporate Clients Need To Know About United States Criminal Laws and Policies," Internet Law Congress and Annual Meeting, San Francisco, CA. PowerPoint presentation and notes supplied.

May 2, 2006: Panelist, "How to Conduct an Internal Investigation," CLE presented by Dechert LLP in Philadelphia, Pennsylvania. PowerPoint presentation supplied.

May 1, 2006: Panelist, "Managing an Internal Investigation," CLE presented by Dechert LLP in New York, New York. PowerPoint presentation and notes supplied.

March 30, 2006: Panelist, "Terrorism and Civil Liberties, The New Supreme Court: Where Is It Headed?," Pennsylvania Bar Institute, Philadelphia, Pennsylvania. PowerPoint presentation and notes supplied.

October 21, 2005: Panelist, "Terrorism and Civil Liberties," The Fifth Constitutional Law Conclave Pennsylvania Bar Institute, Philadelphia, Pennsylvania. PowerPoint presentation supplied.

July 14, 2005: Panelist, "Update on Attorney-Client Privilege Issues and Document Preservation Post-*Morgan Stanley*," Young Lawyers Division of the American Bar Association, White Collar Crime Committee, Philadelphia Chapter. I have no notes, transcript or recording. The address of the Young Lawyer's Division of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, IL 60654.

July 12, 2005: Panelist, "Practicing Law in Philadelphia," Young Lawyers' Division and Membership Committee of the Philadelphia Bar Association, Philadelphia, Pennsylvania. I discussed my experiences practicing law in Philadelphia. I have no notes, transcript or recording, but press coverage is supplied. The address of the Philadelphia Bar Association is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

April 28, 2005: Speaker, "Evidence Update," Joint Annual Meeting of the Pennsylvania Association of Criminal Defense Lawyers and the Public Defender Association of Pennsylvania, Philadelphia, Pennsylvania. Notes and slides supplied.

February 25, 2005: Course Planner and Speaker, "Recent Developments in White Collar Crime," Pennsylvania Bar Institute, Philadelphia, Pennsylvania. Notes supplied.

February 11, 2005: Course Planner and Moderator, "Recent Developments in White Collar Crime," Pennsylvania Bar Institute, Pittsburgh, Pennsylvania. Notes supplied.

November 17, 2004: Speaker: "Music Pirates – Pro's or Con's?," University of Pennsylvania Honor Council – Presentation to Undergraduates, Philadelphia, Pennsylvania. PowerPoint presentation supplied.

October 30, 2004: Speaker: "Sentencing of White Collar Defendants in Federal Court," For the Experienced Conference, Pennsylvania Association of Criminal Defense Lawyers, Philadelphia, Pennsylvania. Notes supplied.

June 18, 2004: Moderator: "Implications for First Amendment Rights," Homeland Security and Civil Liberties Conference, United States Army War College and the Institute for Strategic Threat Analysis and Response, University of Pennsylvania Law School, Philadelphia, Pennsylvania. I posed questions to the panelists on how to balance First Amendment protections with security needs in the global war on terror. I have no notes, transcript, or recording, but published summary of panel discussion supplied.

February 10, 2004: Panelist, "*Brown v. Board of Education:* 50 Years Later," American Inn of Court, University of Pennsylvania Law School, Philadelphia, Pennsylvania. Notes supplied.

October 21, 2003: Panelist, "Substantive Due Process: Remedies and the Backdrop of Terrorism," The Fourth Constitutional Law Conclave, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. Notes supplied.

April 8, 2003: Panelist, "White Collar Crime: Scope, Prosecution & Punishment," Philadelphia Legal Secretaries Association, Philadelphia, Pennsylvania. PowerPoint presentation supplied.

March 1, 2003: Instructor, "Advanced Teacher Training," National Institute of Trial Advocacy program in Cambridge, Massachusetts. I advised on teaching techniques to guide law students and law firm associates in learning trial skills. I have no notes, notes, transcript, or recording. The address of the National Institute of Trial Advocacy is 1685 38th Street, Suite 200, Boulder, Colorado 80301.

February 11, 2003: Panelist, "The War on Terrorism, Lawyers and Civil Liberties," American Inn of Court, University of Pennsylvania Law School,

Philadelphia, Pennsylvania. PowerPoint presentation supplied.

February 12, 2002: Panelist, "Constitutional War Powers," American Inn of Court, University of Pennsylvania Law School, Philadelphia, Pennsylvania. PowerPoint presentation, transcript and 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.

Jon Campisi, *Federal Judge to Phila. School District: Stop 'Autism Shuffle'*, THE PA RECORD, Feb. 25, 2013. Copy supplied.

Joseph N. DiStefano, *Will U.S. Bust Bad Guys, or Grab the Cash?,* THE PHILA. INQUIRER, June 5, 2011. Copy supplied.

Roundtable Discussion: Women in the Profession, THE LEGAL INTELLIGENCER, Apr. 20, 2010, at WIP19. Copy supplied in response to 12d.

Rooms of Their Own, PHILA. MAGAZINE, October 2008, at 110, 112-13. Copy supplied.

Jennifer Baldino Bonett, *It's Clear There Is No Single Right Answer*, PHILA. BUS. J., WOMEN OF DISTINCTION SUPPLEMENT, Nov. 30-Dec. 6, 2007. Copy supplied.

Michael Hinkelman, *Exec in Pay-to-Play Scam Gets Probation—10G check went to Street campaign*, PHILA. DAILY NEWS, Jan, 5, 2007. Copy supplied.

Associated Press, *Federal Grand Jury Indicts Businessman*, ERIE TIMES-NEWS (PA), June 16, 2006, at 4. Copy supplied.

Jeff Lyons, *Young Lawyers Urged to Get Involved*, PHILADELPHIA BAR REPORTER, August 2005, at 8. Copy supplied in response to 12d.

Jeff Gammage, *Both Parties' Weapon of Choice: Lawyers – A High-Caliber Kerry Team Took Aim on the Phila. Streets and in Court,* THE PHILA. INQUIRER, Nov. 3, 2004. Copy supplied.

Pennsylvania Business News in Brief, ASSOCIATED PRESS, Oct. 15, 2004. Copy supplied.

Jim Smith, *Rapper Allowed to Make Movie Pending Guilty Plea*, PHILA. DAILY NEWS, Mar. 3, 2004. Copy supplied.

Metropolitan Area News in Brief, THE PHILA. INQUIRER, Aug. 28, 2003, at B3. 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 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 was a member of the Legal Steering Committee for the 2008 Obama for

President campaign, where I advised on subjects such as electioneering issues and training materials for poll watchers and volunteers. I was the Pennsylvania Deputy State Counsel and Southeastern Regional Coordinator for the 2004 Kerry-Edwards campaign. My duties included coordinating and preparing election-day legal teams in Southeastern Pennsylvania, training poll watchers and election-day volunteers on fair election procedures, and representing the campaign in federal court. I was a member of the Legal Steering Committee for the Sam Katz for Mayor campaign in 2003 and advised on electioneering issues, trained poll watchers and volunteers on fair election procedures, and coordinated election-day volunteer 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;

From 1994 to 1995, I served as law clerk to the Honorable Anthony M. Kennedy on the United States Supreme Court.

From 1993 to 1994, I served as law clerk to the Honorable Alex Kozinski on the United States Court of Appeals for the Ninth Circuit.

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

I have not practiced alone.

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 – 1996
Heller Ehrman LLP
333 Bush Street
San Francisco, California 94104
Law Clerk (not yet admitted to bar)

1996 – 1997
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017
Associate

1997 – 2002
United States Attorney's Office for the Southern District of New York
One Saint Andrews Plaza
New York, New York 10007
Assistant United States Attorney (1997 – 2002)
Acting Chief, General Crimes Unit (2002)

2003 – 2006
Hangley Aronchick Segal & Pudlin
One Logan Square
18th & Cherry Streets
27th Floor
Philadelphia, Pennsylvania 19103
Shareholder

2006 – Present
Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, Pennsylvania 19104
Partner

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

I have not served as a mediator or arbitrator.

b. Describe:

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

After clerking, I worked part-time in the Employment and Labor Group of Heller, Ehrman, White & McAuliffe on employment discrimination cases, reductions in force, and compliance matters, while also serving as a Visiting Scholar and Lecturer at Stanford Law School from 1995 to 1996.

As an associate at Davis Polk from 1996 to 1997, I worked on a large-scale accounting fraud case for a Big Four accounting firm and on miscellaneous other cases drafting legal memoranda, discovery requests and responses, motions and briefs, taking depositions, and working with experts. I also argued a pro bono criminal appeal before the United States Court of Appeals for the Eighth Circuit.

From 1997 to 2002, as an Assistant United States Attorney, I investigated

and prosecuted federal criminal cases in the General Crimes Unit from 1997 to 1998, the Narcotics Unit from 1998 to 2000, the Securities and Commodities Fraud Unit from 2000 to 2002, and the Major Crimes Unit from March to November 2002. I regularly appeared in federal district court, worked with multiple law enforcement agencies, and handled grand jury proceedings, wiretaps, trials and appeals before the United States Court of Appeals for the Second Circuit. In 2002, I assisted the Appeals Unit in supervising appeals of other Assistants, and I also served as the Acting Chief of the General Crimes Unit. In these various capacities, I handled a broad range of cases, including firearms violations, narcotics trafficking, health care fraud, securities fraud, bank fraud, mail and wire fraud, public corruption, money laundering, and international extraditions.

From 2003 to the present, as a partner at Dechert LLP, and previously at Hangley Aronchick Segal & Pudlin, I have focused on white collar criminal defense while also handling parallel regulatory proceedings, securities litigation, and commercial litigation. I represent corporate and individual clients before the Department of Justice, State Attorneys General, the Securities and Exchange Commission, and other agencies; conduct domestic and international investigations for corporate clients; and litigate securities and complex commercial cases. My pro bono work has included representations of parents and children with disabilities, disabled veterans, and appointments as a member of the Criminal Justice Act panel to represent indigent criminal defendants, as well as campaign finance and ethics matters for the City of Philadelphia Board of Ethics.

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

While a law clerk under the supervision of attorneys licensed in California at Heller Ehrman White & McAuliffe, my clients included California employers in employment discrimination, labor law, and wage and hour compliance and litigation matters.

As an associate at Davis Polk & Wardwell, I represented accounting firms and financial institutions in complex civil litigation and class actions, as well as representing a white collar criminal defendant in a pro bono appeal before the United States Court of Appeals for the Eighth Circuit.

As an Assistant United States Attorney for the United States Attorney's Office for the Southern District of New York, I represented the United States in criminal prosecutions.

As a partner at Dechert LLP, and previously at Hangley Aronchick Segal & Pudlin, I typically have represented corporate clients and individuals in criminal investigations and prosecutions by federal and state agencies and

in proceedings before the Securities and Exchange Commission. These matters have included securities fraud, accounting fraud, the Foreign Corrupt Practices Act, antitrust, and health care fraud cases. In addition, I have represented companies in class action litigation and commercial business litigation. While many clients have been in the financial services industry, I also have represented non-profit companies and clients in media, energy, electronics, gaming, munitions, transportation, construction and healthcare.

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

Approximately 75% of my practice involves litigation, with the remainder constituting internal investigations and compliance advice designed to avoid litigation. Between 1997 and 2002, as a federal prosecutor, I appeared in court regularly and often on a daily basis. Between 2003 and the present, while in private practice, I have appeared in court less frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 70%
   2. state courts of record: 10%
   3. other courts: 0%
   4. administrative agencies: 20%

ii. Indicate the percentage of your practice in:
   5. civil proceedings: 40%
   6. criminal proceedings: 60%

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

I have tried twelve cases to verdict, judgment or final decision. As a prosecutor, I was sole counsel in one jury trial and one bench trial, chief counsel in one jury trial and one bench trial, and associate counsel in one jury trial. In private practice, I was chief counsel in one bench trial, associate counsel in two bench trials, and have tried four other matters to dismissal, summary judgment, or judgment on the pleadings.

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 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. P.V., et al. v. The School District of Philadelphia, et al., 2:11-cv-04027 (Hon. Legrome D. Davis, EDPA) (2011 – Present).

In the first impact litigation from a partnership I forged between Dechert LLP and the Public Interest Law Center of Philadelphia ("PILCOP"), I brought a class action lawsuit in the United States District Court for the Eastern District of Pennsylvania on behalf of a class of approximately 1,600 students with autism in the School District of Philadelphia. The complaint sought injunctive relief and challenged the School District's transfer of these students from school to school without adequate notice to parents or opportunity for parental input as a violation of the Individuals with Disabilities Education Act and related federal and state statutes. I supervised a team of associates and coordinated with PILCOP co-counsel in developing strategy, filed the complaint and motion for class certification, handled discovery and motion practice, including expert discovery, and prepared the motion for summary judgment. In February 2013, after two years of litigation, the District Court granted our motion for class certification and, in relevant part, granted our motion for summary judgment. The Court denied defendants' motion for reconsideration on August 19, 2013, and the parties are proceeding to a remedy phase of the litigation. As a result of this litigation, the Public Interest Law Center of Philadelphia presented me, on behalf of Dechert LLP, with the Thaddeus Stevens Award in 2011.

Co-counsel:

Sonja Kerr
Director, Disability Rights
Public Interest Law Foundation of Philadelphia
1709 Benjamin Franklin Parkway, Second Floor
Philadelphia, Pennsylvania 19103
267-546-1319

Defendants' counsel:

David Smith
Schnader Harrison Segal & Lewis LLP
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103
215-751-2190

2. Lutman v. Lutman, No. 10-1504, 2010 WL 3398985 (Hon. Christopher Conner, MDPA) (2010).

In a matter referred to me by the United States Department of State under the Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention"), I represented pro bono the Israeli mother and legal custodian of her eight-year-old boy who was abducted by his father, my client's ex-husband, when my client sent her son to visit her ex-husband in the United States. Working primarily with one associate and a support team, I filed a petition for the child's return under the Hague Convention in the United States District Court for the Middle District of Pennsylvania. In several days of a Hague Convention bench trial before the District Court that involved direct and cross-examination of numerous witnesses including the respondent, I persuaded the court to reject the respondent's defenses, including that his son was now "well-settled" in the United States, and the court ordered the return of the child to his mother's custody. For this work, my team and I were presented by Dechert LLP with the Sam Klein Pro Bono Award in 2011.

Respondent's Counsel:

Daniel M. Fennick
Anderson Converse & Fennick
1423 East Market Street
York, Pennsylvania 17403
717-846-7100

3. United States v. Bailey, 06 Cr. 287 (Hon. Legrome D. Davis, EDPA) (2006 – 2007).

I represented the CEO of a web-based physician database company who was prosecuted for eleven counts of violating the Computer Fraud and Abuse Act ("CFAA") by obtaining unauthorized access to the membership directory of the American College of Physicians. Because this was the first CFAA prosecution in the country involving theft of purely public data that caused no damage to a computer, computer system, or the data itself, it raised numerous issues of first impression and involved extensive briefing. Ultimately, the defendant pleaded guilty to one count of unauthorized computer access and was sentenced after a sentencing hearing to three months' imprisonment.

Prosecutor:

Michael Levy
United States Attorney's Office for the Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, Pennsylvania 19106
215-861-8599

4. United States v. Kopper, Cr. H-02-560 (Hon. Ewing Werlein, S.D. Tex.) (2006).

I represented Kopper, the chief advisor to Enron Chief Financial Officer Andy Fastow and the first Enron cooperator for the government, in his sentencing proceeding. Kopper's cooperation led to the prosecution of more than 20 defendants, the extradition of three British bankers, the recovery of over $100 million, and the convictions of Enron's top executives. Following the submission of an extensive sentencing memorandum detailing his cooperation and charitable work since the collapse of Enron, Kopper was sentenced to three years' imprisonment.

Co-counsel:

David Howard (then partner at Dechert LLP)
Microsoft Corporation
One Microsoft Way
Redmond, Washington 98052
425-704-8685

Prosecutor:

Kathryn Ruemmler (then AUSA on Enron Task Force)
Counsel to the President
The White House
1600 Pennsylvania Avenue, Northwest

Washington, DC 20500
202-456-2632

5. United States v. Sapia, 99 Cr. 1193 (Hon. Allen G. Schwartz (now deceased); Hon. Shira A. Scheindlin, SDNY) (1999 – 2001) and related cases United States v. Flores, 99 Cr. 1110 (Hon. Robert Sweet, SDNY) (1999 – 2001); United States v. Vasquez, 99 Cr. 1192 (Hon. Deborah A. Batts, SDNY) (1999 – 2001).

I served as lead prosecutor in the Organized Crime Drug Enforcement Task Force ("OCDETF") investigation and prosecution of a large-scale cocaine, crack, and heroin distribution organization that was operating out of Miami and New York and that maintained headquarters next to the Adlai Stevenson High School in the Bronx. The investigation involved eight pen registers, six wiretaps, and five search warrants, leading to the dismantling of the organization and the seizure of 40 kilograms of cocaine, eight firearms, and approximately $250,000 in cash. Among the more than 50 defendants who were convicted or entered guilty pleas were several career criminals. Information procured from a cooperating witness in this case also solved an open homicide and led to the prosecution of two defendants for the murder of a confidential informant. I was presented with a Certificate of Appreciation by the Drug Enforcement Administration in 2000 for my work on these cases.

Co-counsel:

David Anders (then Assistant United States Attorney)
Wachtell Lipton Rosen & Katz
51 West 52nd Street
New York, New York 10019
212-403-1000

Defense counsel (due to the large number of defendants in these matters, I am providing contact information for the following principal defense counsel):

Louis Freeman (Sapia)
Freeman Nooter & Ginsberg
30 Vesey Street, Suite 100
York, New York 10007
212-608-0808

Alan Nelson (Vasquez)
3000 Marcus Avenue, Suite 1E-5
Lake Success, New York 11042
516-328-6200

Susan Kellman (Locicero)
Law Offices of Susan Kellman
25 Eighth Avenue

Brooklyn, New York 11217
718-783-8200

Neil Checkman (Guzman)
111 Broadway # 1305
New York, New York 10006
212-264-9940

David Wikstrom (Jimenez)
Law Office of David Wikstrom
233 Broadway, Suite 2208
New York, New York 10279
212-248-5511

Maurice Sercarz (Flores)
Sercarz & Riopelle
810 Seventh Avenue
New York, New York 10019
212-586-4900

J. Bruce Maffeo (Sears)
1350 Broadway
New York, New York 10006
212-883-4951

William Stampur (Vasquez)
Hurwitz Stampur & Roth
299 Broadway, Suite 800
New York, New York 10007
212-619-4240

Lawrence Ruggiero (Rodriguez)
Law Office of Lawrence Ruggiero
233 Broadway
New York, New York 10279
212-406-2910

Mitchell Golub (Coleman)
Golub & Golub
225 Broadway, Suite 1515
New York, New York 10007
212-693-1000

Francisco Celedonio (Houlder)
305 Broadway, Suite 1400

New York, New York 10007
212-219-7533

6. United States v. Lee, 99 Cr. 602 (Hon. Alvin K. Hellerstein, SDNY) (1999 – 2000).

I was responsible for the prosecution of the defendant in this case for conspiracy to distribute heroin out of a restaurant he owned in New York. This trial was the culmination of a long-term investigation of international narcotics trafficking that included wire taps, pen registers, and prior convictions of various co-conspirators. I handled the pre-trial suppression hearing and, as sole counsel at trial, put on the government's case, which included wiretap recordings and expert testimony. After a five-day jury trial, Lee was found guilty and was sentenced to five years' imprisonment. Upon the defendant's appeal, I also handled the government's briefing and oral argument before the United States Court of Appeals for the Second Circuit, which affirmed the judgment below.

Defense counsel:

Lawrence Hochheiser
Hochheiser Hochheiser & Inwood LLP
270 Madison Avenue, Suite 1203
New York, New York 10016
212-689-4343

Joyce London
Law Office of Joyce C. London
20 Vesey Street, Suite 400
New York, New York 10007
212-964-3700

7. United States v. Jones, et al., 99 Cr. 1148 (Hon. Loretta A. Preska, SDNY) (1999 – 2000).

I served as lead prosecutor in the Organized Crime Drug Enforcement Task Force investigation and prosecution of a violent, gallon-quantity PCP gang operating in New York, California, Connecticut, Pennsylvania, and New Jersey. This case involved five wiretaps, numerous undercover buys, and hundreds of hours of video surveillance, and resulted in the arrest of 31 defendants and seizure of a gallon of liquid PCP, three firearms, and $166,000 cash. The wiretaps in this case enabled DEA in New Haven to begin Title III intercepts on two Connecticut-based PCP traffickers, leading to the arrest of ten defendants and the seizure of an additional gallon of PCP. Of 14 defendants charged in New York, 13 pleaded guilty and one (Derrek Gabb) proceeded to trial. I served as lead counsel at that bench trial and the defendant was convicted on all counts.

Co-counsel:

Robert Hotz (then Assistant United States Attorney)
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, New York 10036
212-872-1028

Defense counsel (due to the large number of defendants in this matter, I am providing contact information for the following principal defense counsel):

Susan Wolf (Gabb)
Hoffman & Pollok
260 Madison Avenue
New York, New York 10016
212-679-2900

Louis Freeman (Jones)
Freeman Nooter & Ginsberg
30 Vesey Street, Suite 100
New York, New York 10007
212-608-0808

Ira London (Theus)
Law Office of Ira London
99 Park Avenue #1600
New York, New York 10016
646-475-2372

Labe Richman (Pipersburg)
305 Broadway # 100
New York, New York 10007
212-227-1914

Neil Checkman (Card)
111 Broadway # 1305
New York, New York 10006
212-264-9940

Richard Lind (Brown)
Office of Richard Lind
641 Lexington Avenue, 18th Floor
New York, New York 10021
212-888-7725

Amelio Marino (Williams)
Law Office of Amelio Marino
163 West 71st Street
New York, New York 10023
212-873-7297

Ellyn Bank (Little)
Office of Ellyn Bank
225 Broadway
New York, New York 10007
212-385-1800

8. United States v. Caruso, et al., 98 Cr. 506 (Hon. Dominick L. DiCarlo, Court of International Trade, sitting by designation (now deceased)) (1998 – 1999).

I, along with my trial partner, prosecuted the two defendants in this case for orchestrating two separate but related securities fraud schemes that targeted over 100 investors across the United States, including many elderly and vulnerable victims, through the use of telemarketers in boiler room operations. The defendants were charged with four counts of mail fraud and conspiracy to commit mail fraud in connection with over $500,000 in investor losses. After a ten-day jury trial, we were successful in procuring convictions of both defendants on all counts. The defendants were each sentenced to over three years' imprisonment. I was presented with a Certificate of Appreciation from the United States Postal Inspection Service in 1999 for my work on this case.

Co-counsel:

Douglas Jensen (then Assistant United States Attorney)
Park & Jensen LLP
630 Third Avenue
New York, New York 10017
646-200-6320

Defense counsel:

Irving Cohen (Caruso)
Law Office of Irving Cohen
233 Broadway
New York, New York 10279
212-964-2544

Robert John Aiello (Duquesnay)
Aiello & Cannick
69-06 Grand Avenue

Maspeth, New York 11378
718-426-0444

Roger Bennet Adler (Duquesnay)
Law Offices of Robert B. Adler
233 Broadway, Suite 1800
New York, New York 10279
212-406-0181

9. United States v. Urena, et al., 98 Cr. 1248 (Hon. Denise L. Cote, SDNY); and related case United States v. Ramirez, et al., 98 Cr. 1205 (Hon. Barbara S. Jones, SDNY); and numerous related cases (1997 – 2001).

I served as lead prosecutor in the investigation and prosecution of a $65 million food stamp fraud conspiracy that was the largest in the country of its kind at that time. I supervised and co-audited teams of FBI and Department of Agriculture inspector federal agents, drafted numerous search warrants, complaints and exhibits and handled bail hearings and motion practice involving over 70 subjects associated with more than 20 stores and five banks. This two-year investigation involved ten large-scale searches and spawned a second wave of prosecutions that I also handled, relating to an international narcotics money laundering conspiracy. In total, we obtained more than 60 pleas and convictions, including several bank officers and employees. In June 2000, I was presented the Secretary of Agriculture's Group Honor Award for Excellence for my work on this case.

Co-counsel:

Peter Neiman (then Assistant United States Attorney)
Wilmer Cutler Pickering Hale & Dorr LLP
399 Park Avenue
New York, New York 10022
212-295-6487

Defense counsel (due to the large number of defendants in this matter, I am providing contact information for the following principal defense counsel):

Lee Alan Ginsberg (R. Cespedes)
Freeman Nooter & Ginsberg
75 Maiden Lane
Suite 503
New York, New York 10038
212-608-0808

Roland Thau (R. Cespedes)
Federal Defender Services
52 Duane Street

New York, New York 10007
212-417-8733

Martin Klotz (I. Cespedes)
Willkie Farr & Gallagher
787 Seventh Avenue
New York New York 10019
212-728-8688

Alan Nelson (E. Cespedes)
Law Office of Alan Nelson
3000 Marcus Avenue, Suite 1E-5
Lake Success, New York 11040
516-328-6200

Aubrey Lees (Merejo)
Law Office of Aubrey Lees
799 Broadway # 541
New York, New York 10003
212-477-1899

Dawn Cardi (Urena)
Dawn Cardi & Associates
Two Park Avenue, 19th Floor
New York, New York 10016
212-481-7770

Lloyd Epstein (Casilla)
Epstein & Weil
225 Broadway, Suite 1203
New York, New York
212-732-4888

John O'Leary (Sanchez)
Law Office of John O'Leary
39-51 1/2 46th Street
Lic, New York 11104
718-706-9796

10. In the Matter of the Extradition of Ernst, 97 Crim. Misc. 1 (Hon. Henry B. Pitman, Magistrate Judge, SDNY) (1997 – 1998).

I was the sole prosecutor responsible for the provisional arrest and extradition to Switzerland of Ernst, a permanent resident of the United States, who had conducted a multi-million dollar securities and accounting fraud scheme involving a publicly traded company in Switzerland and had been tried and

convicted in absentia in Switzerland after fleeing to the United States. Ernst aggressively opposed his extradition, requiring an extensive bench trial and my presentation of much of the Swiss criminal case, including live testimony by the Swiss judge/prosecutor. I was successful in obtaining an order of extradition and in defeating Ernst's subsequent habeas petition so that he was deported to Switzerland for the continuation of any criminal proceeding and/or to serve his sentence.

Defense counsel:

Frederick H. Cohn
61 Broadway, Suite 1601
New York, New York 10006
212-768-1110

Michael Carey
Carey & Associates
521 Fifth Avenue, Suite 3300
New York, New York 10175
212-758-0076

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

Over my years in private practice, I have channeled my commitment to protecting the fairness of elections and integrity of government to advocacy on behalf of the Philadelphia Board of Ethics, an independent city agency for which I serve as outside counsel, and participation on the board of the Committee of Seventy, a non-partisan government watchdog group. My representation of the Board of Ethics has included affirmative litigation to enforce the City's ethics and campaign finance laws and defensive work when the Board has been sued in challenges to the constitutionality of these laws or the Board's interpretation of them. For example, in Local 98 IBEW Committee on Political Education v. Philadelphia Board of Ethics, et al., 08 cv 630 (Hon. Harvey Bartle III, then-Chief Judge, EDPA) (2008), I represented the Board of Ethics and served as lead counsel for our co-defendants, the Pennsylvania Attorney General and the Philadelphia District Attorney, in successfully defeating plaintiff's challenge to the constitutionality of the state and city campaign finance laws.

Throughout my work in both the public and private sector, I also have pursued my interest in teaching and mentoring by serving as a lecturer at various law schools in the areas of trial advocacy, appellate advocacy, evidence, and Internet crime, and by

publishing on developments in the law on a regular basis. I have served as a guest lecturer for various professors in other subject matter areas and frequently counsel law students and recent graduates on professional development issues.

Other significant legal activities include my development of a robust appellate practice, both as a prosecutor and as a defense attorney. In a case before the United States Court of Appeals for the Third Circuit, for example, I was retained to brief and argue the appeal after the District Court imposed penalties and disgorgement of approximately $50 million in a Securities and Exchange Commission enforcement proceeding. The case raised several important issues of first impression, including the type of causal link required between the violation and alleged profits for the Commission to obtain a disgorgement remedy under the securities laws. Securities and Exchange Commission v. Teo, No. 12-1168 (3d Cir. Feb. 10, 2014). At the same time, I have sought to improve access to the appellate courts for indigent defendants by launching and supervising the Dechert-University of Pennsylvania Law School Appellate Externship Program through which pro se appellants are represented by Penn Law students paired with Dechert attorneys. This highly successful partnership has been praised by judges of the Third Circuit and was recognized by the American Lawyer Media's Philadelphia publication, The Legal Intelligencer, in 2012.

In addition, I have been actively involved in developing resources for the federal defense bar and improving communications among the defense bar, the United States Attorney's Office and the District Court for the Eastern District of Pennsylvania through my work on the Executive Committee of the Federal Bar Association's Criminal Law Committee, Philadelphia Chapter. In this capacity, I participate in program planning for the Criminal Law Committee throughout the year and have organized and participated in many panel presentations and continuing legal education seminars for the federal defense bar. In 2008, I also was invited, on behalf of the Criminal Law Committee, to represent the interests of the defense bar in a roundtable discussion with then-Chief Judge Harvey Bartle and representatives from the United States Attorney's Office, the Office of the Federal Defender, the Probation Department, the United States Marshals Service, and the Bureau of Prisons to identify and address problems in administering criminal justice in the Eastern District of Pennsylvania and to improve coordination among the relevant agencies.

I have not performed lobbying 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.

From 2009 through the present, I have taught a seminar on appellate advocacy and judicial philosophy in connection with the Dechert-University of Pennsylvania Law School appellate externship program. Syllabi provided.

In 2005 and 2006, I taught Evidence, a core curriculum class on the Federal Rules of Evidence, at the University of Pennsylvania Law School. Syllabus provided.

In 2003, I co-taught a seminar in Cybercrime at the University of Pennsylvania Law School in which we explored the developing law under which Internet and computer crimes are prosecuted. Syllabus provided.

In 2002, I taught Trial Practice at Columbia Law School, which was a clinical course on trial skills that culminated in a mock trial. Syllabus provided.

In 1995, I taught Advocacy and Judicial Decision-Making at Stanford Law School, covering judicial philosophy and appellate advocacy skills. I no longer have a syllabus for this course.

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

    I participate in Dechert LLP's 401K and HR-10 plans, intended for retirement benefits at age 65, but subject to an elective lump sum distribution if I leave Dechert's employment.

    Upon retirement, I also am eligible to receive benefits from the Federal Employee Retirement System from my years in public 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 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).

    Please see Financial Disclosure Report.

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

    Please see Net Worth statement.

24. **Potential Conflicts of Interest**:

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

If confirmed, I will recuse myself in any litigation in which I have ever played a role. Cases involving Dechert LLP, at least initially, would raise potential conflict issues and I would recuse myself for a period of time. I would apply the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges to determine whether to recuse myself in other matters, including matters that involve former clients of my firm otherwise unrelated to any matters that my firm or I handled.

I am not otherwise aware of any individuals, family or financial arrangements that are likely to present conflicts of interests.

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 thoroughly analyze any potential conflict of interest and will follow the rules and decisions addressing what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges. To facilitate that analysis, I would compile a comprehensive list of matters and/or clients or other persons who may raise potential conflicts of interest, and for close cases, I would consult with other judges and persons designated by the Court to advise in this area.

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 2005 through 2008, I served on the Criminal Justice Act ("CJA") panel of the United States District Court for the Eastern District of Pennsylvania, representing indigent defendants in criminal cases.

From 2007 through the present, I have served pro bono as outside counsel for the Philadelphia Board of Ethics, assisting in investigations, handling enforcement actions, and defending the Board in legal actions brought against it.

On an annual basis since 2009, I also have administered the Dechert-University of Pennsylvania Law School Appellate Externship Program, supervising law students who

are paired with Dechert attorneys in handling the briefing and argument of pro bono cases assigned by the United States Court of Appeals for the Third Circuit.

In addition, in 2011, I launched the Philadelphia Project, a partnership between Dechert LLP and the Public Interest Law Center of Philadelphia to provide legal support to families of children with disabilities in the School District of Philadelphia and to seek class-wide relief where systemic problems are identified. As the organizer of that program, I have supervised numerous associates assigned to assist families with their individual issues. I also filed successful class action litigation against the School District of Philadelphia on behalf of a class of children with autism to stop the District from changing their educational placement without adequate notice to or participation of parents in the process.

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 11, 2013, an official from the White House Counsel's Office inquired if I would be interested in serving on the U.S. Court of Appeals for the Third Circuit. I replied that I would be, and I have been in contact with officials from the Counsel's Office since then. Since August 14, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 26, 2013, I was interviewed by attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 18, 2013, I was interviewed by Senator Patrick Toomey in Allentown, Pennsylvania. On February 6, 2014, 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
Krause, Cheryl A.	United States Court of Appeals for the Third Circuit	02/06/2014
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 Court of Appeals Judge - Active Status	☑ Nomination Date 02/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 01/21/2014
7. Chambers or Office Address		
2929 Arch St. Philadelphia, PA 19104		

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	Dechert LLP
2.	Director	Committee of Seventy
3.		
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	07/31/2012	Dechert LLP Partnership Agreement - Final distribution of 2014 Dechert LLP income to be made in April 2015
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Krause, Cheryl A.	Date of Report 02/06/2014

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. 2014	No reportable income	
2. 2013	Dechert LLP - Salary (estimate - profit distribution to be finalized in April 2014)	$495,000.00
3. 2012	Dechert LLP - Salary	$458,168.00
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. 2014	Self-employed service provider - GMECI LLC
2. 2013	Self-employed service provider - GMECI LLC
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 Krause, Cheryl A.	Date of Report 02/06/2014

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.	Bank of America	Mortgage on Rental Property #1, Philadelphia, PA (Part VII, line 4)	L
2.	Green Tree Financial	Mortgage on Rental Property #2, Absecon, NJ (Part VII, line 5)	M
3.	City Mortgage	Mortgage on Rental Property #3, New York, NY (Part VII, line 6)	M
4.	Wells Fargo	Mortgage on Rental Property #4, Ventnor City, NJ (Part VII, line 7)	M
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
Krause, Cheryl A.	02/06/2014

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. USAA Accounts	A	Interest	M	T	Exempt				
2. Wells Fargo Money Market Accounts	A	Interest	L	T	Exempt				
3. Dechert LLP Salary Savings Plan		None	M	T	Exempt				
4. Rental Property #1, Philadelphia, PA	E	Rent	L	W	Exempt				
5. Rental Property #2, Absecon, NJ	D	Rent	M	W	Exempt				
6. Rental Property #3, New York, NY	E	Rent	M	W	Exempt				
7. Rental Property #4, Ventnor City, NJ	D	Rent	M	W	Exempt				
8. Bank of America Account		None	K	T	Exempt				
9. Russell Global Balanced Fund		None	M	T	Exempt				
10. Amarin Corp. PLC Common Stock		None	J	T	Exempt				
11. Apple Common Stock	B	Dividend	L	T	Exempt				
12. Archer Daniels Midland Common Stock	A	Dividend	J	T	Exempt				
13. Arena Pharmaceuticals Common Stock		None	L	T	Exempt				
14. BluePhoenix Solutions Common Stock		None	J	T	Exempt				
15. BTU International Inc. Common Stock		None	J	T	Exempt				
16. CenturyLink Inc. Common Stock	B	Dividend	L	T	Exempt				
17. Delta Air Lines Inc. Common Stock	A	Dividend	K	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Krause, Cheryl A.	02/06/2014

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)
18. Dendreon Corp. Common Stock		None	J	T	Exempt				
19. DuPont Fabros Technology Common Stock	A	Dividend	J	T	Exempt				
20. Fidelity Select Money Market Portfolio	A	Dividend	K	T	Exempt				
21. Frontier Communications Common Stock	B	Dividend	K	T	Exempt				
22. Furmanite Corp. Common Stock		None	L	T	Exempt				
23. GSE Systems Inc. Common Stock		None	J	T	Exempt				
24. Highland Capital L/S Healthcare Fund A Shares (529 Plan)		None	J	T	Exempt				
25. Highland Capital L/S Healthcare Fund C Shares (529 Plan)		None	K	T	Exempt				
26. Highland Capital L/S Healthcare Fund Z Shares		None	K	T	Exempt				
27. Innovative Solutions Common Stock		None	J	T	Exempt				
28. IVA Worldwide Fund A Shares (529 Plan)		None	J	T	Exempt				
29. IVA Worldwide Fund C Shares (529 Plan)		None	K	T	Exempt				
30. IVA Worldwide Fund I Shares	B	Dividend	M	T	Exempt				
31. Magnetek Inc. Common Stock		None	J	T	Exempt				
32. Mannkind Corp. Common Stock		None	K	T	Exempt				
33. Microstrategy Inc. Common Stock		None	J	T	Exempt				
34. Nuance Communications Common Stock		None	L	T	Exempt				

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 8

Name of Person Reporting	Date of Report
Krause, Cheryl A.	02/06/2014

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)
35. Petroleo Brasileiro SA (ADR) Common Stock	A	Dividend	J	T	Exempt				
36. Powersecure International Common Stock		None	L	T	Exempt				
37. Retractable Tech. Inc. Common Stock		None	J	T	Exempt				
38. RTI International Metals Inc. Common Stock		None	J	T	Exempt				
39. Sonic Foundry Inc. Common Stock		None	K	T	Exempt				
40. Student Transportation Common Stock	A	Dividend	J	T	Exempt				
41. Unisys Corp. Common Stock		None	J	T	Exempt				
42. Universal Health Realty Income Trust	A	Dividend	J	T	Exempt				
43. Vivus Inc. Common Stock		None	K	T	Exempt				
44. Walter Energy Inc. Common Stock	A	Dividend	J	T	Exempt				
45. Yahoo Common Stock		None	J	T	Exempt				
46. inc Networks LLC		None	K	T	Exempt				
47. MIT 4G LLC		None	K	T	Exempt				
48. State of Israel Bond	A	Interest	J	T	Exempt				

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

Name of Person Reporting	Date of Report
Krause, Cheryl A.	02/06/2014

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Krause, Cheryl A.	Date of Report 02/06/2014

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/ Cheryl A. Krause

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		307	748	Notes payable to banks-secured (autos)		23	829
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	180	521	Notes payable to relatives			
Unlisted securities – see schedule		57	500	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	1	863	861
Real estate owned – see schedule	2	437	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		84	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		293	252				
Dechert LLP Salary Savings Plan		168	852				
				Total liabilities	1	887	690
				Net Worth	2	641	683
Total Assets	4	529	373	Total liabilities and net worth	4	529	373
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	
Amarin Corp. plc (ADR)	$7,785
Apple. Inc. stock	82,361
Archer Daniels Midland Co. stock	4,137
Arena Pharmaceuticals, Inc. stock	51,240
Bluepheonix Solutions Ltd. Stock	5,981
BTU International stock	5,732
CenturyLink Inc. stock	59,700
Delta Airlines, Inc. stock	48,120
Dendreon Corp. stock	9,660
DuPont Fabros Technology, Inc. stock	3,801
Fidelity Select Money Market Portfolio	21,193
Frontier Communications Corp. stock	38,880
Furmanite Corp. stock	68,145
GSE Systems stock	4,959
Highland Capital L/S Health A Shares	4,753
Highland Capital L/S Health C Shares (529 Plan)	25,871
Highland Capital L/S Health Z Shares (529 Plan)	25,146
Innovative Solutions stock	14,780
IVA Worldwide Fund A Shares (529 Plan)	5,019
IVA Wordwide Fund C Shares (529 Plan)	25,292
IVA Worldwide Fund I Shares	140,156
Magnetek Inc. stock	12,480
MannKind Corp. stock	16,680
MicroStrategy Inc. stock	12,390
Nuance Communications stock	84,873
Petroleo Brasileiro Petrobras SA (ADR)	1,224
PowerSecure International stock	72,268
Retractable Tech. Inc. stock	10,800
RTI International Metals, Inc. stock	3,197
Russell Global Balanced Fund	208,968
Sonic Foundry, Inc. stock	41,400
State of Israel bond	113
Student Transportation, Inc. stock	9,263
Unisys Corp. stock	6,560
Universal Health Realty Income Trust	4,223
VIVUS, Inc. stock	26,520
Walter Energy Inc. stock	12,850
Yahoo stock	4,001
Total Listed Securities	$ 1,180,521

Unlisted Securities	
inc NETWORKS LLC	37,500
MIT 4G LLC	20,000
Total Unlisted Securities	$ 57,500

Real Estate Owned	
Personal residence	$ 1,200,000
Former personal residence; up for sale	525,000
Rental property #1	185,000
Rental property #2	240,000
Rental property #3	205,000
Rental property #4	82,500
Total Real Estate Owned	$ 2,437,500

Real Estate Mortgages Payable	
Personal residence	$ 950,670
Former personal residence; up for sale	408,387
Rental property #1	124,021
Rental property #2	176,005
Rental property #3	137,834
Rental property #4	66,944
Total Real Estate Mortgages Payable	$ 1,863,861

AFFIDAVIT

I, Cheryl Ann Krause, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Feb. 5, 2014
(DATE)

Cheryl Ann Krause
(NAME)

Lori A. Long
(NOTARY)

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
LORI A. LONG, Notary Public
City of Philadelphia, Phila. County
My Commission Expires May 14, 2015

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Richard Franklin Boulware II

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

   United States District Court for the District of Nevada

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.

   Federal Public Defender of Nevada
   411 East Bonneville Avenue, Suite 250
   Las Vegas, Nevada 89101

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

   1968; Rochester, Minnesota

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.

   1999 – 2002, Columbia Law School; J.D, 2002

   1995 – 1998, Harvard Graduate School of Arts & Sciences, PhD program in Sociology Department (no degree received)

   1986 – 1989, 1992 – 1993, Harvard College; A.B. (*cum laude*), 1993

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

   2007 – Present
   Federal Public Defender of Nevada

411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
Trial Attorney (2008 – present)
Research & Writing Attorney (2007 – 2008)

2003 – 2007
Federal Defenders of New York
52 Duane Street
New York, New York 10007
Trial Attorney

August 2003 – December 2003, 2000 – 2002 (intermittently)
Covington & Burling
620 Eighth Avenue
New York, New York 10018
Litigation Associate (August 2003 – December 2003)
Summer Associate (Summer 2000, Summer 2002)
Part-Time Law Clerk (non-summer months (2000 – 2002))

2002 – 2003
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007
Law Clerk to Judge Denise Cote

Summer 2002
Irell & Manella
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Summer Associate

Summer 2001
Munger, Tolles & Olson
355 South Grand Avenue
Los Angeles, California 90071
Summer Associate

Summer 2001
Quinn Emmanuel
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Summer Associate

1997 – 2001
The Boulware Group
Cambridge, Massachusetts

Las Vegas, Nevada
New York, New York
Consultant (Self-employed, sole proprietor, part-time)

1995 – 1998
Sociology Department
Harvard University
675 William James Hall
33 Kirkland Street
Cambridge, Massachusetts 02138
Teaching Assistant (part-time)

1993 – 1995
Covington & Burling
620 Eighth Avenue
New York, New York 10018
Paralegal

Summer 1993
Attorney/Author Philip K. Howard, The Death of Common Sense (1994)
Covington & Burling
620 Eighth Avenue
New York, New York 10018
Research Assistant

Other Affiliations (uncompensated)

2008 – present
Las Vegas Chapter of the National Bar Association Foundation
P.O. Box 1236
Las Vegas, Nevada 89125
Board of Directors

2009 – 2011
National Bar Association, Las Vegas Chapter
P.O. Box 1236
Las Vegas, Nevada 89125
President

2010 – 2011
National Bar Association
1225 11th Street, NW
Washington, D.C. 20001
National Board of Governors

2008 – 2013
National Association for the Advancement of Colored People (NAACP), Las Vegas Chapter
1048 Owens Avenue
Las Vegas, Nevada 89106
First Vice-President (2011 – July 2013)
Second Vice-President (2008 – 2010)

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

   I have never 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.

   Nevada Attorneys For Criminal Justice, Dedicated Service Award (2013)

   National Bar Association, President's Award (2012) (award from national president)

   Nevada State Bar, Medal of Justice (2012)

   Columbia Law School, Law Review (2000 – 2002)

   Columbia Law School, Harlan Fisk Stone Scholar (2000)

   Harvard College, National Merit Scholar (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.

   Las Vegas Chapter of the National Bar Association Foundation
   Board of Directors (2008 – present)

   Nevada State Bar Association
   Nevada Lawyer Special Issue Steering Committee (2011)

   National Bar Association, Las Vegas Chapter
   President (2009 – 2011)

   National Bar Association
   National Board of Governors (2010 – 2011)

10. **Bar and Court Admission**:

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

New Jersey, 2003

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.

District Court of New Jersey, 2003
Southern District of New York, 2003
District Court of Nevada, 2007
Ninth Circuit Court of Appeals, 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.

100 Black Men, Inc., Las Vegas Chapter (2009 – 2010)
Education Reform Committee

Brother-To-Brother Program: Mentor in Juvenile Detention Center (2008 – 2009)

Committee To Form Willie H. Brooks Soar Academy (2010 – 2011)

County Commission's District Attorney Selection Screening Panel (2012)

County Commission's Coroner's Inquest Reform Panel (Fall 2010)

National Association for the Advancement of Colored People (NAACP) (Las Vegas Branch)
Second Vice-President (2008 – 2010)
Legal Redress Committee (2009 – 2013)

First Vice President (2011 – 2013)
Chairman of the Legal Redress Committee (2009 – 2013)

National Association of Criminal Defense Lawyers (2013)

National Inns of Court (2005 – 2007)

Nevada Commission on Minority Affairs (2013 – present)
Chairman

Superintendent's Educational Opportunity Advisory Committee on Underachieving Schools (Clark County School District) (2010 – 2011)

Superintendent's Educational Opportunity Advisory Committee on Westside "Prime 6" Schools (Clark County School District) (2011 – 2012)

Superintendent's Educational Opportunity Advisory Committee on Disproportionality in School Discipline (Clark County School District) (2013)

Victory Missionary Baptist Church (Youth Ministry) (2010 – 2011, 2013 – present)
Mentor, College Preparatory Program

U.S. VETS, Program for Homeless Veterans (2009 – present)
Volunteer Attorney

University of Nevada, Las Vegas, Boyd School of Law, Black Law Students Moot Court Team (2013)
Volunteer Coach

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.

100 Black Men, Inc., which was founded in 1963, is a civic fraternal organization that only admits only men. There is also a companion organization for women called 100 Black Women. I took no action to change these policies. To the best of my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, 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.

Dedicated To Excellence: National Bar Association, Las Vegas Chapter, Nevada Lawyer, Feb. 2012. Copy supplied.

Why We Should Let The Revamped Coroner's Inquest System Go Forward, Las Vegas Sun, Sept. 4, 2011. Copy supplied.

Houses: From Home to Hotel, The Harvard Crimson, May 6, 1998. Copy supplied.

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

Since joining the Nevada Commission on Minority Affairs in 2013, I helped to develop the 2013 Strategic Plan. Copy supplied.

During my tenure as president of the Las Vegas Chapter of the National Bar Association, I oversaw the production of one volume of our newsletter: Volume 3, Fall 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.

During my tenure as a member of the Nevada Commission on Minority Affairs since 2013, I have regularly appeared at public meetings held by the Commission, and have testified before the Nevada Assembly on one occasion.

September 16, 2013: Meeting. Minutes supplied.

June 25, 2013: Meeting. Minutes supplied.

April 9, 2013: Meeting. Minutes supplied.

March 26, 2013: Meeting. Minutes supplied.

March 20, 2013: Testimony before the Nevada Assembly Committee on Government Affairs on Assembly Bill 270. Minutes supplied.

March 12, 2013: Meeting. Minutes supplied.

During my tenure as an officer with the Las Vegas Branch of the NAACP from 2008 to 2013, I prepared and signed certain policy letters to public bodies and appeared to testify on behalf of the NAACP. I have provided those I was able to locate:

May 2, 2013: Testimony before Nevada Senate Committee on Revenue and Economic Development on Assembly Bill 496. Minutes and related letters supplied.

April 4, 2013: Testimony before the Nevada Assembly Committee on Legislative Operations and Elections on Assembly Bills 440 and 441. Minutes supplied.

April 2, 2013: Testimony before the Nevada Assembly Committee on Taxation on Assembly Bill 496. Minutes and proposed amendment supplied.

March 14, 2013: Testimony on behalf of the NAACP and the Nevada Attorneys for Criminal Justice (NACJ) before the Nevada Senate Committee on Judiciary on Senate Bill 107 and Senate Bill 243. Minutes supplied.

March 14, 2013: Testimony before the Nevada Senate Committee on Legislative Operations and Elections. Minutes supplied.

June 6, 2012: Testimony before the Advisory Commission on the Administration of Justice regarding the coroner's inquest process. Minutes supplied.

May 22, 2012: Signatory to joint letter from the NAACP and ACLU to Las Vegas Metropolitan Police Department re: Use of Force Procedures. Copy supplied.

March 8, 2012: Testimony before Local Elected Officials Consortium meeting. Minutes supplied.

January 2012: Joint petition to the Department of Justice re: Investigation into Las Vegas Metropolitan Police Department. Copy supplied.

October 10, 2011: Testimony on behalf of the NAACP and the National Bar Association (NBA) before Special Masters appointed by Nevada Legislature regarding redistricting of state legislative and congressional districts. Minutes supplied.

June 23, 2011: Testimony before Clark County School District Board of Trustees Meeting. Minutes supplied.

June 6, 2011: Signatory to letter to the Nevada Senate Committee on Finance with proposed amendment to Assembly Bill 552. Copy supplied.

June 5, 2011: Testimony before the Nevada Senate Committee on Judiciary on Assembly Bill 552. Minutes and proposed amendment supplied.

May 27, 2011: Signatory to letter to Nevada Legislature re: Opposition to DNA Collection for Arrests Bill. Copy supplied.

May 12, 2011: Testimony before the Nevada Assembly Committee on Legislative Operations and Elections on Assembly Bill 301. Minutes supplied and letter supplied.

April 11, 2011: Testimony before Nevada Assembly Committee on Government Affairs on Assembly Bill 320. Minutes supplied.

April 9, 2011: Testimony on behalf of the NAACP and the NACJ before the Nevada Assembly Committee on Judiciary on Assembly Bill 272. Minutes supplied.

March 22, 2011: Testimony on behalf of the NAACP, the NACJ, and the NBA before the Nevada Assembly Committee on Legislative Operations and Elections on Assembly Bill 301. Minutes supplied.

August 13, 2009: Testimony before Clark County School District Board of Trustees Meeting. Minutes supplied.

April 29, 2009: Signatory to letter to Nevada Legislature re: Support for Increasing Age for Certifying Juveniles as Adults for Criminal Prosecution. Copy supplied.

March 25, 2009: Testimony on behalf of the NAACP and the NBA before the Nevada Assembly Committee on Judiciary on Assembly Bill 335. Minutes supplied.

March 25, 2009: Testimony on behalf of the NAACP and the NBA before Nevada Assembly Committee on Government Affairs on Assembly Bill 237. Minutes supplied.

During and after my time on the County Commission's Coroner's Inquest Reform Panel in the fall of 2010, I testified as to the nature and results of that process at public meetings.

December 4, 2012: Testimony before the Clark County Commission regarding proposed changes to coroner's inquest process. I have no notes, transcript, or recording.

November 8, 2010: Public comments as member of the Clark County Commission Inquest Reform Panel. Transcript supplied.

November 1, 2010: Public comments as member of the Clark County Commission Inquest Reform Panel. Transcript supplied.

October 25, 2010: Public comments as member of the Clark County Commission Inquest Reform Panel. Minutes supplied.

October 18, 2010: Public comments as member of the Clark County Commission Inquest Reform Panel. Minutes supplied.

October 6, 2011: Testimony before Clark County School District Board of Trustees Meeting. Minutes supplied.

July 14, 2011: Testimony before Clark County School District Board of Trustees Meeting. Minutes supplied.

January 26, 2011: Testimony before Nevada State Board of Education. Minutes supplied.

May 22, 2008: Testimony before Clark County School District Board of Trustees Meeting. Minutes supplied.

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

December 14, 2013: Competition Judge, "We The People," High School Competition, Las Vegas, Nevada. This competition involves high school students presenting arguments on constitutional questions. I have no notes, transcript or recording. The address for the State Bar of Nevada is 600 East Charleston Boulevard, Las Vegas, Nevada 89104.

November 8, 2012: Presenter, NAACP Education Award to Clark County School District at Board of Trustees Meeting, Las Vegas, Nevada. I co-presented this award to Board of Trustees and Superintendent on behalf of the NAACP. I have no notes, transcript or recording. The address for the NAACP is P.O. Box 1236, Las Vegas, Nevada 89125

October 20, 2012: Panelist, "Fatherhood Forum," Southern Nevada Housing Authority, Las Vegas, Nevada. I discussed the importance of being a supportive and consistent presence as a father in the life of a child. I have no notes, transcript or recording. The address for the Southern Nevada Housing Authority is North 11th Street, Las Vegas, Nevada 89101.

June 29, 2012: Panel Presenter, "Embracing Diversity," Nevada State Bar Annual Conference, San Diego, California. Presentation supplied.

May 31, 2012: Panel Presenter, "Managing the Mega Fraud Case: One Step at a Time," National Federal Defender Annual Conference, Atlanta, Georgia. Presentation supplied.

April 10, 2012: Panel Member, "Racial Profiling & Trayvon Martin," William S. Boyd School of Law, University of Nevada Las Vegas, Las Vegas, Nevada. I discussed challenges in addressing concerns regarding racial profiling. I have no notes, transcript or recording. The address for the William S. Boyd School of Law, University of Nevada is 4505 South Maryland Parkway, Las Vegas, Nevada 89154.

April 5, 2012: Panel Presenter, "20,000 Pages of Blissful Reading: Mortgage Fraud From A Defense Attorney's Perspective," Nevada Federal District Court Annual Conference, Reno, Nevada. Presentation supplied.

March 2, 2012: Panel Presenter: "Trial Practice Tips From A Criminal Law Perspective," William S. Boyd School of Law, University of Nevada Las Vegas, Las Vegas, Nevada. The panel was on trial practices in criminal cases. I have no notes, transcript or recording. The address for the William S. Boyd School of Law, University of Nevada is 4505 South Maryland Parkway, Las Vegas, Nevada 89154.

February 8, 2012: Panel Presenter: "Mortgage Fraud Roundtable," Federal Defender of Nevada Continuing Legal Education Class, Las Vegas, Nevada. The panel was on practice tips for criminal mortgage fraud cases. I have no notes,

transcript or recording. The address for the Federal Defender of Nevada is 411 East Bonneville Avenue, Suite 250, Las Vegas, Nevada 89101.

October 19, 2011: Presenter, "Managing Large Document Cases: The Basics," Federal Defender of Nevada CLE Class, Las Vegas, Nevada. Presentation supplied.

September 8, 2009: Speaker, General Membership Meeting, 100 Black Men of Las Vegas, Inc., Las Vegas, Nevada. Minutes attached.

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

Interview on the "Ralston Reports," Channel 3 – Las Vegas, regarding the Voting Rights Act (June 25, 2013). Video recording available at http://www.ralstonreports.com/tv-show/62513-richard-boulware-sylvia-lazos.

Interview on the "The Agenda," Channel 3 – Las Vegas, regarding the Voting Rights Act (June 25, 2013). Video recording available at http://www.clipsyndicate.com/video/play/4128298/the_agenda_tuesday_boulware_06_25_2013.

Interview for Channel 8 – Las Vegas, regarding possible plan for use of police cameras (April 11, 2013). Excerpts supplied.

Interview on the "The Agenda," Channel 3 – Las Vegas, regarding revised process for investigation of police shootings (March 1, 2013). Video recording available at http://www.onenewspage.us/video/20130301/1187811/THE-AGENDA-FRIDAY-Boulware-03.htm.

Remarks at Press Conference by a group of community organizations and Congressman Steven Horsford regarding immigration reform (February 19, 2013). I have no notes, transcript or recording.

Interview on the "Ralston Reports," Channel 3 – Las Vegas, regarding Martin Luther King holiday and his legacy (January 22, 2013). Video recording available at http://www.ralstonreports.com/tv-show/12213-william-horne-niger-innis-richard-boulware.

Interview on the "Ralston Reports," Channel 3 – Las Vegas, regarding revised process for investigating police shootings (January 4, 2013). Video recording available at http://www.ralstonreports.com/tv-show/1413-steve-sisolak-richard-boulware.

"Year After Fatal Shooting, Pain Remains," Las Vegas Review Journal (December 12, 2012). Copy supplied.

Interview on Nevada Public Radio "State of Nevada," KNPR – Las Vegas, regarding revised process for investigating police shootings (December 7, 2012). Audio recording available at http://www.knpr.org/son/archive/detail2.cfm?SegmentID=9510.

Interview on the "The Agenda," Channel 3 – Las Vegas, regarding revised process for investigating police shootings (December 3, 2012). Video recording available at http://www.onenewspage.us/video/20121203/1114778/THE-AGENDA-MONDAY-Allan-Boulware.htm.

"DOJ Report on Metro Includes 75 Recommendations, Findings," Channel 5 – Las Vegas (November 15, 2012). Copy supplied.

"Nevada Court Strikes Down Revised Coroner's Inquest Process," Las Vegas Review Journal (October 25, 2012). Copy supplied.

"Grand Jury Looks At Shooting," Las Vegas Review Journal (October 17, 2012). Copy supplied.

Interview on Nevada Public Radio "State of Nevada," KNPR – Las Vegas, regarding revised process for investigation of police shootings (August 7, 2012). Audio recording available at http://www.knpr.org/son/archive/detail2.cfm?SegmentID=9111.

Interview on Nevada Public Radio "State of Nevada," KNPR – Las Vegas, regarding Las Vegas being a hospitable city (July 27, 2012). Audio recording available at http://www.knpr.org/son/archive/detail2.cfm?SegmentID=9084.

Interview on the "The Agenda" Channel 3 – Las Vegas, regarding police revision of its policies regarding use of force (July 26, 2012). Video recording available at http://www.clipsyndicate.com/video/play/3668407/the_agenda_thursday_boulware_07_26_2012.

"Shooting Documents Released," Las Vegas Review Journal (June 5, 2012). Copy supplied.

Interview on Nevada Public Radio "State of Nevada," KNPR – Las Vegas, regarding police use body cameras (May 24, 2012). Audio recording available at http://www.knpr.org/son/archive/detail2.cfm?SegmentID=8888.

Interview for Channel 3 – Las Vegas, regarding possible plan for use of cameras on police (May 12, 2012). I have been unable to obtain a copy.

"Police Union Threatens Legal Action Over Metro's Decision To Test Body-Mounted Cameras," Las Vegas Sun (May 7, 2012). Copy supplied.

Interview on the "The Agenda," Channel 3 – Las Vegas, regarding police shootings and investigation by the federal government (April 10, 2012). Video recording available at http://www.clipsyndicate.com/video/play/3414562/the_agenda_boulware_04_10_2012.

Interview on Nevada Public Radio "State of Nevada," KNPR – Las Vegas, regarding police use of force incident (March 21, 2012). Audio recording available at http://www.knpr.org/son/archive/detail2.cfm?SegmentID=8697.

"ACLU Repeats Call for Feds to Probe Vegas Police," Associated Press (March 5, 2012). Copy supplied.

"Review of Police Shootings Has Begun," Las Vegas Review Journal (February 26, 2012). Copy supplied.

"Groups Want Quicker Inquiry," Las Vegas Review Journal (February 9, 2012). Copy supplied.

Comments at Press Conference by the NAACP and ACLU regarding need for heightened level of review of local police (February 8, 2012). Press coverage supplied.

Interview on "Face-to-Face," Channel 3 – Las Vegas, regarding petition filed with the Department of Justice to seek review of the Las Vegas Metropolitan Police Department (January 16, 2012). Video recording available at http://www.clipsyndicate.com/video/playlist/24953/3191052?title=aclu_news_videos.

"Groups Seek Federal Investigation into Las Vegas Police," Las Vegas Review Journal (January 13, 2012). Copy supplied.

"Former Sheriff Joins Call For Vegas Police Probe," Associated Press (December 17, 2011). Copy supplied.

"Sheriff Would Support Federal Inquiry into Las Vegas Police Shootings," Las Vegas Review Journal (December 17, 2011). Copy supplied.

"Widow: Police Arrested Husband Before Fatal Confrontation," Channel 5 – Las Vegas (December 16, 2011). Copy supplied.

"Sheriff Responds to Calls for Use of Force Inquiry," Channel 8 – Las Vegas (December 15, 2011). Copy supplied.

"Federal Scrutiny Missing From Las Vegas Police Shootings," Las Vegas Review Journal (December 11, 2011). Copy supplied.

"Elected Officials See Need For Changes in Handling of Police Shootings," Las Vegas Review Journal (December 4, 2011). Copy supplied.

"Policing Themselves," Las Vegas Review Journal (November 30, 2011). Copy supplied.

"In Numbers, Deadly Trends," Las Vegas Review Journal (November 28, 2011). Copy supplied.

"Now It's Time For Change," Las Vegas Review Journal (November 28, 2011). Copy supplied.

Interview on Nevada Public Radio "State of Nevada," KNPR – Las Vegas, regarding police shootings and police relationship with larger community (September 15, 2010). Audio recording available at http://www.knpr.org/son/archive/detail2.cfm?SegmentID=7158.

"NAACP Says Citations In School Are Unfair," Las Vegas Sun (September 2, 2010). Copy supplied.

NAACP Press Release regarding improper issuance of traffic citations (August 31, 2010). Copy supplied.

"Open Meeting Law Topic of School District Panel," Las Vegas Review Journal (January 28, 2010). Copy supplied.

"Getting To Know You: COPS Program Teaches HUPD To Function Better Within Harvard Community," Harvard Gazette (May 8, 1997). Copy supplied.

"Randomization: The First Week," The Harvard Crimson (September 13, 1996). Copy supplied.

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

I have never held 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.

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 never held any position within a political party. I have not held a position or played a role in a political campaign.

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

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

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

From September 2002 to September 2003, I clerked for the Honorable Denise Cote, District Court Judge of the United States District Court for

the Southern District of New York.

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

I have never practiced as a solo practitioner.

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

Fall 2003
Covington & Burling
620 Eighth Avenue
New York, New York 10018
Litigation Associate

2003 – 2007
Federal Defenders of New York
52 Duane Street
New York, New York 10007
Trial Attorney

2007 – present
Federal Public Defender of Nevada
411 Bonneville Avenue
Las Vegas, Nevada 89101
Trial Attorney (2008 – present)
Research & Writing Attorney (2007 – 2008)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

From approximately September 2003 to December 2003, I practiced as a litigation associate at Covington & Burling in New York City. I participated in internal investigations, and I drafted different types of motions, temporary restraining orders, research memoranda and other such documents.

From 2003 to 2007, I practiced as a trial attorney for the Federal Defenders of New York. In this capacity, I only represented indigent clients who received appointed counsel by the federal court. These cases all involved federal criminal charges, including drug trafficking, wire fraud and illegal possession of weapons.

Since 2007, I have been an attorney with the Federal Public Defender's Office in Las Vegas, Nevada. From 2007 until 2008, I practiced as a research and writing attorney, researching and drafting motions and memoranda related to the full range of federal charges facing our clients. Since January 2008, I have practiced as a trial attorney in a broad array of federal cases, including charges of bank fraud, bank robbery, illegal reentry into the United States and drug trafficking. For the past three years, my practice has focused on representing clients in large complex white-collar fraud cases. In 2010, I was designated as the lead attorney in my office for large complex white-collar cases. Typically, my practice in this area has involved cases regarding mortgage fraud, bank fraud, wire/mail fraud and tax fraud.

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

During my time at Covington & Burling, my typical clients, both individuals and corporations, were involved in either white-collar criminal cases or civil litigants in contract disputes. For the majority of my career, I have represented indigent clients as a trial attorney in the spectrum of federal criminal cases.

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

My practice has been 99% litigation. I have appeared in federal court on different matters very frequently. I have appeared approximately three to six times per week in federal court during my tenure as a trial attorney with the Federal Public Defender's Office in both Las Vegas and New York. For the short period of time when I was a Research & Writing Attorney in Las Vegas, I did not appear in court regularly.

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: 1%
2. criminal proceedings: 99%

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

I have tried 15 cases to verdict. All of them have been in federal court. I was sole counsel in five of the trials and chief counsel in the other ten trials.

i. What percentage of these trials were:
1. jury: 73%
2. non-jury: 27%

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. Owen et al.*, Docket No. 04-Cr-649-RPP, 2006 U.S. Dist. LEXIS 7765 (S.D.N.Y. 2006), *rev'd*, by 500 F.3d 83 (2d Cir. 2007). This case was before Judge Robert Patterson; 2005 – 2007.

I was lead counsel representing Mr. Owen, who was charged, along with three co-defendants, with possessing with intent to distribute approximately 400 pounds of marijuana. Mr. Owen was alleged to have transported marijuana concealed within moving boxes by rental truck at the behest of others. Prior

to trial, I was lead counsel at a one-day suppression hearing with witnesses, documentary and surveillance evidence. After a four-day trial, Mr. Owen was convicted. Although I did not continue to represent Mr. Owen during the post-trial phase, a motion for a new trial was filed, based in part on my post-trial interview of one of the co-defendants, who, for the first time, admitted that my client had not actually been involved in the drug conspiracy. The district court overturned the conviction on the ground that it had "a real concern that an innocent man may have been convicted." On appeal, the verdict was reinstated by the appellate court. However, based upon the evidence that was uncovered the government ultimately agreed to a more lenient charge, which resulted in a "time served" sentence.

Co-counsel:
Sean Hecker
Debevoise & Plimpton
919 Third Avenue
New York, New York 10022
(212) 909-6052

Government Counsel:
Jacob Buchdahl
Susman Godfrey
560 Lexington Avenue, 15th Floor
New York, New York 10022
(212) 336-8342

2. *United States v. Regaldo-Millares*, Docket No. 04-Cr-35-GBD (SDNY), *aff'd.*, 2007 U.S. App. LEXIS 7531 (2d Cir. 2007). This matter was before Judge George B. Daniels; 2004 – 2005.

I represented Mr. Regaldo-Millares, who was charged with being a drug courier and with drug trafficking. He was arrested in the course of an alleged drug delivery after being monitored by law enforcement officers. The trial raised the question of how much a drug courier needs to know about what he is carrying to be a willful participant of a drug conspiracy. On behalf of Mr. Regaldo-Millares, I argued that he did not have sufficient knowledge of the existence of a drug distribution operation because the members of the conspiracy had caused him to believe that he was delivering legal items to a friend. The trial also presented issues regarding whether his use of colloquialisms constituted coded drug language, rather than innocuous slang. After a four-day jury trial, Mr. Regaldo-Millares was convicted. Although I did not participate in the appeal in this case, I understand that the conviction was affirmed.

Government Counsel:
Jessica Roth

(formerly Assistant United States Attorney for the Southern District of New York)
Assistant Professor
Cardozo Law School
55 Fifth Avenue
New York, New York 10003
(212) 790-0489

3. *United States v. Brand*, Docket No. 04-Cr-194-PKL (S.D.N.Y.), 2005 U.S. Dist. LEXIS 634, *aff'd.*, 467 F.3d 179 (2d Cir. 2006). This matter was before Judge Peter Leisure (deceased); 2004 – 2006.

   I was lead counsel representing Mr. Brand, who was accused of illegal interstate travel with the intent to have sexual contact with a minor and with enticing a minor to engage in sexual contact. Mr. Brand, a 38-year-old music teacher, was alleged to have traveled from New Jersey to New York for the purpose of engaging in sexual conduct with an individual he believed to be 13-years-old and used a computer, the Internet and a telephone to attempt to entice that same 13-year- old girl to engage in sexual conduct. The person whom Mr. Brand believed to be a 13-year-old girl was an FBI agent. I presented evidence related to the affirmative defense of entrapment, including expert testimony. After an eight-day jury trial, Mr. Brand was convicted. Although I did not participate in the appeal, I understand that the judgment and sentence were affirmed on appeal.

   Co-counsel:
   Honorable Steve Statsinger
   (formerly a trial attorney with the Federal Defenders of New York)
   Judge of the Criminal Court of the City of New York
   100 Centre Street
   New York, New York 10013
   (646) 386-4683

   Government Counsel:
   Brian Michael
   (formerly Assistant United States Attorney for the Southern District of New York)
   21st Century Fox
   Fox Networks Group
   P.O. Box 900
   Beverly Hills, California 90213
   (310) 369-2409

4. *United States v. Joe*, Docket No. 06-Cr-795-LTS (S.D.N.Y.). This matter was before Judge Laura Swain; 2006 – 2007.

   I represented Mr. Joe, who was accused of illegally possessing a weapon. It was alleged that he threw the weapon out the window to avoid its discovery. One of the key issues in this six-day jury trial was the competency of one of the witnesses who had mental health issues. The court granted the defense motion for the production of medical records of the witness. The court then held a separate evidentiary hearing on this witness competency issue, ultimately ruling that the witness was competent. During the course of jury deliberations, the parties also had to address the issue of the potential (and eventual dismissal) of a juror for improper deliberation conduct and the issue of whether the court should give a directive charge to the jury after it was initially deadlocked. Mr. Joe was acquitted.

   Government Counsel:
   Joseph Facciponti
   Assistant United States Attorney for the Southern District of New York
   United States Attorney's Office
   One Saint Andrews Plaza
   New York, New York 10007
   (212) 637-2200

5. *United States v. Shamsideen,* Docket No. 03-Cr-1313(S.D.N.Y.), *aff'd.*, *United States v. Glover*, 511 F.3d 240 (2d Cir. 2008). This matter was before Judge Stephen C. Robinson (ret.); 2003 – 2005.

   I was lead counsel representing Mr. Shamsideen, who was charged with illegal possession of a weapon as a felon. He was arrested after the car in which he was riding was stopped by police, and a gun was found in the car. The court denied the defense's motions to sever the trial for the co-defendants, who had antagonistic defenses, to suppress evidence based on a theory that there was an improper traffic stop, and to admit impeachment material for government witnesses. After a four-day trial, Mr. Shamsideen was convicted, which was subsequently upheld on appeal.

   Co-counsel:
   Jennifer Brown
   Federal Defenders of New York
   52 Duane Street
   New York, New York 10007
   (212) 417-8700

   Co-defendant's Counsel:
   Kerry Lawrence
   Calhoun & Lawrence

81 Main Street, Suite 450,
White Plains, New York 10601
(914) 946-5900

Government Counsel:
Jonathan New
(formerly Assistant United States Attorney for the Southern District of New York)
Baker Hostetler
45 Rockefeller Plaza
New York, New York 10111
(212) 589-4650

6. *United States v. Wallaesa*, Docket No. 09-CR-492-ECR (Dist. Nev.). This matter was before Judge Edward Reed (deceased); 2009 – 2010.

I was lead counsel representing Mr. Wallaesa, who was charged with assault on a federal officer and interference with a flight crew member through intimidation. He was alleged to have forcibly disregarded instructions of the flight crew and an onboard federal law enforcement official, including allegedly assaulting the federal officer. In the pre-trial phase, the court granted the defense's motion and found that the grand jury had only been instructed regarding a misdemeanor assault and therefore could only have returned an indictment for a misdemeanor and not a felony. At trial, the court subsequently instructed the jury only as to the elements of a misdemeanor assault charge. The court also granted the defense motions in part to limit the testimony of certain government witnesses based on irrelevance and/or unfair prejudice. After a three-day jury trial, the jury acquitted Mr. Wallaesa.

Co-Counsel:
Rachel Korenblat
Assistant Federal Public Defender
411 East Bonneville Avenue
Las Vegas, Nevada 89101
(702) 388-6336

Government Counsel:
Roger Yang
Assistant United States Attorney
United States Attorney's Office
333 Las Vegas Boulevard South, Suite 5000
Las Vegas, Nevada 89101
(212) 388-6336

7. *United States v. Sutherland et al.*, Docket No. 10-Cr-356-LDG, 2012 U.S. Dist. LEXIS 5856, 74359, 154022, 173252 (Dist. Nev. 2012) (appeal pending). This matter was before Judge Lloyd George; 2010 – 2013.

   I represented Mr. Nunes, who was charged, along with three co-defendants, with bank fraud and wire fraud in connection with an alleged multifaceted conspiracy involving the purchase of homes with "straw buyers" who never intended to live in the homes and whose financial assets and salaries were grossly inflated. The court denied defense's motion as to the admissibility of the fact that the bank that was the target of the fraud was being sued by the government for several hundred million dollars for improper loan practices in a different jurisdiction. After a nine-day jury trial at which I served as chief counsel, the jury acquitted Mr. Nunes on one count and convicted him on two counts. The main issue on sentencing involved how to calculate loss and restitution in the context of bank loans which had been repeatedly resold and whose owners cannot be adequately documented. Given the resale of the loans and the government's inability to establish the owners of the loans, the defense was able to prevail on restitution. The government subsequently withdrew its argument for restitution. Mr. Nunes' conviction is currently on appeal to the Ninth Circuit Court of Appeals. I am not the attorney assigned to this appeal.

   Co-counsel:
   Rachel Korenblat
   Assistant Federal Public Defender
   411 East Bonneville Avenue
   Las Vegas, Nevada 89101
   (702) 388-6577

   Co-defendant Toren's Counsel:
   William Brown
   Law Offices of William H. Brown
   330 South Third Street, Suite 860
   Las Vegas, Nevada 89101
   (702) 366-9311

   Co-defendant Sutherland's Counsel:
   Richard Schonfeld
   Chesnoff & Schonfeld
   520 South Fourth Street
   Las Vegas, Nevada 89101
   (702) 384-5563

   Government Counsel:
   Brian Young & Thomas Hall
   Assistant United States Attorneys

United States Attorney's Office
555 Fourth Street, NW
Washington, D.C. 20530
(202) 616-3114
(202) 616-1682

8. *United States v. Blake*, Docket No. 04-Cr-195-GBD (S.D.N.Y.). This matter was before Judge George Daniels; 2004 – 2005.

   I was lead counsel representing Mr. Blake, who was charged with assault on another federal employee and possession of cocaine with the intent to distribute. Mr. Blake was alleged to have threatened another employee with a knife and was alleged to have been selling cocaine from his employee locker. The court granted the defense's request for a destruction of evidence instruction to the jury because the law enforcement officers involved had destroyed the alleged weapon, a penknife, related to the assault charge. Additionally, both sides presented evidence, including expert testimony, on the issue of how much cocaine could be considered a "personal use" amount for an addict. After a four-day jury trial, Mr. Blake was convicted.

   Co-counsel:
   Deirdre von Dornum
   Assistant Dean for Public Service
   (formerly a trial attorney with Federal Defenders of New York)
   New York University School of Law
   40 Washington Square, South
   New York, New York 10012
   Telephone: (212) 998-6668

   Government Counsel:
   Edward Chang
   Assistant United States Attorney
   (formerly an Assistant United States Attorney in the Southern District of New York)
   157 Church Street
   New Haven, Connecticut 06510
   (203) 821-3796

9. *United States v. Kimsey*, Docket No. 08-Cv-635-PMP (Dist. Nev.), reversed by 668 F.3d 691 (9th Cir. 2012). This matter was before Judge Philip Pro; 2009 – 2012.

   I represented Mr. Kimsey, who was charged with contempt of court for the unauthorized practice of law. He was alleged to have written pleadings for a pro se defendant that were then filed with the court. The district court judge presided over a one-day bench trial on an issue of first impression regarding

whether the ghostwriting of legal documents by a non-attorney for a pro se defendant constituted the unauthorized practice of law where the non-attorney did not hold himself out as an attorney or receive any money for his services. Mr. Kimsey was convicted. After the trial, the defense filed a motion to overturn the verdict because Mr. Kimsey should have received a jury trial pursuant to the contempt statute, 18 U.S.C. § 402. The motion was denied by the district court. On appeal, the Ninth Circuit held that Mr. Kimsey should have been given a jury trial pursuant to the statute as he requested. Moreover, on the merits, the court vacated the sentence, holding that a non-attorney could not be criminally charged with contempt for simply violating a local rule of a federal court.

Co-counsel:
Franny Forsman (appellate counsel)
P.O. Box 4341
Las Vegas, Nevada 89116
(702) 501-8728

Government Counsel:
Peter Leavitt
Assistant United States Attorney
333 Las Vegas Boulevard South
Las Vegas, Nevada 89101
(702) 388-6336

10. *United States v. Cromwell*, Docket No. 10-Cr-512-GMN (Dist. Nev.), *affd.*, 2013 U.S. App. LEXIS 11947 (9th Cir. 2013). This matter was before Judge Gloria Navarro; 2010 – 2012.

I represented Mr. Cromwell, who had pled guilty to being a felon unlawfully in possession of a weapon or ammunition. The sentencing hearing, which took place over a few days, presented a number of issues. First, the parties disputed the relevant standard of proof for the sentencing given the potential for a large sentence (up to ten years) to be imposed where the main factors driving the severity of the sentence were not a part of the guilty plea allocution by the defendant. The court ruled that the evidence was sufficient under either standard. Second, the parties initially disputed whether the defendant could receive consecutive sentences separately for the weapon and ammunition which would have raised his sentencing exposure to 20 years. The government subsequently conceded that the sentences should be concurrent and the court also agreed that the defense was correct that the maximum sentence was ten years for both the weapon and ammunition. The defendant received a ten-year sentence.

Government Counsel:
Philip Smith

Assistant United States Attorney
United States Attorney's Office
333 Las Vegas Boulevard South, Suite 5000
Las Vegas, Nevada 89101
(212) 388-6336

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

    I have done work in the community with bar associations and community organizations. For example, as part of my leadership in the National Bar Association, I have organized various free legal seminars for community residents. In 2010, I assisted with organizing a seminar for youth on their legal rights with respect to contracts, financial independence, foster care and other topics. In 2013, I helped organize a seminar for the Southern Nevada Housing Authority on housing rights for residents of public housing in the Las Vegas area.

    I have also done work in the community on appointed committees. In 2012, I was appointed to a screening committee for the selection of a new District Attorney for Clark County. The District Attorney had resigned before his elected term had been completed. The County Commission appointed lawyers to the Screening Committee to interview candidates and then make a recommendation of final candidates from which the County Commission would choose. In 2010, the County Commission also appointed me to the Coroner's Inquest Review Committee. This committee was created by the Commission to make recommendations for changes to the coroner's inquest process. The coroner's inquest process is the process in the County that occurs when a resident has died in an encounter with the police. The County created a committee of lawyers to review the existing system and make recommendations for changes to the process. The committee made recommendations to the Commission, which were subsequently adopted.

    I have not performed any lobbying activities.

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

    I have not taught any courses.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted

contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not expect any deferred income or future benefits.

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

    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 Financial Disclosure Form.

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.

       I anticipate recusing myself from any case which was assigned to the Federal Public Defender's Office trial unit in Las Vegas while I was working in the unit as an attorney. I do not anticipate other conflicts. It is possible that friends who are lawyers might appear in front of me, but I would address this on a case-by-case basis pursuant to 28 U.S.C. § 455 and Canon 3(C) of the Code of Conduct for United States Judges.

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

       If confirmed, I would resolve each conflict on a case-by-case basis, so that each is handled with regard to the specific potential issues of the respective potential

conflict. In conducting this analysis, I would refer to 28 U.S.C. § 455 and Canon 3(C) of the Code of Conduct for United States Judges, as well as any and all other laws, rules, and practices governing such circumstances.

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

    Since 2009, I have been a volunteer attorney for the U.S. VETS program in Las Vegas. This program provides free legal advice to homeless veterans. This advice frequently involves addressing outstanding arrest warrants or reviewing possible mechanisms for addressing custody or other family law related issues.

    I also have done various forms of pro bono work through my membership in bar associations. For example, in connection with my service with the National Bar Association, I organized free legal seminars for youth in the community in 2010 and for public housing residents in 2011. I also organized the Free Backpack Program for elementary school youth from 2009 to 2011. For these seminars and my work with the community, I was honored with a President's Award by the National Bar Association in 2012.

    Finally, I have been involved in mentoring in the community. I have participated in the Brother-to-Brother mentoring program which involved mentoring to young men in juvenile detention. Through my church, I provide and have provided mentoring to high school students regarding preparation for the academic challenges and social pressures of college.

26. **Selection Process**:

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

    In late June 2013, Senator Harry Reid's staff inquired whether I would be interested in serving as a district court judge in the District of Nevada. On July 1, 2013, I interviewed with Senator Reid, and shortly after this interview, I was informed by a representative of his office that my name was being forwarded to the President for consideration as a possible nominee. Since approximately July

9, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 13, 2013, I interviewed with Senator Dean Heller. On November 20, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On January 16, 2014, 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
Boulware, Richard F.	District Court of Nevada	01/17/2014
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 01/16/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/31/2013
7. Chambers or Office Address		
411 E. Bonneville Avenue Las Vegas, NV 89101		

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	Las Vegas Chapter of National Bar Association Foundation
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Boulware, Richard F.	Date of Report 01/17/2014

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	Sandia National Laboratories - Salary
2.	2013	Board of Regents, Nevada Higher Education - Teaching Salary
3.	2013	Guinn Center for Policy Priorities - Salary
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Boulware, Richard F.	Date of Report 01/17/2014

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.	Sallie Mae	Educational Loans	M
3.	Sears	Credit Card	J
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Boulware, Richard F.	01/17/2014

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. The Hartford Money Market Fund		None	J	T					
2. Fidelity DFA US Small Cap Portfolio	B	Int./Div.	K	T					
3. Fidelity Contrafund	C	Int./Div.	K	T					
4. Fidelity Growth Company Fund	C	Int./Div.	L	T					
5. Fidelity Lifepath Index 2035 Fund		None	K	T					
6. Fidelity Low-Priced Stock Fund	A	Int./Div.	J	T					
7. Fidelity Magellan Fund	A	Int./Div.	J	T					
8. Bank of America (Cash Accounts)	A	Interest	J	T					
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

Name of Person Reporting	Date of Report
Boulware, Richard F.	01/17/2014

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Boulware, Richard F.	Date of Report 01/17/2014

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/ Richard F. Boulware

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		10	420	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		202	350	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		40	970
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		407	563
Real estate owned – see schedule		720	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		31	000	Education loans		174	581
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		62	274				
				Total liabilities		623	114
				Net Worth		402	930
Total Assets	1	026	044	Total liabilities and net worth	1	026	044
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	
DFA U.S. Small Cap Portfolio	$ 38,444
Fidelity Contrafund	49,491
Fidelity Growth Company Fund	52,163
Fidelity Lifepath Index 2035 Fund	48,692
Fidelity Low-Priced Stock Fund	4,670
Fidelity Magellan Fund	3,829
Hartford Stable Value Fund	5,061
Total Listed Securities	$ 202,350

Real Estate Owned	
Personal residence	$ 550,000
Family residence (88% owner)	25,000
Undeveloped property (50% owner)	145,000
Total Real Estate Owned	$ 720,000

AFFIDAVIT

I, Richard F. Boulware, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/23/14
(DATE)

(NAME)

CLAUDIA V. LOPEZ
Notary Public-State of Nevada
APPT. NO. 04-89123-1
My App. Expires September 20, 2014

Claudia V. Lopez
(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Salvador Mendoza, Jr.

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

   United States District Court Judge, Eastern District of Washington

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

   Benton County Justice Center
   7122 West Okanogan Place, Building A
   Kennewick, Washington 99336

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

   1971; Pacoima, 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.

   1994 – 1997, University of California, Los Angeles School of Law; J.D., 1997
   1990 – 1994, University of Washington; 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.

   May 2013 – present
   Benton County Justice Center
   Superior Court Administration Office
   7122 West Okanogan Place, Building A
   Kennewick, Washington 99336
   Superior Court Judge

May 2013 – present
Franklin County Court House
Superior Court Administration Office
1016 North Fourth Avenue
Pasco, Washington 99301
Superior Court Judge

2006 – 2013
Benton County Justice Center
District Court Administration Office
7122 West Okanogan Place, Building A
Kennewick, Washington 99336
District Court Judge Pro Tempore

2002 – 2013
Franklin County Court House
District Court Administration Office
1016 North Fourth Avenue
Pasco, Washington 99301
District Court Judge Pro Tempore

2002 – 2013
Benton and Franklin Counties Juvenile Justice Center
5606 West Canal Drive
Kennewick, Washington 99336
Juvenile Court Judge Pro Tempore

2002 – 2013
City of Pasco Municipal Court
1016 North Fourth Avenue
Pasco, Washington 99301
Municipal Court Judge Pro Tempore

2002 – 2013
Mendoza and Johnson, P.S.
(Formerly known as Mendoza Law Office, P.S. (2002 – 2011))
7135 West Hood Place
Kennewick, Washington 99336
President, Managing Attorney

1999 – 2002
Haney and Mendoza, P.S.
(Formerly known as Mendoza Law Office (1999 – 2001))
7025 West Grandridge Boulevard, Suite B1
Kennewick, Washington 99336

Vice President (2001 – 2002)
Solo practice (1999 – 2001)

September 1998 – April 1999
Franklin County Prosecuting Attorney's Office
1016 North Fourth Avenue
Pasco, Washington 99301
Deputy Prosecuting Attorney

Summer 1996, 1997 – 1998
Washington State Attorney General's Office
1433 Lakeside Court, # 102
Yakima, Washington 98901
Assistant Attorney General (1997 – 1998)
Legal Intern (Summer 1996)

Summer 1995
United Farm Workers of America
29700 Woodford-Tehachapi Road
Keene, California 93531
Legal Intern

Other Associations (uncompensated unless otherwise indicated):

1999 – present
Mendoza Holdings, Inc. (compensated)
7135 West Hood Place
Kennewick, Washington 99336
President

2011 – 2013
Columbia Basin College
2600 North 20th Avenue
Pasco, Washington 99301
Board of Trustees

2011 – 2013
Tri-City Hispanic Chamber of Commerce
1600 North 20th Avenue, # D3
Pasco, Washington 99301
Board of Directors Advisor

2007 – 2013
Benton and Franklin Counties Circle of Hope Foundation for Drug Courts
5606 West Canal Place, Suite 106

Kennewick, Washington 99336
Board of Directors

2009 – 2011
United Way of Benton and Franklin Counties
401 North Young Street
Kennewick, WA 99336
Board of Directors

2002 – 2011
Benton and Franklin County Legal Aid
418 North Kellogg
Kennewick, Washington 99336
Board of Directors

2001 – 2009
Mendoza Farms, Inc. (compensated)
7135 West Hood Place
Kennewick, Washington 99336
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 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.

   2013 Washington State Minority and Justice Commission, Tri-Cities Youth and Justice Forum Award

   2013 Tri-Cities Hispanic Chamber of Commerce Leadership Award

   2013 Keynote Speaker Educational School District 123 Conference

   2012 Keynote Speaker Kennewick School District Conference

   2011 Benton Franklin Legal Aid Society Award for Outstanding Service

   2008 La Voz Newspaper, Community Leadership Award

   2004 Washington Law & Politics, Super Lawyers, Rising Star

2003 Keynote Speaker for the Hispanic Academic Achievers Program

2002 Benton Franklin Legal Aid Society Award for Outstanding Service

1995 UCLA, School of Law, Public Interest Grant

1994 Council on Legal Education Opportunity Fellowship

1993 Minority Leaders Fellowship, American University

1993 University of Washington Alumni Board Scholarship

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

Benton Franklin Bar Association

Benton and Franklin County Legal Aid
Board of Directors (2002 – 2011)

Federal Bar Association, Eastern District of Washington
Lawyer Representative to 9th Circuit Judicial Conference (2010 – 2013)
Eastern District Chair (2012 – 2013)

Leadership Tri-Cities
Law Enforcement and the Justice System (2006, 2009 – 2012)

MacArthur Foundation, Models for Change Initiative for Juvenile Justice
Chair, Latino Community Leadership Committee (2010 – 2011)

Tri-Cities CJA Attorneys
Training Coordinating Committee (2009 – 2013)

United States District Court, Eastern District of Washington
Magistrate Selection Committee, Yakima, WA (2007)

Washington State Bar Association

Washington State Minority and Justice Commission
Tri-Cities Youth and Justice Forum Organizing Committee (2005 – 2013)

We the People Constitutional Law Competition
Volunteer Judge (2007, 2008, 2009)

10. **Bar and Court Admission**:

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

Washington, 1997

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.

State of Washington, all State Courts, 1997
United States District Court, Eastern District of Washington, 1999
United States District Court, Western District of Washington, 2008

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.

Benton and Franklin Counties Circle of Hope Foundation for Drug Courts (2007 – 2013)
Board of Directors

Christ the King School, Sausage Fest Fundraiser (2012, 2013)
Co-Chair for the Pop Wagon

Columbia Basin College (2011 – 2013)
Board of Trustees

Tri-Cities Hispanic Chamber of Commerce (2010 – 2013)
Board of Directors Advisor (2011 – 2013)

United Way of Benton and Franklin Counties (2009 – 2011)
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 in 11a currently discriminate nor previously have discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or through the practical implementation of their membership policies.

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

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

Letter to the Editor: Comforting Support, Tri-City Herald (November 22, 2012). Copy supplied.

Letter to the Editor: District Court: Ekstrom, Tri-City Herald (October 13, 2010). Copy supplied.

Letter to the Editor: KSD: Kintzley, Tri-City Herald (October 7, 2009). Copy supplied.

Candidate Statement, Washington State Voter's Guide (2008 General Election). Copy supplied.

When Maria Speaks Spanish: Hernandez, the Ninth Circuit and the Fallacy of Race Neutrality, 18 Chicano-Latino L. Rev. 193 (1996). 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 2002, I helped to create the first Drug Courts for juvenile offenders in Benton and Franklin Counties. As part of our work, we developed policy and procedures for the program. Manual 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 2013, I served as a member of the Columbia Basin College Board of Trustees and made statements and comments on a regular basis at our monthly board meetings. The following minutes are attached:

May 13, 2013, Meeting. Minutes supplied.

March 11, 2013, Meeting. Minutes supplied.

February 11, 2013, Meeting. Minutes supplied.

January 14, 2013, Meeting. Minutes supplied.

December 10, 2012, Meeting. Minutes supplied.

August 10, 2012, Meeting. Minutes supplied.

April 16, 2012, Meeting. Minutes supplied.

February 13, 2012, Meeting. Minutes supplied.

January 9, 2012, Meeting. Minutes supplied.

December 12, 2011, Meeting. Minutes supplied.

November 14, 2011, Meeting. Minutes supplied.

October 3, 2011, Meeting. Minutes supplied.

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

November 1, 2013: Moderator, "2013 Youth and Justice Forum," Pasco, Washington. I made welcoming remarks encouraging students to seek careers in

the justice system. I have no notes, transcript, or recording. The address for the Washington State Minority and Justice Commission, Administrative Office of the Courts is Post Office Box 41170, Olympia, Washington 98504.

October 18, 2013: Panelist, Washington State Minority Bar Association Conference, Seattle, Washington. PowerPoint supplied.

May 10, 2013: Presenter, "The Practice in Federal Court & the Defendant's Consequences of Misdemeanor Convictions," Benton and Franklin Office of Public Defense, Kennewick, Washington. PowerPoint supplied.

May 6, 2013: Swearing-in ceremony comments, Benton County Justice Center, Kennewick, Washington. I made some general remarks during my swearing-in ceremony. I do not have notes, transcript, or recording, but press coverage is supplied.

May 6, 2013: Speaker, "Meet and Greet with Judge Mendoza, Justice Gonzalez, and Justice McCloud," Kennewick, Washington. I met with the public to answer questions about my background and experience. I have no notes, transcript, or recording. The address for the Latina/o Bar Association of Washington State is Post Office Box 21134, Seattle, Washington 98111.

December 2012: Guest Speaker, "Career in the Legal Field," Delta High School, Richland, Washington. I have no notes, transcript, or recording. The address for Delta High School is 901 Northgate Drive, Richland, Washington 99352.

September 30, 2011: Moderator, "Ethical Issues in Detecting and Disclosing Mental Health Impairment of Clients and Witnesses," Federal Bar Association, Eastern District of Washington Conference, Spokane, Washington. The topic focused on the challenges of dealing with litigants that had mental health issues from the perspective of the judiciary, and criminal and civil practitioners. I coordinated with the panelists for the discussion, introduced the panelists, and assisted with questions from the conference participants. I have no notes, transcript, or recording. The address for the Federal Bar Association of the Eastern District of Washington is 1100 U.S. Bank Building, Spokane, Washington 99201.

June 3, 2011: Guest Presenter, "Starting and Managing a Law Practice," Washington State Bar Association, Washington Leadership Institute, Kennewick, Washington. The lecture focused on the practical strategies necessary for operating, managing, and financing a successful law practice. I have no notes, transcript, or recording. The address for the Washington Leadership Institute is University of Washington School of Law, William H. Gates Hall, Room 346, Post Office Box 353020, Seattle, Washington 89195.

June 3, 2011: Panelist, Columbia Basin Badger Club, Richland, Washington. I was a guest presenter on the topic of judicial elections. I have no notes, transcript, or recording. The address for the Washington Leadership Institute is University of Washington School of Law, William H. Gates Hall, Room 346, Post Office Box 353020, Seattle, Washington 89195.

December 2010: Guest Lecturer, "Domestic Public Policy," Washington State University Tri-Cities, Richland, Washington. The lecture focused on the basic principles of creating public policy and applying those principles to practice. During the lecture, the students were encouraged to suggest topical issues and develop and analyze differing approaches to addressing the issue. I have no notes, transcript, or recording. The contact address is Washington State University, Department of Criminal Justice and Criminology, Post Office Box 644872, Pullman, Washington 99164.

November 2010: Guest lecturer, "Washington State Court System," Washington State University Tri-Cities, Richland, Washington. The lecture focused on the structure of the state court system, the appeal process, and different career opportunities. I have no notes, transcript, or recording. The contact address is Washington State University, Department of Criminal Justice and Criminology, Post Office Box 644872, Pullman, Washington 99164.

2010 Fall CLE: Presenter, "Ethics and Retainer Agreements," Washington Association of Criminal Defense Lawyers (WACDL), Pasco, Washington. My lecture involved the ethical considerations involved in fee agreements and the change in Washington State Rule of Professional Conduct 1.5. I have no notes, transcript, or recording. The address for WACDL is 1511 Third Avenue, Suite 503, Seattle, Washington 98101.

May – November 2008: I made a series of speeches to Benton and Franklin County civic organizations, chambers of commerce, and town hall meetings, regarding my campaign for superior court judge. To the best of my recollection, they focused solely on my legal experience, background and fitness to serve on the superior court bench. All of these comments were made extemporaneously and without notes.

2006, 2009 – 2012: Panelist, Leadership Tri-Cities of Benton and Franklin Counties, Kennewick, Washington. I have been a panelist on the topic of the justice system in Benton and Franklin counties at a number of events. I have no notes, transcript, or recording. The address for Leadership Tri-Cities is Post Office Box 4660, Kennewick, Washington 99336.

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.

Kristin M. Kraemer, "Benton-Franklin Sees First Latino Judge," *Tri-City Herald*, April 25, 2013. Copy supplied.

Kristin M. Kraemer, "Tri-City Lawyers Polled On Judicial Hopefuls," *Tri-City Herald*, March 30, 2013. Copy supplied.

Ty Beaver, "Database Measures Student Success," Tri-City Herald, March 12, 2013. Copy supplied.

Kristin M. Kraemer, "2 Indicate Interest In Benton County Judgeship," *Tri-City Herald*, February 24, 2013. Copy supplied.

Ty Beaver, "New Database Tracks Columbia Basin College Students After They Leave The School," *Tri-City Herald*, February 16, 2013. Copy supplied.

Kristin M. Kraemer, "Judge Matheson Stepping Down After Distinguished Career," *Tri-City Herald*, February 12, 2013. Copy supplied.

Kristin M. Kraemer and Paula Horton, "Prosser Mourns Loss Of Teen And Her Mom In Crash," *Tri-City Herald*, October 24, 2012. Copy supplied.

Ty Beaver, "Tri-City Students Attend Youth & Justice Forum," *Tri-City Herald*, October 19, 2012. Copy supplied.

Paula Horton, "White Swan Man Faces Trial After DUI Charge," *Tri-City Herald*, October 13, 2012. Copy supplied.

Paula Horton, "Some Benton County Public Defense Attorneys Decide To Stay On," *Tri-City Herald*, September 22, 2012. Copy supplied.

"Public Defenders Get New Case Limits," *KNDU 25*, June 19, 2012. Copy supplied.

Paula Horton, "Kennewick Man Pleads Guilty To 2010 Rape," *Tri-City Herald*, February 17, 2012. Copy supplied.

Paula Horton, "UPDATE: Claybell Park Rape Suspect Pleads Guilty During Trial," *Tri-City Herald*, February 16, 2012. Copy supplied.

Paula Horton, "UPDATE: Mental Health Exam Ordered For Suspect In Kennewick Murder," *Tri-City Herald*, January 30, 2012. Copy supplied.

Jacques Von Lunen, "Kennewick Lawyer Named To The CBC Board," *Tri-City Herald*, November 20, 2011. Copy supplied.

Jacques Von Lunen, "Teens Get A Taste Of Justice," *Tri-City Herald*, October 29, 2011. Copy supplied.

The Associate Press, "No Trial In Woman's 1982 Strangulation Death," *The Seattle Times*, February 7, 2011. Copy supplied.

Editorial Board, "Don't Judge Criminal Suspects Too Quickly," *Tri-City Herald*, August 6, 2010. Copy supplied.

Michelle Dupler, "Charges Dismissed In Assault Case," *Tri-City Herald*, July 29, 2010. Copy supplied.

"DNA Evidence Exonerates Man Charged With Rape," *KCOY 12*, July 28, 2010. Copy supplied.

Kristin M. Kraemer, "Trial Delayed For Richland Man Facing Assault Charges," *Tri-City Herald*, July 2, 2010. Copy supplied.

Paula Horton, "Trial Date Moved For Man Accused In Beating," *Tri-City Herald*, June 18, 2010. Copy supplied.

Kristin M. Kraemer, "Lawyer: DNA Will Clear Meadow Springs Beating Suspect," *Tri-City Herald*, April 17, 2010. Copy supplied.

Annette Cary, "Richland Developer Guilty Of $380,000 Scam," *Tri-City Herald*, March 26, 2010. Copy supplied.

"Richland Con Artist Pleads Guilty To Real Estate Fraud," *KNDU 25*, March 25, 2010. Copy supplied.

Kristin M. Kraemer, "Trial Delayed For Teen Boy Accused Of Killing Mother," *Tri-City Herald*, March 19, 2010. Copy supplied.

Kristin M. Kraemer, "Teen Pleads Innocent In Shooting," Tri-City Herald, March 5, 2010. Copy supplied

Kristin M. Kraemer, "Forum Introduces Students To Justice Career," *Tri-City Herald*, November 7, 2009. Copy supplied.

Kristin M. Kraemer, "Prosecutor Moves To Private Practice," *Tri-City Herald*, October 25, 2009. Copy supplied.

Kristin M. Kraemer, "Sentence Nears For Schalchlin In Deaths," *Tri-City Herald*, July 19, 2009. Copy supplied.

Kristin M. Kraemer, "Legal Aid Sets Barbeque Today," *Tri-City Herald*, July 17, 2009. Copy supplied.

Kristin M. Kraemer, "Judge Hopefuls Tout Experience In Mid-Columbia Race," *Tri-City Herald*, November 1, 2008. Copy supplied.

Kristin M. Kraemer, "Area Lawmen Back Mendoza For Judge." *Tri-City Herald*, September 12, 2008. Copy supplied.

Kristin M. Kraemer, "Yule Backs Mendoza For Superior Court Post," *Tri-City Herald*, September 4, 2008. Copy supplied.

Kristin M. Kraemer, "VanderSchoor Should Keep Seat," *Tri-City Herald*, August 20, 2008. Copy supplied.

Kristin M. Kraemer, "Bar Association Weighs In On Judicial Race," *Tri-City Herald*, August 3, 2008. Copy supplied.

April 17, 2008: I participated in a news conference to announce my candidacy for the Benton and Franklin Counties Superior Court seat vacated by Judge Dennis Yule. I have no notes, transcript, or recording, but press coverage is supplied.

Paula Horton, "Teen Gets 41 Years In Benton City Slayings," Tri-City Herald, March 15, 2008. Copy supplied

Tri-City Herald staff, "Moses Lake Teacher Proclaims Innocence," *Tri-City Herald*, May 10, 2007. Copy supplied.

Andrew Sirocchi, "Woman Gets 2 Years For Deadly Fire," *Tri-City Herald*, August 30, 2006. Copy supplied.

Nathan Isaacs, "Fatal Shooting Justified, Sheriff Says," *Tri-City Herald*, February 22, 2006. Copy supplied.

Kristin M. Kraemer, "Calendar Raises Money For Nonprofit Franklin County Wash., Legal Aid Society," *Tri-City Herald*, October 11, 2004. Copy supplied

Lily Eng, "Different Debate Puts UW Diversity Plan Over Top," *The Seattle Times*, March 4, 1994. Copy supplied.

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

On May 6, 2013, Governor Jay Inslee appointed me to the Superior Court in Benton and Franklin Counties. Shortly after my appointment, I had to run for election. I filed the

Washington State Declaration of Candidacy with the Washington Secretary of State on May 13, 2013. Since I ran unopposed, I received a Certificate of Election from the Secretary of State thereafter. My term will expire December 2016. In Washington State, superior courts are courts of general jurisdiction. The superior courts have original jurisdiction in all cases in equity, all cases at law which involve the title or possession of real property, all criminal cases amounting to felony, all cases of misdemeanor not otherwise provided for by law, actions of forcible entry and detainer, proceedings in insolvency, actions to prevent or abate a nuisance, all matters of probate, and of actions for divorce and annulment of marriage. Since May, I have handled various cases involving criminal adult and juvenile matters, civil dockets, adoption/guardianship dockets, domestic/family law dockets, civil contempt hearings, domestic violence protection order dockets, mental health proceedings, summary judgment hearings, and various civil and criminal trials.

In 2002, I was appointed by the district court judges in Benton and Franklin Counties and in Pasco Municipal Court to act as a judge pro tempore. There was no formal application or selection process. I worked in that capacity on an as needed basis until my appointment to Superior Court in 2013. One is generally assigned full dockets by the court administrator of the individual jurisdiction to cover while a judge is unavailable. The dockets that I handled included both criminal and civil matters, first appearances, arraignments, pre-trials, mitigation hearings, and other miscellaneous civil matters. These courts are courts of limited jurisdiction. In civil proceedings, the amount in controversy for district courts cannot exceed seventy five thousand dollars ($75,000). In criminal proceedings, the court can only hear misdemeanor and gross misdemeanor cases.

In 2002, I was appointed by Superior Court Commissioners Mike Johnson and Lonna Malone to be a judge pro tempore in juvenile court proceedings. I had a regular Friday docket handling pretrial criminal matters, civil truancy and contempt matters, Youth at Risk petitions, and Children in Need of Services (CHINS) petitions. After approximately six months, I had to leave the docket due to time conflicts with my private practice. I continued to work as a judge pro tempore on an as needed basis until my appointment to Superior Court in 2013. Juvenile court is a court of limited jurisdiction and is a division of Superior Court. Juvenile courts handle all juvenile offender matters outside of district and municipal courts or cases not declined to Superior Court, as well as dependency proceedings, truancy petitions, Youth at Risk petitions, and CHINS petitions.

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

   I have presided over 36 superior court trials that went to verdict or judgment.

   i. Of these, approximately what percent were:

jury trials:	60%
bench trials:	40%

civil proceedings:	55%
criminal proceedings:	45%

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

I have written two short opinions. Those opinions were filed in State of *Washington v. Arlene's Flowers Inc., et al.*, No. 13-2-00871-5, Benton County Superior Court.

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 following are the most significant cases I have presided over, listed alphabetically:

1. *Burgess Vineyards LLC v. Beveridge, et al.*, No. 12-2-50338-1, Franklin County Superior Court.

   This was a bench trial that involved a contract dispute. The plaintiff alleged that Mr. Beveridge violated an express clause in their written agreement by failing to make the required payment on time. As a result, interest accrued for several months. Mr. Beveridge claimed that he was coerced into signing the agreement when he arrived to pick up the agreed upon pinot grigio grapes. Mr. Beveridge refused to pay for the interest on the outstanding debt as it accumulated. The issues presented involved contract interpretation, whether there was a meeting of the minds, and whether this was an unconscionable contract. There were also some factual disputes and credibility concerns that went to the heart of the claims presented. The judgment was in favor of the plaintiff in the amount of $10,253.

   Attorney for the Plaintiff:
   John Schultz
   Leavy, Schultz, Davis & Fearing, P.S.
   2415 West Falls Avenue
   Kennewick, Washington 99336
   (509) 736-1330

   Attorney for the Defendant:
   John Raekes
   Sperline Raekes, PLLC
   3311 West Clearwater Avenue, Suite D210

Kennewick, Washington 99336
(509) 783-6633

2. *In re the Marriage of Marr*, No. 12-3-00264-0, Benton County Superior Court.

   This case was a four-day divorce bench trial. The case had been ongoing for almost two years due to the complicated medical issues affecting the petitioner, Mrs. Marr, and the dispute regarding the financial assets of the marriage. The case also involved the allegation that the respondent, Mr. Marr, shot Mrs. Marr in the foot. Mr. Marr had been prosecuted for that incident. I denied Mr. Marr's motion to exclude all testimony relating to the shooting. Additionally, the issues of community property, commingling of assets, pre-nuptial and post nuptial agreement interpretation, gifts to the marriage, spousal maintenance, and ultimately the issue of fair and equitable division of assets were addressed.

   Attorney for the Petitioner:
   Samuel P. Swanberg
   7014 West Okanogan Place
   Kennewick, Washington 99336
   (509) 396-7087

   Attorney for the Respondent:
   Mason J. Pickett
   Defoe Pickett Law Office
   830 North Columbia Center Boulevard, Suite A
   Kennewick, Washington 99336
   (509) 734-8787

3. *The Noel Corporation v. Sloppy,* No. 12-2-01588-8, Benton County Superior Court.

   This case was an administrative law appeal from the Board of Industrial Insurance Appeals (BIIA). In Washington State, the parties are entitled to appeal from the BIIA to a superior court based solely on the record from the BIIA. They are also entitled to a jury trial. The BIIA had granted Mr. Sloppy's motion to reopen his case. The Noel Corporation appealed that decision. This was a three-day jury trial. The jury returned a verdict in favor of the Noel Corporation.

   Attorney for the Appellant:
   Steven R. Reinisch
   Reinisch Mackenzie, PC
   10260 South West Greenburg Road, Suite 1250

Portland, Oregon 97223
(503) 245-1846

Respondent:
Pro Se

4. *State of Washington v. Arlene's Flowers Inc., et al.*, No. 13-2-00871-5, Benton County Superior Court. *Ingersoll v. Arlene's Flowers Inc., et al.*, No. 13-2-00953-3, Benton County Superior Court. Decisions supplied.

   These are consolidated cases involving allegations of violations under the Washington Law Against Discrimination on the basis of sexual orientation and violations of the Consumer Protection Act. Both the plaintiffs and defendants are asserting state and federal constitutional claims. There has been and will continue to be extensive pretrial motion practice on a host of procedural and substantive issues. There are over 100 witnesses who are listed to testify in this case. This is an ongoing case that is set for trial in October 2014. There are 14 attorneys representing the various interests. The following are the key attorneys in the case:

   Attorney for Plaintiff (State of Washington):
   Todd Bowers
   Assistant Attorney General
   800 Fifth Avenue, Suite 630
   Seattle, Washington 98104
   (206) 464-7745

   Attorney for Plaintiffs (Ingersoll and Freed):
   Michael R. Scott
   Hillis Clark Martin & Peterson P.S.
   1221 Second Avenue, Suite 500
   Seattle, Washington 98101
   (206) 623-1745

   Attorney for Defendant:
   Alicia Berry
   Leibler, Conner, Berry & St. Hillaire
   1141 North Edison Street, Suite C
   Kennewick, Washington 99336
   (509) 735-3581

5. *State of Washington v. Kairuz*, No. 12-1-01022-0, Benton County Superior Court.

   The case involved marijuana grow operation with over 111 marijuana plants. The defendant was charged with unlawfully manufacturing, delivering, or

possessing with intent to deliver a controlled substance, marijuana. The case had been charged prior to the passage of Washington State Initiative 502 which legalized small amounts of marijuana. The three-day jury trial resulted in a conviction of the defendant.

Prosecutor:
Amy Harris
Benton County Prosecutors Office
7122 West Okanogan Place, Building A
Kennewick, Washington 99336
(509) 735-3591

Attorney for Defendant:
Kevin Holt
7014 West Okanogan Place
Kennewick, Washington 99336
(509) 735-6520

6. *State of Washington v. Madrigal*, No. 12-1-00948-5, Benton County Superior Court.

The case involved several counts of child molestation in the first degree. The alleged victim was nine years old when she disclosed the abusive behavior that she endured over the course of two years. The child underwent a videotaped recording wherein she again disclosed the abuse. The state filed a motion to include the child hearsay statements under Revised Code of Washington 9A.44.120 (1). I granted the motion to allow the child's testimony based on the record and the applicable statutory and case law authority. The case also involved the presentation of DNA evidence, testimony by forensic experts including a medical expert and a child psychologist. On the fourth day of the jury trial, the deputy prosecutor offered the defendant a plea bargain. Mr. Madrigal pled guilty to a reduced charge.

Prosecutor:
Anita Petra
Benton County Prosecutors Office
7122 West Okanogan Place, Building A
Kennewick, Washington 99336
(509) 735-3591

Attorney for Defendant:
Gloria Ochoa
Ochoa Law, PLLC
725 East Third Avenue
Spokane, Washington 99202
(509) 328-3771

7. *State of Washington v. McCorkindale*, No. 13-1-00666-2, Benton County Superior Court.

   This case involves a charge of murder in the first degree. The defendant is alleged to have stabbed the victim to death, run over the victim with a vehicle, placed the body in the truck of the vehicle, and then set the vehicle on fire in an attempt to destroy evidence. This matter will involve in-depth analysis of forensic pathology evidence, DNA analysis, and accident reconstruction evidence. A significant hearing on the motion to suppress the defendant's statements is set for March 2014. This case is set to go to trial in May 2014. The following are the key attorneys in the case:

   Prosecutor:
   Andy Miller
   Benton County Prosecutors Office
   7122 West Okanogan Place, Building A
   Kennewick, Washington 99336
   (509) 735-3591

   Attorney for Defendant:
   Alex Sheridan
   Benton County Office of Public Defense
   7122 West Okanogan Place, Building A
   Kennewick, Washington 99336
   (509) 222-3724

8. *State of Washington v. Preciado*, No. 13-1-50085-9, Franklin County Superior Court.

   The defendant was charged with assault in the first degree and attempted kidnapping in the first degree with firearm enhancements on both counts. The state charged the defendant, who was a drug dealer, of attempting to kidnap and then shooting the victim in an effort to collect on a previous unpaid drug debt. The six-day jury trial involved a wide array of issues including numerous motions in limine, the issuance of material witness warrants, evaluation of character evidence, witness unavailability issues, invocation of Fifth Amendment rights, co-defendant admissibility of statements, conflict of interest, lesser included charges, and extensive jury instructions. Ultimately, the jury found the defendant guilty of a lesser included charge of assault in the second degree with the firearm enhancement. The sentencing date is set for late February 2014.

   Prosecutor:
   Maureen R. Lorincz
   Franklin County Prosecutors Office

1016 North Fourth Avenue
Pasco, Washington 99301
(509) 545-3543

Attorney for Defendant:
James Edward Egan
James E. Egan, P.S.
315 West Kennewick Avenue
Kennewick, Washington 99336
(509) 586-3091

9. *State of Washington v. Wilson*, No. 13-1-00421-0, Benton County Superior Court.

The defendant was charged with one count of unlawful delivery of a controlled substance, heroin, and one count of unlawful possession of a controlled substance, methamphetamine. The three-day jury trial involved issues of search and seizure, standing, flophouses, admission of criminal convictions, and "Terry" stops. The voir dire selection was especially difficult because most of the jury pool had indicated that they or their family members had been affected by the issue of drugs.

Prosecutor:
Anita Petra
Benton County Prosecutors Office
7122 West Okanogan Place, Building A
Kennewick, Washington 99336
(509) 735-3591

Attorney for Defendant:
Catherine E. Harkins
Harkins & Swinburnson, PLLC
515 North Neel Street, Suite 109
Kennewick, Washington 99336
(509) 737-8308

10. *Tamosaitis, et al. v. Bechtel National, Inc., et al,* No. 10-2-02357-4, Benton County Superior Court.

The plaintiffs filed a motion to reopen a dismissed case. The case involves the allegation that Bechtel National had wrongly interfered in Dr. Tamosaitis' employment because Dr. Tamosaitis had raised safety and technical questions about the operation of the vitrification plant project at the Hanford nuclear plant. This case was originally assigned to Judge Craig Matheson, who retired in April 2013. Judge Matheson had dismissed the lawsuit in January 2012. The motion to reopen the case was based on what plaintiffs indicate was new

information. In order to prevail on a motion that is more the one year old after dismissal, the plaintiff needed to show extraordinary circumstances. I determined that the plaintiff failed to meet this burden and denied the motion to reopen.

Attorney for the Plaintiffs:
John P. Sheridan
MacDonald Hoague and Bayless
705 Second Avenue, Suite 1500
Seattle, Washington 98104
(206) 622-1604

Attorney for the Defendants:
Kevin C. Baumgardner
Corr Cronin Michelson Baumgardner & Preece, LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154
(206) 621-1480

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 judge pro tempore, I did not write any opinions. It is not typical to write opinions in juvenile, district, or municipal court because the vast majority of criminal cases that I presided over were arraignment, omnibus, and pre-trial matters. The cases involved pleas of guilty, sentencing, addressing discovery issues, rescheduling, and other general case management functions. As a judge pro tempore on civil matters, the cases involved service management in children in need of services proceedings, school truancy proceedings, various small claims disputes, and the mitigation of infractions. The general practice is to provide oral rulings.

As a Superior Court Judge, I have written two opinions in *State of Washington v. Arlene's Flowers Inc., et al.,* No. 13-2-00871-5, Benton County Superior Court. Decisions supplied in response to 13c.

Alicia Berry
Leibler, Conner, Berry & St. Hillaire
1141 North Edison Street, Suite C
Kennewick, Washington 99336
Representing Arlene's Flowers (Defendants)
(509) 735-3581

Todd Bowers
Assistant Attorney General
800 Fifth Avenue, Suite 630
Seattle, Washington 98104
Representing the State of Washington (Plaintiffs)
(206) 464-7745

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.

I have issued two written opinions in Benton County Superior Court. Those opinions were not published. The opinions by the court are filed in the case in hard copy and available to the public.

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

None.

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 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 defendants in *State of Washington v. Arlene's Flowers Inc., et al.*, No. 13-2-00871-5, Benton County Superior Court, filed a motion requesting that I recuse myself from the case. They did so after I disclosed that I had previously served (prior to my appointment to Superior Court) as a trustee for Columbia Basin College (CBC), the employer for one of the plaintiffs. As a trustee I did not have any duties to supervise any employees of CBC except the President of the college. That plaintiff had presented data and other scholastic information to the Board of trustees in the past. I did not have a personal friendship with the individual and had not recognized him when I initially reviewed the file. Nonetheless, pursuant to Comment 5 of the Canon of Judicial conduct 2.11, I felt it was important to disclose the information even when I did not feel it was a conflict of interest. I also noted on the record that my wife had purchased flowers on a few occasions from Arlene's Flowers in the past, but I also did not feel that was a conflict of interest. The defendants had already filed two affidavits of prejudice against other judges. I pointed out that under Revised Code of Washington 4.12.050, the parties were only entitled to file one affidavit per case. The defense attorneys then filed a motion attempting to withdraw an affidavit they had previously filed against another judge in order to file one against me. I denied the motion because it was not authorized by statute, court rule, or case law. The ruling has not been appealed.

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.

Columbia Basin College, Trustee (2011 – 2013): Governor Christine Gregoire appointed me to a five-year term. The Washington State Senate confirmed my appointment during the 2012 session. I resigned the position following my Superior Court appointment to avoid any potential conflict of interests.

I unsuccessfully ran to fill the position vacated by Superior Court Judge Dennis Yule in Benton and Franklin Counties in 2008.

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 participated in the Mendoza for Judge Election Committee as part of my nonpartisan campaign to fill the position for Superior Court Judge Dennis Yule in 2008. I also endorsed Steve Lowe in 2010 when he was running for Franklin County Prosecutor.

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;

1999 – 2001
Mendoza Law Office
7025 West Grandridge Boulevard, Suite A
Kennewick, Washington 99336
Solo Practitioner

2002 – 2004
Mendoza Law Office, P.S.
7025 West Grandridge Boulevard, Suite B1
Kennewick, Washington 99336
Solo Practitioner

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

1997 – 1998
Washington State Attorney General's Office
1433 Lakeside Court, # 102

Yakima, Washington 98901
Assistant Attorney General

September 1998 – April 1999
Franklin County Prosecuting Attorney's Office
1016 North Fourth Avenue
Pasco, Washington 99301
Deputy Prosecuting Attorney

1999 – 2002
Haney and Mendoza, P.S.
(Formerly known as Mendoza Law Office (1999-2001))
7025 West Grandridge Boulevard, Suite B1
Kennewick, Washington 99336
Solo Practitioner (1999 – 2001)
Vice President (2001 – 2002)

2002 – 2013
Mendoza and Johnson, P.S.
(Formerly known as Mendoza Law Office, P.S. (2002 – 2011))
7135 West Hood Place
Kennewick, Washington 99336
President, Managing Attorney

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

None.

b. Describe:

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

In 1997, I started my legal career in civil practice while working as an Assistant Attorney General in Yakima. I primarily represented the Department of Social and Health Services in dependency proceedings. I also tried administrative licensing hearings for the Department of Licensing. Additionally, I handled contested workers' compensation matters on behalf of the Department of Labor and Industries.

In 1998, I joined the Franklin County Prosecuting Attorney's Office as a Deputy Prosecutor handling juvenile felony and misdemeanor offenses. I was responsible for all prosecutions for juvenile court in the county. I

prosecuted every level of offense from simple assault or theft cases to felony sex offenses and vehicular homicide.

Between 1999 and 2013, I litigated approximately 75 criminal cases in state and federal court in my private practice. I have handled private and Criminal Justice Act (CJA) criminal cases in federal court and felony cases in state court. I also handled private federal criminal cases in Washington, Montana, Illinois, and Michigan. The cases that I have handled in federal court have been a mix of drug conspiracy, firearms, illegal entry, and fraud cases. A number of the cases have been certified as complex cases due to the nature of the case and/or the amount and complexity of discovery.

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

My career was primarily in state and federal criminal law. As an Assistant Attorney General in Yakima, my typical clients were state agencies, and I focused primarily on representing the Department of Social and Health Services in dependency proceedings. In the Franklin County Prosecuting Attorney's Office as a Deputy Prosecutor, I represented Franklin County in handling juvenile felony and misdemeanor offenses. In private practice, I represented criminal defendants, both individuals and corporations, in state and federal courts. The majority of my cases involved serious and often complex criminal 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.

Approximately 95% of my practice was litigation. I appeared daily in state district court, juvenile court, and superior court criminal dockets. Additionally, I regularly handled criminal cases in federal court in both CJA cases and privately retained cases in the Eastern District of Washington. I had approximately five per year.

i. Indicate the percentage of your practice in:
   1. federal courts: 20%
   2. state courts of record: 80%
   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 estimate that I have tried as lead counsel approximately 75 cases to verdict in state court. I have tried 2 federal criminal felony cases to verdict.

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.

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

a. the date of representation;

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

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

The following case summaries are listed alphabetically:

1. *United States v. Cisneros*, No. CR-05-206-3-FVS, U.S. District Court, Eastern District of Washington.

   Between 2005 and 2006, I represented Mr. Cisneros, who was charged with conspiracy to distribute multi-kilo quantities of methamphetamine carrying a minimum sentence of over ten years. The case involved multiple defendants, government informants, and the issue of language and interpreters. At trial a government informant testified against my client and disclosed information about a larger conspiracy involving others

in the narcotics trafficking community. The jury found Mr. Cisneros not guilty.

Judge: Senior District Court Judge Fred Van Sickle

Opposing Counsel: Earl Hicks
United States Attorney's Office
920 West Riverside Avenue
Spokane, Washington 99201
(509) 353-2767

2. *State of Washington v. Goering*, No. 09-1-01182-0, Benton County Superior Court.

Between 2009 through 2010, I represented Mr. Goering, who was charged with rape in the first degree, a class A felony. The case received local attention for the brutal nature of the attack. The victim provided an eye witness identification of Mr. Goering a few days after the attack. However, after a review of the evidence, I was able to convince the prosecutor to send a previously untested key piece of evidence to the crime lab for DNA comparisons. I conducted a forensic interview of the victim that further strengthened our belief that Mr. Goering was the wrong defendant. The DNA ultimately proved that Mr. Goering was not the perpetrator of the attack. Mr. Goering was released with the charges dismissed short of trial, and a different person was later prosecuted and convicted of the rape.

Judge: Benton County Superior Court Judge Craig Matheson (Ret.)

Opposing Counsel: Terry Bloor
Benton County Prosecutors Office
7122 West Okanogan Place
Kennewick, Washington 99336
(509) 735-3591

3. *United States v. Ireland*, No. CR-05-6019-WFN-4, U.S. District Court, Eastern District of Washington.

Between 2005 and 2006, I represented Mr. Ireland, who was charged with a number of felony wire fraud counts and conspiracy charges. The charges stemmed from an arson involving the Moore Mansion, a local Tri-City attraction. Mr. Ireland was alleged to have assisted the owner of the business in securing loans and dummy valuations for the property to obtain higher insurance coverage. The owner of the business then allegedly burned down the Moore Mansion to collect the insurance

proceeds. This case required careful analysis of insurance documents, comparison studies, and forensic analysis of business records. After several months of negotiations, the government dismissed the case for lack of evidence.

Judge: Senior District Court Judge Wm. Fremming Nielsen

Opposing Counsel: Robert Ellis (retired)

4. *State of Washington v. C.J.J.*, No. 04-8-00054-7, Benton County Superior Court.

In 2004, C.J.J. was charged with one count of child molestation first degree and one count of assault fourth degree with sexual motivation. The case proceeded to trial after extensive negotiation, discovery, and investigation. The case required a comprehensive understanding of child testimony including issues of credibility and child hearsay. The defendant was found not guilty at the conclusion of the four-day bench trial. Years later the alleged child victim disclosed to his family that the allegations were false.

Judge: Benton County Superior Court Judge Craig Matheson (Ret.)

Opposing counsel: Sharon M. Swanson (Formerly at the Benton County Prosecutor's Office)
355 John A. Cherberg Building
Olympia, Washington 98504
(360) 556-9076

5. *State of Washington v. Magana*, No. 10-1-01316-8, Benton County Superior Court.

The defendant was charged with rape in the first degree. Although the defendant was charged in 2010, this case did not proceed to trial until early 2012. There was extensive pretrial preparation involving defendant's communications with his wife and the issue of marital privilege. The case also required a comprehensive understanding of DNA evidence and the Washington State Crime Lab protocols. After months of preparation including examination of the scene, the evidence, and the extensive witnesses in the case, the parties proceeded to trial. The defendant pled guilty on the fourth day of trial. He did so after the state produced a jailhouse informant as a potential rebuttal witness that would contradict the defendant's statements and purportedly recite new admissions.

Judge: Benton County Superior Court Judge Cameron Mitchell

Opposing Counsel: Terry Bloor
Benton County Prosecutors Office
7122 West Okanogan Place
Kennewick, Washington 99336
(509) 735-3591

6. *United States v. Olsen, et al.*, No. CR-11-06001-RHW-8, U.S. District Court, Eastern District of Washington.

This was a court-declared complex case that involved multiple defendants, including individuals and corporations. Between 2012 and 2013, I represented Mr. Ackerman, who was alleged to have been the architect of a conspiracy to defraud several insurance companies. These insurance companies had issued policies that were ultimately secured by the U.S. Government. Mr. Ackerman was an insurance agent who sold various potato farm insurance policies to several farmers (alleged co-conspirators). The government alleged that Mr. Ackerman assisted others in crafting agreements that were set up to fail in order to obtain insurance proceeds. The government argued that almost ten million dollars in insurance fraud had occurred over the course of several years. The case involved both civil and criminal investigations that spanned several years and several state and federal agencies. While I was unable to complete the trial due to my appointment to Superior Court, Mr. Ackerman went to trial in April 2013. The jury was hung. The government decided not to pursue another trial.

Judge: Senior District Court Judge Edward F. Shea

Opposing Counsel: Tyler Tornabene
United States Attorney's Office
920 West Riverside Avenue
Spokane, Washington 99201
(509) 353-2767

7. *State of Washington v. Sanchez*, No. 04-1-01039-3, Benton County Superior Court.

Between 2004 and 2005, I represented the defendant, who was charged with murder in the first degree with aggravating circumstances. In Washington, when the prosecutor files murder first degree charges and also alleges that the crime was committed with statutory aggravating circumstances, the defendant is eligible for the death penalty. I worked with co-counsel to prepare a mitigation packet that ultimately resulted in

the state not seeking the death penalty. The case involved a history of domestic violence between the victim and the defendant. The defendant was diagnosed with limited cognitive functioning and mental retardation. In fact, through pretrial motions, the defendant's statements were suppressed by the court due to some of the cognitive issues and the police interrogation procedure. I was also able to challenge the Spanish version of the advisement of rights that had been provided to the defendant. Since I am bilingual (Spanish/English) I was able to determine that the advice of rights form was incorrect. The Benton County Sherriff's Office corrected their form after our case. The defendant pled guilty as charged and was sentenced to 25 years.

Judge: Benton County Superior Court Judge Dennis Yule (Ret.)

Opposing Counsel: Andy Miller, Benton County Prosecutor
Benton County Prosecutors Office
7122 West Okanogan Place
Kennewick, Washington 99336
(509) 735-3591

8. *State of Washington v. Schalchlin*, No. 08-1-00857-0, Benton County Superior Court.

In 2008 and 2009, I and co-counsel Norma Rodriguez, represented Mr. Schalchlin in this double murder case. This was a complex case with important issues of physical and emotional abuse, substance abuse, Satanism, and critical DNA and blood splatter evidence. The case was ultimately resolved when I suggested that the lead prosecutor and I sit down and evaluate and negotiate the case. As a result, the charges were ultimately reduced with a reasonable sentence recommendation under the circumstances. This was also a case where we worked with the state on a novel approach and attempted to mediate the case. While the case was not resolved through mediation, it was a helpful exercise in attempting to resolve a complex criminal case.

Judge: Benton County Superior Court Judge Craig Matheson (Ret.)

Co-Counsel: Norma Rodriguez
Rodriguez and Associates, P.S.
7502 West Deschutes Place
Kennewick, Washington 99336
(509) 783-5551

Opposing Counsel: Andy Miller, Benton County Prosecutor
Benton County Prosecutors Office
7122 West Okanogan Place
Kennewick, Washington 99336
(509) 735-3591

9. *State of Washington v. Welch*, No. 10-1-01238-2, Benton County Superior Court.

In 2010 and 2011, I represented Mr. Welch, who was charged with murder in the first degree. He was arrested in 2010 for the alleged murder of a woman in 1982. The case brought to bear the issues of DNA analysis, admissibility of statements by witnesses who were deceased, and the issues of mental health and competence to stand trial. Mr. Welch was severely impaired as the result of an accident several years prior to the time of his 2010 arrest. I was able to obtain the appropriate medical and mental health experts to convince the state that the defendant was not competent to stand trial. In the end, the state dismissed the charges based on Mr. Welch's inability to assist in his own defense and stand trial.

Judge: Benton County Superior Court Judge Dennis Yule (Ret.)

Opposing Counsel: Andy Miller, Benton County Prosecutor
Benton County Prosecutors Office
7122 West Okanogan Place
Kennewick, Washington 99336
(509) 735-3591

10. *State of Washington v. Williams*, No. 12-1-00111-5, Benton County Superior Court.

In 2012, I represented Mr. Williams on murder in the first degree charges. The defendant had experienced a schizophrenic episode and murdered his grandmother because he believed he was commanded to do so by Satan. The defendant had been recently released from a state mental health hospital after having been detained for five years. We investigated the surrounding circumstances and presented that information to the prosecutor. The defendant ultimately entered a plea of not guilty by reason of insanity. He will spend the rest of his life in a mental institution.

Judge: Benton County Superior Court Judge Bruce Spanner

Opposing Counsel: Andy Miller, Benton County Prosecutor
Benton County Prosecutors Office

7122 West Okanogan Place
Kennewick, Washington 99336
(509) 735-3591

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 my practice and to my service as a judge, I have been very involved in bar associations. For example, in 2010, the federal judges from our District selected me as a Lawyer Representative to the Ninth Circuit Judicial Conference (three-year term). My role was to act as a link between the judges and the Bar. I also coordinated CLE presentations for both our District Conference and the Ninth Circuit Chief District Judges Conference. Prior to my appointment as a Lawyer Representative, I coordinated with the Federal Defenders of Eastern Washington office and set up a series of CLEs held on a quarterly basis to better inform our local practitioners.

    I have not performed any lobbying activities.

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

    I have not taught 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.

    Mendoza and Johnson, P.S. leases the building that my wife and I own and manage under Mendoza Holdings. The amount of monthly rent is $4,370.

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

    No.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My former law partner Scott Johnson and my wife Mia Mendoza have a limited practice in federal District Court in the Eastern District of Washington. I would disqualify myself from participating in any way on any case or cases in which they are involved. Additionally, I will carefully review any real or potential conflicts by reference to 28 U.S.C §445, Canon 3 of the Code of Conduct for United States Judges, and all other laws, rules, and practice governing such circumstances.

    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 conflicts by reference to 28 U.S.C §445, Canon 3 of the Code of Conduct for United States Judges, and all other laws, rules, and practice governing such circumstances.

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

    I was on the Board of Directors for the Benton Franklin Legal Aid Society for over nine years. In addition to personally handling cases on a pro bono basis, I also dedicated hundreds of hours to raising funds for the organization as a member of the Board of Directors for Benton Franklin Legal Aid. I assisted in raising thousands of dollars each year by securing donations, organizing events, and increasing attendance and raffle ticket

sales. I was recognized by the organization in 2002 and again in 2011 for my service and dedication to the indigent and underrepresented communities.

Additionally, for over eight years I have been assisting with the planning and organization of the Tri-Cities Youth and Justice forum sponsored by the Washington State Minority and Justice Commission. I have been one of the lead organizers for the last two years. The goal is to encourage students from underrepresented communities to seek careers within the legal system. I coordinate over 60 volunteer attorneys, judges, law enforcement officers, and other court staff to make presentations and interact in a day of events. Over 200 students attend on a yearly basis.

Throughout my years of private practice, I worked with the Northwest Justice Project to provide legal assistance to individuals who could not afford private legal counsel. Among the cases that I handled as part of the Justice Project, the case of *Department of Social and Health Services v. Degood* stands out. At 93 years old, Ms. Degood had applied for housing assistance from DSHS for the first time in her life after she had exhausted her retirement savings in medical and living expenses. In calculating her award, DSHS made an error unbeknownst to Ms. Degood, which resulted in an overpayment. The first allegations intimated that Ms. Degood had intentionally provided incomplete information. DSHS was demanding payment with interest that amounted to several thousands of dollars that Ms. Degood could not pay. They were also threatening to cut off her housing assistance which would result in her being removed from her assisted living residence. However, after I brought to light the DSHS errors in the case, the Department ultimately dismissed the civil case and did not pursue a criminal matter. Ms. Degood passed away a few months after the conclusion of the case.

26. **Selection Process**:

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

The two U.S. Senators and the Congressional Representatives representing Eastern Washington have agreed on a bipartisan committee process to screen and interview candidates for this position. I submitted my application on August 7, 2013. On August 16, 2013, one of the co-chairs of the bipartisan committee sent me a letter notifying me that I had been selected for an interview. On September 20, 2013, I was interviewed by the committee in Yakima, Washington. On September 24, 2013, I was informed that the committee had recommended me for further consideration. On September 26, 2013, Senators Murray and Cantwell

conducted separate phone interviews with me. I was then contacted by Senator Murray's office on September 30, 2013, and informed that my name was being forwarded to the White House for consideration. Since that same day, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 25, 2013, I interviewed with attorneys from the White House and the Department of Justice in Washington, D.C. On January 16, 2014, 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
Mendoza, Jr., Salvador	U.S. District Court, Eastern District of Washington	01/16/2014
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**
Superior Court Judge	☑ Nomination Date 01/16/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/31/2013
7. Chambers or Office Address		
Benton County Justice Center 7122 West Okanogan Place Building A Kennewick, WA 99336		

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.	President	Mendoza Holding, LLC.
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 Mendoza, Jr., Salvador	Date of Report 01/16/2014

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	Mendoza and Johnson, P.S. (Salary)	$189,000.00
2. 2013	Mendoza and Johnson, P.S. (Salary)	$67,116.00
3. 2013	Benton County, WA (Salary)	$49,073.00
4. 2013	State of Washington (Salary)	$49,073.00

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	Mendoza & Johnson, P.S.(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 Mendoza, Jr., Salvador	Date of Report 01/16/2014

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.	American West Bank	Mortgage, Office Building (Part VII, Line 4)	M
2.	U.S. Bank	Mortgage, Rental Home (Part VII, Line 3)	M
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Mendoza, Jr., Salvador	Date of Report 01/16/2014

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. Vanguard Wellesley Income Fund	A	Interest	J	T					
2. Washington PERS, Plan 2	A	Interest	J	T					
3. Rental Home (Prosser, Washington)	D	Rent	M	W					
4. Office Building (Kennewick, Washington)	E	Rent	N	W					
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less 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	

Name of Person Reporting	Date of Report
Mendoza, Jr., Salvador	01/16/2014

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

Office Building (Part VII, Line 4) is owned by Mendoza Holdings, LLC, of which I am the sole member and President.

FINANCIAL DISCLOSURE REPORT
Page 6 of 6

Name of Person Reporting	Date of Report
Mendoza, Jr., Salvador	01/16/2014

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/ Salvador Mendoza, Jr.

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		53	900	Notes payable to banks-secured (auto)		54	995
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		11	031	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		695	479
Real estate owned – see schedule	1	065	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		120	000				
Cash value-life insurance							
Other assets itemize:							
Washington PERS Plan 2		8	839				
				Total liabilities		750	474
				Net Worth		508	296
Total Assets	1	258	770	Total liabilities and net worth	1	258	770
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	
Vanguard Wellesley Income Fund	$ 11,031
Total Listed Securities	$ 11,031
Real Estate Owned	
Personal residence	$ 350,000
Rental property	250,000
Undeveloped lot	115,000
Rental Office building	350,000
Total Real Estate Owned	$ 1,065,000
Real Estate Mortgages Payable	
Personal residence	$ 316,395
Rental property	136,860
Rental Office building	242,224
Total Real Estate Mortgages Payable	$ 695,479

AFFIDAVIT

I, Salvador Mendoza Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/16/2014
(DATE)

(NAME)

MONICA VILLANUEVA
COMMISSION EXPIRES
NOTARY PUBLIC
8-15-2015
STATE OF WASHINGTON

(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Staci Michelle Yandle

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.

   Office: The Law Offices of Staci M. Yandle, LLC
   One Eagle Center, Suite 3A
   O'Fallon, Illinois 62269

   Residence: Carlyle, Illinois

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

   1961; Centreville, 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.

   1983 – 1987, Vanderbilt University School of Law; J.D., 1987
   1979 – 1983, University of Illinois; B.S., 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.

   2007– present
   The Law Offices of Staci M. Yandle, LLC
   One Eagle Center, Suite 3A
   O'Fallon, Illinois 62269

(formerly in Belleville, Illinois)
Owner

2010 – present
The Farrise Firm, P.C.
225 South Olive, Suite 102
Los Angeles, California 90012
Of Counsel

2003 – 2007
The Rex Carr Law Firm
412 Missouri Avenue
East St. Louis, Illinois 62201
Partner

Fall 2000; 1991 – 1999
St. Louis University School of Law
3700 Lindell Boulevard
St. Louis, Missouri 63108
Adjunct Professor

1987 – 2003
Carr, Korein, Tillery, Kunin, Montroy, Cates, Katz & Glass (Formerly, Carr, Korein, Schlicter, Kunin, Montroy, Glass & Bogard)
412 Missouri Avenue
East St. Louis, Illinois 62201
Associate

February – July 1987
Chapman & Associates
1406 Niedringhaus Avenue
Granite City, Illinois 62040
Law Clerk

February – July 1987
Madison County Circuit Court
155 North Main Street
Edwardsville, Illinois 62025
Law Intern for Circuit Judge Charles Chapman

Summer 1986
Rothstein, Bailey, Bennett, Daly and Donnetelle
1215 Paseo De Peralta
P.O. Box 8180
Santa Fe, New Mexico 87504
Law Clerk

1984 – 1986
Vanderbilt University
2201 West End Avenue
Nashville, Tennessee 37235
Graduate Assistant for Minority Affairs

Summer 1985
Vanderbilt Legal Clinic
Vanderbilt University Law School
131 21st Avenue, South
Nashville, Tennessee 37203
Intern

Summer 1984
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
Law Clerk

Other Affiliations (Uncompensated)

2012 – present
Illinois Bar Foundation
20 South Clark, Suite 910
Chicago, Illinois 60603
Board Member

2006 – 2012
American Association for Justice (Formerly the Association of Trial Lawyers of America)
777 Sixth Street, NW, Suite 200
Washington, DC 20001
Board of Governors (2006 – 2012)
Executive Committee (2007 – 2011)

2006 – 2010
Emma L. Wilson King Foundation
P.O. Box 457
East St. Louis, Illinois 62202
Board Member

2005 – 2007
Illinois Trial Lawyers Association
401 West Edwards Street
P.O. Box 5000

Springfield, Illinois 62704
Board of Managers

2000 – 2009
Jackie Joyner-Kersee Foundation
101 Jackie Joyner-Kersee Circle
East St. Louis, Illinois 62204
Board Member

2001 – 2003
St. Clair County Bar Association
1931 West Main Street
Belleville, Illinois 62226
Board Member

2000 – 2001
Boy Scouts of America, Okaw Valley Council
1801 North 17th Street
Belleville, Illinois 62226
Executive Board Member

Approximately 1996 – 1997
Metro East Bar Association
(Defunct – No address available)
President

1989 – 2002
Delta Economic Development Corporation
1012 South 15th Street
East St. Louis, Illinois 62207
Board Member & Registered Agent

1989 – 2002
Southend Development Corporation
1012 South 15th Street
East St. Louis, Illinois 62207
Board Member

Approximately 1992 – 1994
Metropolitan St. Louis Sickle Cell Anemia Association
4144 Lindell Boulevard
St. Louis, Missouri 63108
Board Member

1988 – 1989
Blacks Assisting Blacks Against AIDS

3618 North Spring Avenue
St. Louis, Missouri 63108
Board Member

1987 – 2012
NAACP, East St. Louis, Illinois Chapter
2149 Missouri Avenue
East St. Louis, Illinois 62205
Legal Advisor

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

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

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

   Racial Harmony, Phenomenal Women of Metropolitan St. Louis, Awardee (2013)
   American Association for Justice, Women's Trial Lawyer Caucus, Marie Lambert Award (2012)
   American Association for Justice, Distinguished Service Award (2011)
   American Association for Justice, Distinguished Service Award (2010)
   American Association for Justice, Distinguished Service Award (2006)
   Illinois General Assembly Scholarship Recipient (1979 – 1983)

   I have received special recognition for outstanding service and achievement from various community and civic organizations, including: Racial Harmony; Delta Sigma Theta Sorority, Inc.; NAACP; Jackie Joyner-Kersee Foundation; East St. Louis Federation of Teachers/Local 1220; National Council of Negro Women; and Top Ladies of Distinction.

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

   American Association for Justice (Formerly the Association of Trial Lawyers of America)
   - AAJ PAC Board of Trustees (2012 – 2013)
   - Diversity Task Force Committee (2009 – 2010)
   - Executive Committee (2007 – 2011)
   - Board of Governors (2006 – 2012)
   - Minority Caucus

Lobby Days Co-Chair (2010)
Executive Committee Representative (2008 – 2011)
State Delegate (2007 – 2009)
Chair (2005 – 2006)
First Vice Chair (2004 – 2005)
Second Vice Chair (2003 – 2004)

Women's Caucus
Board of Governor's Representative (2008 – 2011)
State Delegate (2008 – 2009)
Executive Committee Representative (2007 – 2008)
Chair (2006 – 2007)
First Vice Chair (2005 – 2006)
Second Vice Chair (2004 – 2005)
Secretary (2003 – 2004)

American Bar Association
Chicago Bar Association
Illinois Advisory Committee to the United States Commission on Civil Rights
Illinois Bar Foundation
Board Member (2012 – present)
Illinois Southern Judicial District Merit Commission (1993)
Illinois State Bar Association
Illinois Trial Lawyers Association
Board of Managers (2005 – 2007)
Madison County Bar Association
Metro East Bar Association
President (approximately 1996 – 1997)
National Bar Association
St. Clair County Bar Association
Board of Directors (2001 – 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.

Illinois, 1987
Missouri, 2003

There have been no lapses in membership.

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

United States Court of Appeals for the Seventh Circuit, 1991

United States District Court for the Eastern District of Arkansas, 2011
United States District Court for the Eastern District of California, 2011
United States District Court for the Northern District of Illinois, 2009
United States District Court for the Southern District of Illinois, 1988
United States District Court for the Eastern District of Missouri, 2012
Supreme Court of Illinois, 1987
Supreme Court of Missouri, 2003

There have been no lapses in membership.

11. **Memberships**:

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

Blacks Assisting Blacks Against AIDS (1988 – 1989)
Board Member
Boy Scouts of America, Okaw Valley Council (2000 – 2001)
Executive Board Member
Delta Economic Development Corporation (1989 – 2002)
Board Member & Registered Agent
Delta Sigma Theta Sorority, Inc. (1981 – present)
Emma L. Wilson King Foundation (2006 – 2010)
Board Member
Illinois Gaming Board (1999 – 2001)
Jackie Joyner-Kersee Foundation (2000 – 2009)
Board Member
Metropolitan St. Louis Sickle Cell Anemia Association (Approximately 1992 – 1994)
Board Member
NAACP (1987 – present)
Legal Advisor to the East St. Louis Branch (1987 – 2013)
National Consumer Voice for Quality Long-Term Care (Formerly The National Citizen's Coalition for Nursing Home Reform) (2011 – present)
Public Citizen (2011 – present)
Public Justice (2010 – present)
Southend Development Corporation (1989 – 2002)
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.

Delta Sigma Theta, founded in 1913, is a public service sorority that admits only women. 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.

Establish Elopement Liability, TRIAL MAG. (AM. ASS'N FOR JUSTICE), March 2013. Copy supplied.

Staci M. Yandle Bio, The Law Offices of Staci M. Yandle Website. Available at http://www.yandlelaw.com/staci-m-yandle/.

"*Message from the Chair*," American Association for Justice Minority Caucus Newsletter, Spring 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.

During the time I was a member of the Illinois Advisory Committee to the United States Commission on Civil Rights, the Committee periodically prepared and published reports. Although I did not personally prepare these reports, I did vote on their submission in my capacity as a Committee member. I have listed the reports on which I voted that I have been able to identify after conducting a search of the Internet.

Illinois Advisory Committee to the United States Commission on Civil Rights, *Race Relations and Equal Education Opportunities at Proviso West High School*, March 1996. Copy supplied.

Illinois Advisory Committee to the United States Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in Metropolitan Chicago*, May 1995. Copy supplied.

Illinois Advisory Committee to the United States Commission on Civil Rights, *Police Protection of the African American Community in Chicago*, Sept. 1993. 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.

While I was serving on the Illinois Gaming Board from 1999 to 2001, I discussed and voted on Board matters at various hearings. 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 13, 2013: Speaker, "Voir Dire When Ethnic, Gender Bias or Sexual Orientation is a Concern," Mississippi Association for Justice 2013 Annual Convention, New Orleans, Louisiana. Presentation paper on which presentation was based was substantially similar to the one provided for the July 22, 2002 presentation.

June 13, 2013: Speaker, "Fight Like A Woman, Win Like A Man: Negotiation Skills," Mississippi Association for Justice Women's Caucus Luncheon, New Orleans, Louisiana. Presentation paper on which presentation was based was substantially similar to the one provided for the July 2006 presentation.

June 27, 2012: Panelist, "Diversity in Bar Associations", Illinois State Bar Association Law and Leadership Institute, St. Louis, Missouri. Along with my co-panelists, I discussed diversity in the various bar associations in which I have been involved and the role of diversity in legal professional organizations in general. I have no notes, transcript, or recording. The address of the Illinois State Bar Association Law and Leadership Institute is c/o Just The Beginning Foundation, 233 South Wacker Drive, Suite 6600, Chicago, Illinois 60606.

June 12, 2012: Speaker, "Amendments to Federal Rules of Civil Procedure 26 &

45 – The Effects on Expert And Non-Party Discovery," Illinois State Bar Association Federal Practice Seminar, Collinsville, Illinois. Presentation paper supplied.

July 2011: Speaker, "Direct Examination – The Challenge of Proving Non-Economic Damages," The American Association for Justice 2011 Annual Convention, New York, New York. Presentation paper supplied.

July 2009: Speaker, "When Settlement Is Your Best Option – Ethical Considerations," The American Association for Justice 2009 Annual Convention, San Francisco, California. Presentation paper supplied.

June 2009: Speaker, "Screening: The Most Important Part of Your Case," The American Association for Justice Nursing Home Litigation Group, Memphis, Tennessee. Presentation paper supplied.

March 2, 2009: Speaker, Criminal Law and Procedure class, Southern Illinois University, Edwardsville, Illinois. The notes I utilized for this presentation are the same as those provided for the April 4, 2007 presentation.

July 2008: Speaker, "Leaving the Male-Dominated Firm – The Ethical and Business Decision for the Woman Trial Lawyer," The American Association for Justice 2008 Annual Convention, Philadelphia, Pennsylvania. Presentation paper supplied.

October 2007: Panelist, "The Challenges of Being the Only___ in a Law Firm (or Other Legal Setting)," Southern Illinois University School of Law, Carbondale, Illinois. The general topic covered in my presentation was the challenge of being the only female in a law firm partnership. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Southern Illinois University School of Law is 1205 Douglas Drive, Carbondale, Illinois 62901.

July 2007: Moderator, Panel on "Women Trial Lawyers – Leadership Inside and Outside of the Courtroom," The American Association for Justice 2007 Annual Convention, Chicago, Illinois. My role as moderator was to introduce the speakers and to lead the question and answer period. I have no notes, transcript, or recording. The address for the American Association for Justice is 777 Sixth Street, NW, Suite 200, Washington, DC 20001.

May 23, 2007: Welcome Remarks, American Association for Justice Women's Caucus Lobby Day, Washington, D.C. During my remarks, I welcomed the participants and provided a general overview of the event. I have no notes, transcript, or recording. The address for the American Association for Justice is 777 Sixth Street, NW, Suite 200, Washington, DC 20001.

April 20, 2007: Panelist, "Successful Women Trial Lawyers: Rising Above and

Staying There," American Association for Justice Women's Caucus Retreat, Fort Myers, Florida. I have no notes, transcript, or recording. The address for the American Association for Justice is 777 Sixth Street, NW, Suite 200, Washington, DC 20001.

April 4, 2007: Guest Speaker, Criminal Law and Procedure Class, Southern Illinois University, Edwardsville, Illinois. Presentation supplied.

February 2007: Speaker, "Deposing the Administrator and Getting the Smoking Gun," The American Association for Justice 2007 Mid-Winter Convention, Miami, Florida. I have no notes, transcript, or recording. The address for the American Association for Justice is 777 Sixth Street, NW, Suite 200, Washington, DC 20001.

September 2006: Speaker, "Tips For Handling Nursing Home Cases," Illinois Trial Lawyers Association Trial Seminar, St. Louis, Missouri. Presentation paper supplied.

February 21, 2006: Welcome Remarks, Minority Caucus Reception, The American Association for Justice Mid-Winter Convention, Honolulu, Hawaii. During my remarks, I introduced the officers of The American Association for Justice and the Minority Caucus in attendance. I have no notes, transcript, or recording. The address for the American Association for Justice is 777 Sixth Street, NW, Suite 200, Washington, DC 20001.

July 2006: Speaker, "Fight Like A Woman, Win Like A Man: Negotiation Skills," The American Association for Justice 2006 Annual Convention, Seattle, Washington. Presentation paper supplied.

February 18, 2006: Moderator, Panel on "Safeguarding the Elderly," The American Association for Justice Mid-Winter Convention, Honolulu, Hawaii. My role as moderator was to introduce the speakers and to lead the question and answer period. I have no notes, transcript, or recording. The address for the American Association for Justice is 777 Sixth Street, NW, Suite 200, Washington, DC 20001.

July 23, 2005: Moderator, Panel on "Maximizing Special Damages When Representing Minority Clients," American Association for Justice Annual Convention, Toronto, Canada. My role as moderator was to introduce the speakers and to lead the question and answer period. I have no notes, transcript, or recording. The address for the American Association for Justice is 777 Sixth Street, NW, Suite 200, Washington, DC 20001.

February 1, 2005: Moderator, "Failure to Diagnose in the Emergency Room," American Association for Justice Mid-Winter Convention, Palm Springs, California. My role as moderator was to introduce the speakers and to lead the

question and answer period. I have no notes, transcript, or recording. The address for the American Association for Justice is 777 Sixth Street, NW, Suite 200, Washington, DC 20001.

July 2003: Speaker, "Gender: Its Impact on the Litigation Process – When the Litigant is a Woman," The Association of Trial Lawyers of America 2003 Annual Convention, San Francisco, California. Presentation paper supplied.

July 22, 2002: Speaker, "Voir Dire When Ethnic or Gender Bias is a Concern," The American Association for Justice 2002 Annual Convention, Atlanta, Georgia. Presentation paper supplied.

February 2001: Speaker, "Strategies in Mediation," The Association for Trial Lawyers of America 2001 Mid-Winter Convention, New Orleans, Louisiana. Presentation paper 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.

Over the last 25 years, I have given newspaper interviews about some of my cases but I do not recall the dates or specifics. I have provided information on those interviews I could identify after conducting a diligent search of my personal records and the Internet.

Melissa Meinzer, *St. Louis County Jury Awards $5.2 Million Med-Mal Verdict*, MO. LAW. WKLY., July 25, 2013. Copy supplied.

Steven M. Sellers, *Illinois Court Rejects Arbitration Clause in Nursing Home Wrongful Death Action*, TRIAL MAG. (AM. ASS'N FOR JUSTICE), Oct. 18, 2012. Copy supplied.

Diversity in the Plaintiff Bar: Interview with Staci Yandle, TRIAL MAG. (AM. ASS'N FOR JUSTICE), July 2012. Copy supplied.

Press Release: "Family of Man Found Frozen in Creek After Wandering Away From Belleville Nursing Home Files Lawsuit," Issued from The Law Offices of Staci M. Yandle, LLC, Feb. 21, 2012. Copy supplied.

Christina Stueve, *Daughters Sue Nursing Home for Allegedly Neglecting Their Father*, Madison County Rec., Feb. 21, 2012. Copy supplied.

Investigation Reveals Problems That May Have Cost a Man His Life, KMOV.com, Feb. 21, 2012. Copy supplied.

Kevin Bersett, *Belleville Nursing Home Sued by Family of Patient Who Wandered Away, Then Died*, BELLEVILLE NEWS-DEMOCRAT, Feb. 21, 2012. Copy supplied.

Kevin Bersett, *State: Belleville Nursing Home Negligent in 77-Year-Old Resident's Death*, BELLEVILLE NEWS-DEMOCRAT, Feb. 11, 2012. Copy supplied.

Kevin Bersett, *'He Was Not Supposed to Die That Way': Daughters Hire Lawyer After Father's Death Near Nursing Home*, BELLEVILLE NEWS-DEMOCRAT, Jan. 20, 2012. Copy supplied.

Denise Hollinshed, *Family of Man Who Walked Out of Belleville Nursing Home Seeks Answers*, ST. LOUIS POST-DISPATCH, Jan. 19, 2012. Copy supplied.

Kevin Bersett, *Daughters of Dead Belleville Nursing Home Resident Hire Lawyer, Seek Answers*, BELLEVILLE NEWS-DEMOCRAT, Jan. 19, 2012. Copy supplied.

American Association for Justice, Membership Video, 2011. Video supplied.

Post-Dispatch Faces Lawsuit Over Retiree Benefits, ST. LOUIS BUS. J., Dec. 6, 2011. Copy supplied.

Retirees Sue St. Louis Post-Dispatch, ST. LOUIS POST-DISPATCH, Dec. 5, 2011. Copy supplied.

Jason Rosenbaum, *Post-Dispatch is at Center of Lawsuit, Bankruptcy Filing*, ST. LOUIS BEACON, Dec. 5, 2011. Copy supplied.

Connie Schultz, *Women Become the Powers That Be*, PLAIN DEALER, Feb. 17, 2007. Copy supplied.

Women Trial Lawyers Collaborate, Sharpen Business and Advocacy Skills, TRIAL MAG. (AM. ASS'N FOR JUSTICE), January 2007. Copy supplied.

From approximately 2001 to 2002, I appeared on a monthly radio show called "Your Legal Health" on KATZ 1620am, St. Louis Missouri, to discuss common legal issues individuals confront in everyday life such as insurance coverage and basic estate planning. I have been unable to obtain the recordings.

Douglas Holt, *Ryan Replaces 2 on Gaming Board; Ousted Members Had Voted Against Rosemont Casino*, CHI. TRIB., June 30, 2001. Copy supplied.

Robert Goodrich, *Fatal Shooting of Suspect by Officer is Called Justified; Belleville Policeman Acted Properly in Chase, State's Attorney Finds*, ST. LOUIS POST-DISPATCH, Mar. 16, 2001. Copy supplied.

Chris Fusco, *Rosemont Still a Player*, CHI. SUN-TIMES, Jan. 31, 2001. Copy supplied.

Douglas Holt, *Grand Victoria Casino Fined $250,000 Over Rigged Drawing*, CHI. TRIB., July 19, 2000. Copy supplied.

Douglas Holt & Ray Long, *Gaming Chief Quits Under Fire; Ryan is Furious Over Casino Deal*, CHI. TRIB., Jan. 7, 2000. Copy supplied.

Jeff Truesdell, *East St. Louis Seeking Better Image*, MONTREAL GAZETTE, Aug. 13, 1990.

Darrell McWhorter, *Welcome Back the Brightest and Best of East St. Louis Come Home to Help*, ST. LOUIS POST-DISPATCH, June 10, 1990. Copy supplied.

Harper Barnes, *Big Chill Set for Trip Back North Even Santa Has to Take Precautions*, ST. LOUIS POST-DISPATCH, Dec. 23, 1989. Copy supplied.

Safir Ahmed & Robert F. Goodrich, *E. St. Louis Schools Barred from Making Cuts*, ST. LOUIS POST-DISPATCH, Feb. 3, 1989. Copy supplied.

Bill Vogler, *Cahokia School Board Upheld On Staff Moves*, ST. LOUIS POST-DISPATCH, July 1, 1988. Copy supplied.

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

I have not held 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.

Member (approximately 1992 – 1996), Illinois Advisory Committee to the United States Commission on Civil Rights; appointed 1992 by the members of the United States Commission on Civil Rights.

Member (Oct. 1999 – July 2001), Illinois Gaming Board; appointed October 1999 by Governor George Ryan to fill remainder of three-year 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.

On November 5 and November 6, 2012, I volunteered in get-out-the-vote efforts and in serving as an election monitor at a polling place in Cleveland, Ohio, as part of The American Association for Justice's voter protection effort.

Although perhaps not directly responsive, from 2012 to 2013, I served as a board member of The American Association for Justice's AAJ PAC, an organization that raises funds to support candidates on a bipartisan basis who support the civil justice system.

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 law clerk to a judge.

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

2007 – 2010
Solo Practitioner
7012 West Main Street
Belleville, Illinois 62223

2013 – Present
Solo Practitioner
One Eagle Center, Suite 3A
O'Fallon, Illinois 62269

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 – 2003
Carr, Korein, Tillery, Montroy, Cates, Katz & Glass (Formerly, Carr, Korein, Schlicter, Kunin, Montroy, Glass & Bogard)
412 Missouri Avenue
East St. Louis, Illinois 62201
Associate

2003 – 2007
The Rex Carr Law Firm, LLC
412 Missouri Avenue
East St. Louis, Illinois 62201
Partner

2007 – Present
The Law Offices of Staci M. Yandle, LLC
One Eagle Center, Suite 3A
O'Fallon Illinois, 62269
(formerly in Belleville, Illinois)
Owner

2010 – Present
The Farrise Firm, P.C.
225 South Olive, Suite 102
Los Angeles, California 90012
Of Counsel

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

I have served as an arbitrator through the Twentieth Judicial Circuit Court, St. Clair County, Illinois, Mandatory Arbitration Center approximately ten times since 2000. I do not recall the specifics of any of the matters for which I served on the panel nor do I have access to any records or documentation regarding those matters. The matters were from civil cases filed in St. Clair County seeking damages not in excess of $50,000 and generally involved car accidents, minor personal injuries or breach of contract.

b. Describe:

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

From 1987 to 2003, I worked as an associate at Carr, Korein, Tillery, Montroy, Cates, Katz & Glass (formerly Carr, Korein, Schlicter, Kunin, Montroy, Glass & Bogard). When I began practicing in 1987, my practice was primarily focused on labor & employment and education law. The remainder of my practice was personal injury law. From 1996 to 2003, my practice was primarily in the areas of personal injury, medical malpractice, nursing home abuse & neglect, defective products and civil rights law. I handled the majority of cases in litigation as sole or lead counsel.

From 2003 to 2007, I practiced as a partner with The Rex Carr Law Firm, LLC. My practice consisted of litigating primarily personal injury, medical malpractice, nursing home abuse & neglect and civil rights cases as sole or lead counsel.

Since 2007, I have practiced as the owner of The Law Offices of Staci M. Yandle, LLC. The nature of my practice has remained the same as it was as a partner with The Rex Carr Law Firm, LLC.

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

Illinois Rules of Professional Conduct 7.4 prohibits attorneys from claiming to be specialists in any area of practice unless they have complied with Rule 7.4(d)(1). I have never attempted to become certified as a specialist in any area of law.

From 1987 to 1996, my clients typically included individual personal injury plaintiffs, teachers' unions, individual teachers, and individual administrators.

Since 1996, my clients typically have been individual personal injury plaintiffs.

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 and has consistently been 95% litigation, and I have always appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 20%
   2. state courts of record: 80%
   3. other courts: 0%
   4. administrative agencies: 0%

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

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 15 cases to verdict or judgment. I've tried one case as associate counsel, one case as lead counsel, and 13 as sole counsel.

i. What percentage of these trials were:
   1. jury: 87%
   2. non-jury: 13%

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 *SSC Odin Operating Co. v. Carter*, I filed two briefs in opposition to two Petitions for Writ of Certiorari before the United States Supreme Court. The U.S. Supreme Court denied both petitions for certiorari. *SSC Odin Operating Co. v. Carter*, 129 S. Ct. 2734 (2009), available at 2009 WL 1206652; *SSC Odin Operating Co. v. Carter*, 133 S. Ct. 1998 (2013), available at 2013 WL 1209145.

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. *Wilkes v. Kistler*, Case No. 10SL-CC00913 (21st Judicial Cir. Ct. of St. Louis County, Mo. 2013).

I represented the plaintiff, Wilkes, in a medical malpractice case against his primary care physician alleging negligent delay in diagnosing HIV, which led to end stage renal disease requiring dialysis. The allegations were that the physician failed to investigate abnormal findings on tests for complete blood counts, failed to refer the plaintiff to a hematologist and failed to obtain an appropriate sexual history from the plaintiff. Damages sought were approximately $18,000,000. I initially served as lead counsel in the case. I drafted or supervised the drafting of the pleadings, written discovery and motions. I argued motions and took all but one of the depositions, including the depositions of the defendant, three defense expert witnesses and two treating physicians. When the matter proceeded to a jury trial, I tried the case as sole counsel. After eight days of trial, the jury returned a verdict in favor of the plaintiff and awarded compensatory damages.

The dates of my representation were 2008 to 2013. The case was heard by Circuit Judge Steven Goldman. Defendant's counsel was James Reinert, 120 South Central Avenue, Suite 1600, St. Louis, MO 63105, (314) 880-8060.

2. *Harris v. United States*, Case No. 3:08-cv-00912 (S.D. Ill. 2011).

I was sole counsel for the plaintiff, Harris, Special Administrator of the Estate of Anderson (her deceased daughter) in a medical malpractice case filed pursuant to the Federal Tort Claims Act. Subsequent to delivering twins by C-section at Touchette Regional Hospital, Anderson was diagnosed with methicillin-resistant staphylococcus aureus, sepsis and mitral valve endocarditis. She died 1½ years later from a brain hemorrhage at the age of 25. She left surviving six minor children. I drafted all pleadings, written discovery and motions. I argued motions and took depositions including the responsible physician and two defense expert witnesses. The case was settled in mediation four days prior to trial.

The dates of my representation were 2008 to 2011. The case was presided over by U.S. District Judge Michael J. Reagan. Defendant's counsel was James L. Porter, Assistant United States Attorney, 9 Executive Drive, Fairview Heights, IL 62208, (618) 628-3700.

3. *Coleman v. Wiencek*, Case No. 08-CV-05275 (N.D. Ill. 2010).

I was lead counsel for the plaintiff, Coleman, Administrator of the Estate of her brother, Russell, in a civil rights case filed pursuant to 28 U.S.C. 1983 alleging the unreasonable use of deadly force by an officer of the Aurora Police Department and the City of Aurora. A common law negligence cause of action was also brought against Provena Mercy Medical Center. Russell was admitted to Provena Mercy Medical Center for Dilantin toxicity. His prior medical history included psychosis and schizophrenia and he had a previous psychiatric admission to Provena. At the time of admission, his behavior was erratic and at times combative. He was not searched for weapons or other contraband. The morning after his admission, he confronted a nurse in his room with a handgun. Law enforcement, including the Aurora S.W.A.T. team, was called to the scene and a six hour standoff ensued. The incident concluded with Mr. Russell being shot and killed by a member of the S.W.A.T. team. I drafted the majority of the pleadings, written discovery and motions and responses to motions for summary judgment. I argued motions and took the depositions of the defendant police officer and approximately eight other officers of the Aurora Police Department. The common law negligence claims against the City of Aurora and Provena Mercy Medical Center were dismissed before trial, but the Section 1983 claims proceeded to jury trial. The trial resulted in a hung jury and mistrial and subsequently dismissed by stipulation.

The dates of my representation were 2007 to 2010. The case was heard by U.S. District Judge Matthew Kennelly. Co-counsel was Celestine Dotson, 300 North Tucker Boulevard, St. Louis, MO 63101, (314) 454-6543. Defendants' counsel was John B. Murphey, 30 North LaSalle Street, Suite 1624, Chicago, IL 60602, (312) 541-1070; and Sammi Renken, 33 West Monroe Street, Suite 2700, Chicago, IL 60603, (312) 372-0770.

4. *Joiner v. Sparta Cmty. Hosp.*, Case No. 05-L-58, (20th Judicial Cir. Ct. of Randolph County, Ill. 2009).

I was co-counsel for the plaintiffs, Joiner and Mahan, Co-Executors of the Estate of B. Joiner (their mother), in a medical malpractice case alleging negligence which resulted in B. Joiner developing pressure sores during an admission to Sparta Hospital. The pressure sores became infected and ultimately contributed to her death. I had shared responsibility for drafting pleadings, written discovery and motions, and I argued motions and took the deposition of the treating physician. The case settled shortly before trial.

The dates of my representation were 2008 to 2009. The case was heard by Circuit Judge William A. Schuwerk, Jr. Co-counsel was Terry Brown, 5520 West Main Street, Belleville, IL 62226, (618) 236-2887. Defendant's counsel was John C. Ryan, P.O. Box 1570, Carbondale, IL 62903, (618) 529-3000.

5. *Carter v. SSC Odin Operating Co.*, Case No. 06-L-75 (4th Judicial Cir. Ct. of Marion County, Ill.)

I have served as lead counsel for the plaintiff, Carter, Special Administrator of the Estate of Gott (her mother), in a nursing home abuse and neglect case since 2006. The defendant filed a motion to compel arbitration, which was denied in the circuit court. The circuit court's denial of the defendant's motion to compel arbitration has been before the Illinois Fifth District Appellate Court twice (*Carter v. SSC Odin Operating Co.*, 885 N.E.2d 1204 (Ill. App. 5th Dist. 2008); and 955 N.E.2d 1233 (Ill. App. 5th Dist. 2011)) and the Illinois Supreme Court twice (927 N.E.2d 1207 (Ill. 2010); and 976 N.E.2d 344 (Ill. 2012)). Additionally, the defendants have filed two Petitions for Writ of Certiorari with the United States Supreme Court, both of which have been denied. The wrongful death claim is currently pending in circuit court with no trial date set. The survival cause of action is currently pending arbitration.

The dates of my representation are 2006 to the present. Co-counsel for appeals in the Illinois Supreme Court was K. Glenda Cameron, 2006 Eastern Suburb, Suite 101, Christiansted, United States Virgin Islands, 00820, (340) 773-3444. Co-counsel for opposition to Petition for Writ of Certiorari were Scott Michelman and Scott L. Nelson, Public Citizen Litigation Group, 1600 20th Street NW, Washington, DC 20009, (202) 588-1000. Defendant's counsel are Mark R. Feldhaus, 714 Locust Street, St. Louis, MO 63101, (314) 621-2929; and Malcolm J. Harkins III, 1001 Pennsylvania Ave., NW, Washington, DC 20004, (202) 416-6800.

6. *Thomas v. McIntyre*, Case No. 01-L-504 (20th Judicial Cir. Ct. of St. Clair County, Ill. 2007), *rev'd and remanded*, Case No. 5-05-0416 (Ill. App. 5th Dist. 2006).

I was sole counsel for the plaintiff, Thomas, in an automobile accident case. I drafted all pleadings, written discovery and motions. I argued motions and took depositions including the defendant and treating physicians. After a three-day trial, the jury found in favor of Thomas and awarded damages totaling $50,000. I appealed the judgment based on the jury's award of damages as against the manifest weight of the evidence. The Illinois Fifth District Appellate Court reversed the judgment and remanded the case for a new trial (Fifth District Docket No. 5-05-0146). The case ultimately settled.

The dates of my representation were 2001 to 2007. The trial was heard before Circuit Judge Lloyd Cueto. Defendant's counsel was Thomas J. Magee, 200 North Broadway, Suite 700, St. Louis, MO 63102, (314) 421-5364.

7. *Richter v. Standard Mut. Ins. Co.*, Case No. 92-MR-185 (20th Judicial Cir. Ct. of St. Clair County, Ill. 1996), *aff'd*, 664 N.E.2d 1140 (Ill. 1996).

I represented the plaintiff, Richter, in a declaratory judgment action based upon the denial of an underinsured motorist claim by her automobile insurers, Standard Mutual Insurance Company. After sustaining injuries in an automobile accident, Ms. Richter settled a claim against the driver-at-fault for their liability policy limits. Standard Mutual

contended that because she failed to secure its consent prior to settling with the driver-at-fault, she had forfeited her underinsured motorist coverage. I was sole counsel in the case. I drafted all pleadings, written discovery and motions and briefs. I took depositions and argued motions and the appeal. The circuit court held that Richter was not barred from recovering under underinsured motorist coverage and Standard Mutual Insurance Company filed an appeal in the Illinois Fifth District Appellate Court. The judgment was affirmed.

The dates of my representation were 1989 to 1996. The case was heard by Circuit Judges Ellen A. Dauber and Robert J. Hillenbrand. Defendant's counsel was Charles Compton, One Mark Twain Plaza, Suite 300, 101 Main Street, Edwardsville, IL 62025, (618) 656-0257.

8. *Siemer v. Nangle*, Case No. 90-L-983 (20th Judicial Cir. Ct. of St. Clair County, Ill. 1992).

I was sole counsel for the plaintiff, Siemer, in a case filed under the Fair Debt Collection Practices Act and the Illinois Consumer Fraud and Deceptive Business Practices Act. The allegations were that the defendant, an attorney, violated the statutes in attempting to collect on a debt for his client. I drafted all pleadings, written discovery and motions. I argued motions and took the deposition of the defendant. The matter proceeded to a jury trial. The jury returned a verdict in favor of the plaintiff and awarded her compensatory damages, punitive damages and attorney's fees.

The dates of my representation were 1990 to 1992. The case was heard by Circuit Judge Milton Wharton. Defendant's counsel was Jack Harper, 2101 Locust Street, St. Louis, MO 63103.

9. *People v. Bruce*, Case Nos. 01-CM-6727, 01-CM-6728, and 01-CM-6729 (20th Judicial Cir. Ct. of St. Clair County, Ill. 2002).

I represented the defendant, Bruce, who was involved in a physical altercation with two police officers when they attempted to arrest him while he was knocking at the door of his parents' home. The officers claimed that Bruce refused to provide his identification and physically resisted their attempts to handcuff him. He was charged with disorderly conduct, obstructing a peace officer, and resisting arrest. I was sole counsel in the case. I drafted all pleadings, written discovery and motions. I argued motions and took depositions of the arresting police officers. The case proceeded to a jury trial that resulted in a directed verdict for the defendant.

The dates of my representation were 2001 to 2002. The case was heard by Circuit Judge Ellen A. Dauber. Plaintiff's counsel was Chad Jennings, former Assistant St. Clair County State's Attorney, 14755 North Outer Forty Drive, Suite 300, Chesterfield, MO 63017, (636) 449-7266.

10. *People v. Sampson*, Case No. 00-CM-2553 (20th Judicial Cir. Ct. of St. Clair County, Ill. 2002).

I was sole counsel for the defendant, Sampson , who was a junior high school physical education teacher. Based upon allegations made by one of his female students that he inappropriately touched her and made explicit sexual comments to her, he was charged with criminal sexual abuse. The case proceeded to a bench trial and resulted in an acquittal.

The dates of my representation were 2000 to 2002. The case was heard by Circuit Judge Walter Brandon. Plaintiff's counsel was Frederick Stokes, former Assistant St. Clair County State's Attorney, who is no longer practicing law.

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 approximately 1989, I represented The East St. Louis Federation of Teachers, Local 1220 in contract negotiations, which led to me filing unfair labor practice complaints with the Illinois Educational Labor Relations Board (IELRB) against East St. Louis School District #189. As a result, the IELRB issued the first charges of unfair labor practices since it had been established.

As legal counsel for the East St. Louis Public Library Board, I advised and represented the Board with respect to a three-year construction project for a new library facility.

As legal counsel for Delta Economic Development Corporation and Southend Development Corporation, I advised and represented these not-for-profit corporations with respect to a seven-year construction project for a child development center in East St. Louis, Illinois.

As a member of The American Association for Justice (formerly, The Association of Trial Lawyers of America), I have participated in "Lobby Days" during which I met with members of Congress to discuss civil justice issues. I was not required to register as a lobbyist for these informal discussions.

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 2000, I taught a trial advocacy course at the St. Louis University School of Law. The

course was designed to teach students trial litigation skills. The major topics taught included client and witness interviews, depositions, voir dire, opening statements, direct examination, cross examination and closing statements. I do not have a copy of the syllabus.

From 1991 to 1999, I taught a civil practice clinic at the St. Louis University School of Law. The course was designed to teach students pre-litigation skills. The major topics included initial client interviews, fact investigation and settlement. 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.

    If confirmed, I would expect to receive future compensation derived from my work to date on the existing case inventory of my practice through either the transfer of client files or merger of my practice. In the event of a merger, I would enter into an appropriate payment agreement for the liquidated value of my work on any existing cases as of the date of merger consistent with the Code of Conduct for United States Judges and applicable canons of judicial ethics.

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 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 would recuse myself, for at least some initial time period, from any case being handled by my current law firm. I would also recuse myself from cases on which I previously worked, and from any case where, due to professional or personal relationships with a party or attorney involved, my impartiality might reasonably be questioned. I am not aware of any potential conflicts of interest likely to be presented by family members. Overall, I will follow the provisions of the Code of Conduct for United States Judges and other relevant canons or statutes.

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

    If confirmed, I will resolve any potential conflict of interest pursuant to the Code of Conduct for United States Judges and all other applicable rules of ethics.

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 devote an average of 50-60 hours per year representing clients of limited means on a pro bono basis in matters including landlord/tenant disputes, guardianship matters, drafting powers of attorney and small personal injury insurance claims. In addition, I counsel Delta Economic Development Corporation, a not-for-profit corporation, on matters associated with its corporate status and contract matters associated with its operation of the Delta Child Development Center on a pro bono basis. I also counsel and assist individuals with the formation and incorporation of various not-for-profit charitable organizations on a pro bono basis.

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 May 13, 2013, I submitted a written application to Senator Durbin's bipartisan Judicial Selection Committee in Illinois. I was interviewed by the Committee on June 5, 2013 in East St. Louis, Illinois. On June 25, 2013, a staffer in Senator Durbin's office informed me that the Committee had recommended me as a potential nominee. On July 3, 2013, I interviewed with Senator Durbin in Springfield, Illinois. On July 9, 2013, I was notified by a member of Senator Durbin's staff that the Senator had forwarded my name to the White House as a potential nominee. Since then, 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 January 16, 2014, 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
Yandle, Staci M.	U.S. District Court, Illinois	01/16/2014
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	☑ Nomination Date 01/16/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 01/13/2014
7. Chambers or Office Address		
1 Eagle Center Suite 3A O'Fallon, Illinois 62269		

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.	Owner	The Law Offices of Staci M. Yandle, LLC
2.	Director	Illinois Bar Foundation
3.	Of Counsel	The Farrise Firm, P.C.
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 Yandle, Staci M.	Date of Report 01/16/2014

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	Self-Employed Attorney - The Law Offices of Staci M. Yandle, LLC	$0.00
2. 2013	Self-Employed Attorney - The Law Offices of Staci M. Yandle, LLC	$470,947.00
3. 2014	Self-Employed Attorney - The Law Offices of Staci M. Yandle, LLC	$50,952.00
4.		

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

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Yandle, Staci M.	Date of Report 01/16/2014

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.	American Express	Law Firm Credit Cards	K
2.	Rollins Acceptance	Installment Loan	J
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Yandle, Staci M.	01/16/2014

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 Edwardsville Accounts	A	Interest	K	T	Exempt				
2. Glenda Cameron, personal loan - note receivable		None	J	T	Exempt				
3. Law Offices of Staci M. Yandle, LLC - Assets		None	M	T	Exempt				
4. John Hancock whole life insurance policy - cash value		None	J	T	Exempt				
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Yandle, Staci M.	Date of Report 01/16/2014

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Yandle, Staci M.	Date of Report 01/16/2014

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/ Staci M. Yandle

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		65	674	Notes payable to banks-secured (auto)		35	881
U.S. Government securities				Notes payable to banks-unsecured		49	821
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others		12	912
Accounts and notes receivable:		49	634	Accounts and bills due		9	543
Due from relatives and friends				Unpaid income tax			
Due from others		10	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see attached		277	519
Real estate owned – personal residence		325	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		10	927				
Other assets itemize:							
The Law Offices of Staci M. Yandle LLC	3	294	225				
				Total liabilities		385	676
				Net Worth	3	464	784
Total Assets	3	850	460	Total liabilities and net worth	3	850	460
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		332	927				

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Mortgages Payable	
Personal residence – mortgage	$ 214,513
Personal residence – home equity line of credit	63,006
Total Real Estate Mortgages Payable	$ 277,519

AFFIDAVIT

I, Staci Michelle Yandle, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

JANUARY 16, 2014
(DATE)

(NAME)

Sue Yaekel
(NOTARY)

OFFICIAL SEAL
SUE YAEKEL
Notary Public - State of Illinois
My Commission Expires Nov 7, 2016

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   Leon Rodriguez

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

   Director, U.S. Citizenship and Immigration Services, U.S. Department of Homeland 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.

   U.S. Department of Health and Human Services
   Office for Civil Rights
   200 Independence Avenue SW
   Washington, DC 20201

   Home: Garrett Park, MD

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

   1962; Brooklyn, 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.

   a. Boston College Law School, August 1985–May 1988, J.D., 1988
   b. Brown University, September 1980–June 1984, B.A., 1984

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

a. Director, U.S. Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, September 2011-present
b. Deputy Assistant Attorney General/Chief of Staff, U.S. Department of Justice, Civil Rights Division, 900 Pennsylvania Avenue NW, Washington, DC 20001, January 2010–September 2011
c. Obama-Biden Transition Team for U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 2053, November 2008 – January 2009
d. County Attorney, Office of the County Attorney for Montgomery County, Maryland, 101 Monroe Street, Rockville, MD 20850, May 2007–January 2010
e. Attorney Shareholder, Ober, Kaler, Grimes & Shriver, 1401 H Street NW, Washington, DC 20005, May 2001–May 2007
f. Assistant United States Attorney (includes Chief White Collar Crimes Section, June 1998-April 1999, First Assistant United States Attorney, April 1999-May 2001), U.S. Attorney's Office, U.S. Department of Justice, Western District of Pennsylvania, 633 U.S. Post Office & Courthouse, Pittsburgh, PA 15219, June 1997-May 2001
g. Trial Attorney, U.S. Department of Justice, Civil Rights Division, Criminal Section, 900 Pennsylvania Avenue NW, Washington, DC 20001, August 1994 – June 1997
h. Assistant District Attorney, Kings County District Attorney's Office, 350 Jay Street, Brooklyn, NY 11201, August 1988–July 1994 (includes cross-designation from 1993-1994 as a Special Assistant U.S. Attorney for the Eastern District of New York)
i. Law Clerk, Brown, Rudnick, Freed & Gesmer, One Financial Center, Boston, MA 02111, Summer 1987
j. Researcher, Boston College Law School, Holocaust Human Rights Research Project, 885 Centre Street, Newton, MA 02459, July 1986-May 1988 (intermittent)
k. Stock Clerk, Rody, Inc., 139 N.E. 1st Street, Miami, FL 33132, June 1986-July 1986
l. Door Guard, Boston College Law School Library, 885 Centre Street, Newton, MA 02459, January 1986-May 1986
m. Legal Assistant, New York County District Attorney's Office, One Hogan Place, New York, NY 10013, July 1984-July 1985

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

I did register for selective service. I did not serve in the U.S. Military.

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

    a. Boston College Law School Susan Grant Desmarais Award for Public Service, May 1988
    b. Outstanding Health Care Litigator for 2004 by Nightingale Health Care News
    c. Maryland Hispanic Bar Association Leadership Award, 2007

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.

    International Municipal Lawyers Association, May 2007-January 2010
    Montgomery County Bar Association, 2006-2010
    D.C. Circuit Court of Appeals, Advisory Committee on Admissions and Grievances, November 2006-June 2012
    D.C. Hispanic Bar Association Foundation, Board Member, 2002 -2007
    D.C. Bar Criminal Law and Individual Rights Section, 2002-2007

10. **Bar and Court Admission**:

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

        April 12, 1989, New York – (Inactive since 2007 since I am not currently actively practicing in New York.)
        March 8, 2002, Washington, DC
        January 7, 2004, Maryland

    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, 1997
        United States District Court for the Western District of Pennsylvania, 1997
        United States District Court for the District of Columbia, 2002
        United States Court of Appeals for the D.C. Circuit, 2008
        United States District Court for the District of Maryland, August 3, 2009
        Court of Appeals of Maryland, January 7, 2004
        Court of Appeals of District of Columbia, Mar. 8, 2002
        New York State Court of Appeals, April 12, 1989 (inactive)

        None of the above memberships have lapsed.

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.

1. Board Member, Montgomery County Primary Care Coalition, December 2005–May 2007
2. Board Member, CASA de Maryland Chair, Nominations Committee, November 2005–May 2007
3. Jewish Community Center of Pittsburgh, August 1997-August 2001
4. Jewish Community Center of Greater Washington, September 2003-November 2008

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

None to my knowledge.

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

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

Titles	Publishers	DATE
Constitutional and Statutory Limits for Cost-Benefit Analysis Pursuant to Executive Orders 12,291 and 12,498.	Boston College Environmental Affairs Law Review. 14:505	1988
"Health Care Fraud: No Longer 911 After 9/11?" (co-authored with Sanford V. Teplitzky)	CCH Health Care Compliance Letter	11/5/2001
"Competing Priorities" (co-authored with Sanford V. Teplitzky)	National Law Journal	12/10/2001
"Pleading with Prosecutors: A View from the Inside,"	Ober | Kaler Health Law Alert	Summer 2001
"Master Class: Competing Priorities" (co-authored with Sanford V. Teplitzky)	OKGS Health Law Alert	Winter Spring 2002
"Sentencing Guidelines" (co-authored with Sanford V. Teplitzky)	National Law Journal	March, 2002

"Staying the Course: Guiding Your Company Through a Fraud Investigation"	OKGS Health Law Alert	Summer 2002
"Rare Step: DAB Sets Aside Nursing Home Termination"	OKGS Health Law Alert	Fall Winter 2002
"Fraud in Human Subject Research: A New Crop of Cases for Prosecutors?"	OKGS Health Law Alert	Fall Winter 2002
"Legislative Initiatives to Increase Federal Role in Policing Abuse and Neglect Cases in Long Term Care Facilities"	American Health Lawyer's Association LTC Advisor	Winter 2003
"Hospital Pleads Guilty After Ignoring Fraud"	OKGS Health Law Alert	Fall Winter 2003
"Attorney Liability for Internal Investigations Under Pennsylvania and Federal Law"	Chapter in Corporate Investigation: Role of the Attorney, Pennsylvania Bar Institute	2004
"Broader Corporate Sentencing Guidelines Coming"	OKGS Health Law Alert	Spring Summer 2004
"Criminal Investigations"	chapter in The Non-Profit Legal Landscape, Boardsource (with Martha P. Rogers, Esq.)	2004
"Don't Buy That Extra Shredder Just Yet: Document Retention After Andersen"	OKGS Health Law Alert	Fall 2005
"No Damages Element for False Claims Conspiracy" OKGS Health Law Alert, Fall 2005	OKGS Health Law Alert	Fall 2005
"Trailblazer Audit Alert Reveals Provider Identity Theft"	OKGS Health Law Alert	Spring 2005 (reprinted in Health Lawyers' Weekly, April 29, 2005)
"Supreme Court Declares Sentencing Guidelines Advisory" OKGS Health Law Alert, Spring 2005	OKGS Health Law Alert	Spring 2005
"Fraud and Abuse Issues in Long-Term Care", chapter in The Long-Term Care Handbook: Regulatory, Operational & Financial Guideposts (with Sanford V. Teplitzky, Esq. and Howard L. Sollins, Esq.)	American Health Lawyer's Association (with Sanford V. Teplitzky, Esq. and Howard L. Sollins, Esq.)	2005
"Bisig Widens Avenues of Recovery for FCA Relators"	OKGS Health Law Alert	Fall 2006
"More Courts Support FCA Actions Based on Kickbacks"	OKGS Health Law Alert	Spring 2006
Helping Americans Attain Optimal Health: The Affordable Care Act Delivering on its Promise	U.S. Department of Health & Human Services - Office of Minority Health https://minorityhealth.hhs.gov/npa/blog/BlogPost.aspx?BlogID=2405	4/17/2013
"Your Mobile Device and Health Information Privacy and Security"	Medscapehttp://www.medscape.org/viewarticle/810568	9/13/2013
"Understanding the Basics of HIPAA Security Risk Analysis and Risk Management"	Medscape http://www.medscape.org/viewarticle/810563	9/13/2013

Ending Discrimination in Health Care: New Tools from the Affordable Care Act	U.S. Department of Health & Human Services - AIDS.gov http://blog.aids.gov/2013/09/ending-discrimination-in-health-care-new-tools-from-the-affordable-care-act.html#sthash.0QuSPiIl.dpuf	9/25/2013

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.

DATE	TITLE	SUMMARY
7/26/07	Office of the County Attorney Memorandum, "Development Districts"	Memo to Montgomery County Executive and Montgomery County Council re: Clarksburg Town Center development district
7/30/07	Office of the County Attorney Memorandum, "Public Use of Ellsworth Drive"	Memo to Montgomery County Executive re: public use of Ellsworth Drive in Silver Spring, Maryland
9/12/08	Office of the County Attorney Memorandum, "Bill 25-08; Ambulance Fees - Health Insurance Reimbursement - Equal Protection"	Memo to Public Safety Committee of the Montgomery County Council re: question from Council staff about ambulance fees
5/4/09	Office of the County Attorney Memorandum, "Council's Role in Collective Bargaining–A Primer"	Memo to Montgomery County Council President providing a brief overview on the Council's role in collective bargaining
10/5/09	Office of the County Attorney Memorandum, "County Attorney Comments on Bill No. 33-09"	Memo to Montgomery County Council bill to authorize Inspector General to employ or retain an independent attorney
11/9/11	Statement of Leon Rodriguez, Director, Office for Civil Rights, U.S. Department of Health and Human Services	Testimony Before the Committee on the Judiciary Subcommittee on Privacy, Technology and the Law, United States Senate at a hearing entitled "Your Health and Your Privacy: Protecting Health Information in a Digital World" http://www.judiciary.senate.gov/pdf/11-11-9RodriguezTestimony.pdf

4/26/13	Statement of Leon Rodriguez, Director, Office for Civil Rights, U.S. Department of Health and Human Services	Testimony Before the Energy & Commerce Committee, Subcommittee on Oversight and Investigations, United States House of Representatives at a hearing entitled "Does HIPAA Help or Hinder Patient Care and Public Safety?" http://democrats.energycommerce.house.gov/sites/default/files/documents/Testimony-Rodriguez-OI-HIPAA-Patient-Care-Public-Safety-2013-4-26.pdf

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.

Date	Place	Name of Group	Address of Group
April, 1996	Falls Church, VA	Congregation Rodef Shalom	2100 Westmoreland Street, Falls Church, Virginia 22043
November, 1996	American University, Washington, DC	American University	4400 Massachusetts Ave NW, Washington, DC 20016
November, 1996	Washington, DC	DC Public Access Cable Television	Office of Cable Television 3007 Tilden Street, NW, Pod-P Washington, DC 20008
2/1/1997	FBI Academy, Quantico, VA	Federal Bureau of Investigation	935 Pennsylvania Avenue, NW, Washington, D.C. 20535-0001
April, 1997	American University, Washington, DC	American University	4400 Massachusetts Ave NW, Washington, D.C., 20016
6/1/1999	Monroeville, PA,	Not available	Not available

November, 1999	Pittsburgh, PA	University of Pittsburgh School of Law	3900 Forbes Avenue, Pittsburgh, Pennsylvania, 15260
June, 2000	Seven Springs, PA	Allegheny County Bar Association	400 Koppers Building - 436 Seventh Ave. Pittsburgh, Pennsylvania 15219
September, 2000	Pittsburgh, PA	University of Pittsburgh School of Law	3900 Forbes Avenue, Pittsburgh, Pennsylvania, 15260
October, 2000	Pennsylvania	Pennsylvania Human Relations Commission	1101 S Front St, Harrisburg, PA
4/17/2000	Pennsylvania	Federal Bar Association, Western Pennsylvania Chapter	Goldsmith & Ogrodowski, LLC 247 Fort Pitt Blvd 4th Floor Pittsburg, PA 15222
4/17/2002	Maryland	American College of Health Care Administrators, Maryland Chapter	ACHCA PO Box 75060 Baltimore, MD 21275-5060
10/1/2002	Rocky Gap, Maryland	Health Facilities Association of Maryland	7060 Oakland Mills Rd, Columbia, MD 21046
12/8/2002	Las Vegas, NV	American College of Health Care Administrators	ACHCA PO Box 75060 Baltimore, MD 21275-5060
12/10/2002	Pasadena, CA	Mealey's Publications	Not available

4/10/2003	Not available	American Health Lawyer's Association	1620 Eye Street NW WDC 20006-4010
4/30/2003	Beacon Institute, Columbia, MD	National Association of Directors of Nursing Certification	Reed Hartman Tower, 11353 Reed Hartman Highway, Suite 210, Cincinnati OH 45241
9/30/2003	Ocean City, MD	Health Facilities Association of Maryland	7060 Oakland Mills Rd, Columbia, MD 21046
10/27/2003	Philadelphia, PA	Not available	Not available
11/25/2003	Columbia, MD	National Association of Directors of Nursing	Reed Hartman Tower, 11353 Reed Hartman Highway, Suite 210, Cincinnati OH 45241
2/13/2004	Mechanicsburg, PA	Pennsylvania Bar Institute	5080 Ritter Road Mechanicsburg PA 17055
2/19/2004	Pittsburgh, PA	Pennsylvania Bar Institute	5080 Ritter Road Mechanicsburg PA 17055
2/25/2004	Richmond, VA	Virginia Health Care Association	Richmond, Virginia 23227 st Laburnum Avenue, Suite 206 Richmond, Virginia 23227
5/13-14/2004	New Orleans, LA	American Bar Association	1050 Connecticut Ave. N.W., Suite 400, Washington, D.C. 20036

6/29/2004	Washington, DC	The District of Columbia Bar	1101 K Street NW, Suite 200, Washington DC 20005
9/29/2004	Ocean City, MD	Health Facilities Association of Maryland	7060 Oakland Mills Road Columbia MD
2/1/2005	Hotel Coronado, San Diego, CA	American Health Lawyer's Association	1620 Eye Street NW WDC 20006-4010
5/1/2005	Las Vegas, NV	American Bar Association	2112 W Laburnum Avenue Richmond VA 23227
7/11/2005	Washington, DC	Hispanics for a Judiciary	1640 Rhode Island Avenue, Suite 600 • Washington, DC 20036
10/17/2005	Mandarin Oriental, Washington, DC	Hispanic National Bar Association	1900 L Street NW, Suite 700, Washington, DC 20036
3/21/2006	Washington, DC	DC Health Care Association	1220 L Street, NW, Suite 100-242, Washington, DC 20005
5/4/2006	Philadelphia, PA	National Association of Criminal Defense Lawyers	1660 L St. NW, 12th Floor, Washington, DC 20036
5/25/2006	Richmond, VA	Virginia Health Care Association	8316 Arlington Blvd Ste 220 Fairfax, VA 22031

9/28/2006	Maryland	Health Facilities Association of Maryland	7060 Oakland Mills Road Columbia MD
4/1/2008	Washington, DC	International Municipal Lawyer's Association	7910 Woodmont Avenue • Suite 1440 • Bethesda, Maryland 20814
5/9/2008	Columbia, MD	Maryland Institute for Continuing Professional Education of Lawyers	520 W Fayette Street # 300 Baltimore, MD 21201-1756
9/16/2008	Las Vegas, NV	International Municipal Lawyer's Association	7910 Woodmont Avenue, Suite 1440, Bethesda, Maryland 20814
10/17/2008	Maryland	MD Department of Labor, Licensing and Regulation	500 North Calvert Street #401 Baltimore, MD 21202
4/15/2010	Mount St. Mary's University, Emmitsburg, MD	Mount St. Mary's University	16300 Old Emmitsburg Road, Emmitsburg, MD 21727
10/1/2010	Yale Law School, New Haven, CT	Yale Law School	127 Wall Street, New Haven, CT 06511
7/25/2011	Ocean City, MD	The Society for the Psychological Study of Social Issues	208 I St. NE, Washington, DC 20002-4340
9/12/2011	HHH, Washington, DC	Office of the National Coordinator for Health Information Technology (ONC), HHS	200 Independence Avenue S.W., Suite 745G, Washington, D.C. 20201

12/9/2011	Gallaudet University, Washington, DC	National Health Law Program	1444 I Street NW, Suite 1105, Washington, DC 20005
1/26/2012	OCR, Washington, DC	National Academy for State Health Policy	1233 20th Street, NW - Suite 303, Washington, DC 20036
2/9/2012	Orlando, FL	AHLA Hospital & Health Systems Law Institute	1620 Eye Street NW, Washington, DC 20006-4010
2/23/2012	San Diego, CA	American Bar Association	740 15th Street, NW, Washington, DC 20005
2/24/2012	Las Vegas, NV	Healthcare Information and Management Systems Society	33 West Monroe Street, Suite 1700, Chicago, IL 60603-5616
3/8/2012	Washington, DC	International Association of Privacy Professionals	75 Rochester Ave., Suite 4, Portsmouth, NH 03801
3/14/2012	OCR, Washington, DC	Embassy of Mexico	1911 Pennsylvania Ave NW Washington, DC 20006
3/19/2012	Washington, DC	Association of Asian Pacific Community Health Organizations	1400 Eye Street, NW, Suite 910, Washington, DC 20005
3/26/2012	Renaissance Downtown, Washington, DC	Health Care Conference Administrators	37 Tatoosh Key, Bellevue, WA 98006

5/2/2012	Lancaster, PA	Spanish American Civic Assn	545 Pershing Ave, Lancaster, PA 17602
6/4/2012	Baltimore Marriott Hotel, Baltimore, MD	National Disability Rights Network	900 Second Street, NE, Suite 211, Washington, DC 20002
6/4/2012	WH Conference Center, Washington, DC	Office of the National Coordinator for Health Information Technology (ONC), HHS	200 Independence Avenue S.W., Suite 729-D, Washington, D.C. 20201
6/6/2012	Pillsbury Winthrop Shaw Pittman, LLP, Washington, DC	EHealth Initiative	818 Connecticut Avenue, NW, Suite 500, Washington, DC 20006
6/7/2012	Reagan Bldg, Washington, DC	National Institute of Standards and Technology (NIST)	100 Bureau Dr Gaithersburg, MD 20899
6/8/2012	Atlanta, GA	Hispanic Health Coalition of Georgia, Inc.	2320 Perimeter Park Dr. 2nd Floor, Atlanta, (Chamblee) 30341
6/23/2012	Orlando, FL	National Association of Latino Elected & Appointed Officials	600 Pennsylvania Avenue, SE, Suite 230, Washington, DC 20003
6/26/2012	Rockville, MD	National Institute of Standards and Technology (NIST)	100 Bureau Dr Gaithersburg, MD 20899
6/27/2012	Orlando, FL	League of United Latin American Citizens	1133 19th Street, NW, Suite 1000 Washington, DC 20036

7/26/2012	Livermore, CA	White House Initiative on Educational Excellence for Hispanics	400 Maryland Ave. S.W., Room 4W108, Washington, DC 20202
8/8-9/2012	Denver, CO	2012 Pathways to Respecting American Civil Rights Conference	501 20 St., Greeley, Colorado, 80639
8/30/2012	Miami, FL	National Council of La Raza	1126 16th Street, NW, Suite 600, Washington, DC 20036-4845
9/11/2012	Washington, DC	Congressional Hispanic Caucus Institute	911 2nd Street, NE, Washington, D.C. 20002
9/12/2012	Washington, DC	Office of the National Coordinator for Health Information Technology (ONC), HHS	200 Independence Avenue S.W., Suite 729-D, Washington, D.C. 20201
9/19/2012	Detroit, MI	State Bar of Michigan Health Care Law Section	306 Townsend St, Lansing, MI 48933-2012
9/20/2012	Baltimore, MD	OCR's Olmstead Policy Academy	200 Independence Avenue S.W., Fifth Floor, Washington, D.C. 20201
10/11/2012	Washington, DC	Health Care Conference Administrators	37 Tatoosh Key, Bellevue, WA 98006
10/11/2012	Washington, DC	National Council of La Raza WH Briefing	1126 16th Street, NW, Suite 600, Washington, DC 20036-4845

11/14/2012	Alexandria, VA	National Association of State Mental Health Program Directors (NASMHPD) and National Association of State Directors of Developmental Disabilities Services	NASMHPD - 66 Canal Center Plaza, Suite 302, Alexandria, VA 22314 NASDDDS - 113 Oronoco Street, Alexandria, VA
11/28/2012	Webinar HHH Room 747D, HHS	Center for Faith-based and Neighborhood Partnerships	200 Independence Avenue, S.W. - Washington, D.C. 20201
12/4/2012	Marriott Wardman Park, Washington, DC	American Bar Association	740 15th Street, NW, Washington, DC 20005
12/10/2012	Webinar HHH Room 747D, Washington, DC	Center for Faith-based and Neighborhood Partnerships	200 Independence Avenue, S.W. - Washington, D.C. 20201
12/12/2012	Washington Marriot Wardman Park, Washington, DC	Office of the National Coordinator for Health Information Technology (ONC), HHS	200 Independence Avenue S.W., Suite 729-D, Washington, D.C. 20201
12/13/2012	Fairmont Copley Plaza, Boston, MA	HIMSS and Health IT News	33 West Monroe Street, Suite 1700, Chicago, IL 60603-5616
2/13/2013	JW Marriott, Washington, DC	League of United Latin American Citizens	1133 19th Street, NW, Suite 1000 Washington, DC 20036
2/19/2013	Ritz-Carlton, Washington, DC	HIPAA Summit	825 Eighth Avenue, 11th Floor, New York, NY 10019
2/22/2013	Marriott Miami Biscayne Bay, Miami, FL	American Bar Association	1050 Connecticut Ave. N.W., Suite 400, Washington, D.C. 20036

3/4/2013	Morial Convention Center, New Orleans, LA	Healthcare Information and Management Systems Society	33 West Monroe Street, Suite 1700, Chicago, IL 60603-5616
3/7/2013	Washington Marriott Wardman Park, Washington, DC	International Association of Privacy Professionals	75 Rochester Ave., Suite 4, Portsmouth, NH 03801
3/13/2013	Hilton Chicago, Chicago, IL	American College of Healthcare Executives	1 North Franklin, Suite 1700, Chicago, Illinois 60606-3529
3/22/2013	Renaissance Harborplace Hotel, Baltimore, MD	American Health Lawyers Association	1620 Eye Street NW, Washington, DC 20006-4010
4/22/2013	Ritz-Carlton, Washington, DC	National Minority Quality Forum	1200 New Hampshire Avenue, N.W. Suite 575 Washington, DC 20036
4/23/2013	White House EEOB, Washington, DC	Administration for Children and Families, HHS	370 L'Enfant Promenade, S.W., Washington, D.C. 20447
4/23/2013	Gaylord National, National Harbor, MD	Health Care Compliance Association	6500 Barrie Rd, Ste 250, Minneapolis, MN 55435
4/25/2013	White House EEOB, Washington, DC	National Hispanic Medical Association	1920 L St., NW, Suite 725, Washington, DC 20036
5/2/2013	Caribe Hilton Hotel, San Juan, PR	Health Care Compliance Association	6500 Barrie Rd, Ste 250, Minneapolis, MN 55435

5/14/2013	Las Vegas, NV	Workgroup for Electronic Data Interchange	1984 Isaac Newton Square, Suite 304, Reston, VA 20190
5/22/2013	Reagan Center, Washington, DC	National Institute of Standards and Technology (NIST)	100 Bureau Dr., Gaithersburg, MD 20899
6/6/2013	Georgetown Law Center, Washington, DC	Patient Privacy Rights Foundation	P.O. Box 248, Austin TX 78767
6/6/2013	EEOB, Washington, DC	Office of the National Coordinator for Health Information Technology (ONC), HHS	200 Independence Avenue S.W., Suite 729-D, Washington, D.C. 20201
6/18/2013	Microsoft Policy and Innovation Center, Washington DC	National Minority Quality Forum	1200 New Hampshire Avenue, N.W. Suite 575, Washington, DC 20036
6/20/2013	Westin City Center, Washington, DC	Association of American Medical Colleges	2450 N St NW, Washington, DC 20037
7/1/2013	Manchester Grand Hyatt, San Diego, CA	American Health Lawyers Association	1620 Eye Street NW, Washington, DC 20006-4010
7/11/2013	Veterans Administration HQ, Washington, DC	Human Rights Campaign	1640 Rhode Island Ave. N.W., Washington, DC 20036-3278
9/16/2013	HHS, Washington, DC	Office of the National Coordinator for Health Information Technology (ONC), HHS	200 Independence Avenue S.W., Suite 729-D, Washington, D.C. 20201
9/23/2013	Intercontinental Hotel, Boston, MA	HIMSS and Healthcare IT News	33 West Monroe Street, Suite 1700, Chicago, IL 60603-5616

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.

Date	Entity	Copy of Clips or Transcript where available
12/7/1993	New York Times	Clip online at http://www.nytimes.com/1993/12/07/nyregion/3-accused-of-running-mafia-betting-ring.html?pagewanted=all&src=pm
1/30/1994	New York Daily News	Hard copy available
1/24/1996	The Star-Ledger (Newark, New Jersey)	Hard copy available
12/1/1998	Pittsburgh Post-Gazette	Clip online at http://old.post-gazette.com/win/day6_2a.asp
9/11/1999	Philadelphia Inquirer	Clip online at http://articles.philly.com/1999-09-11/news/25487824_1_riverboat-gambling-seyfert-fbi-agents
6/6/2000	Pittsburgh Post-Gazette	Clip online at www.post-gazette.com/regionstate/20000606mbe3.asp
3/25/2001	Pittsburgh Post-Gazette	Clip online at http://old.post-gazette.com/regionstate/20010325rodriguez4.asp
4/19/2001	Pittsburgh Tribune-Review & TribLive.com	Clip online at http://triblive.com/x/valleyindependent/news/s_30400.html#axzz2fRVfyxtJ

4/19/2001	Associated Press State & Local Wire	Hard copy available
4/21/2003	The New Yorker	Clip online at http://www.newyorker.com/archive/2003/04/21/030421fa_fact_bowe
11/14/2003	Gale Group Inc.	Hard copy available
7/20/2005	BBCMundo.com	Clip online at http://news.bbc.co.uk/hi/spanish/international/newsid_4698000/4698669.stm
9/14/2005	Washington Daybook	Hard copy available
11/30/2005	BBCMundo.com	Clip online at http://news.bbc.co.uk/hi/spanish/international/newsid_4485000/4485668.stm
11/30/2005	BBCMundo.com	Clip online at http://news.bbc.co.uk/hi/spanish/international/newsid_4485000/4485668.stm
1/19/2006	EFE News Services (U.S.) Inc.	Hard copy available
1/26/2006	BBCMundo.com	Clip online at http://news.bbc.co.uk/hi/spanish/international/newsid_4649000/4649132.stm
5/1/2005	BBCMundo.com	Clip online at http://news.bbc.co.uk/hi/spanish/business/newsid_5018000/5018126.stm

7/31/2007	Washington Post	Clip online at http://www.washingtonpost.com/wp-dyn/content/article/2007/07/30/AR2007073001639.html
12/1/2007	The Baltimore Sun	Hard copy available
2/7/2008	Washington Post	Clip online at http://articles.washingtonpost.com/2008-02-07/news/36858735_1_affordable-units-county-officials-montgomery-county
2/25/2008	The Daily Record	Hard copy available
3/25/2008	Washington Post	Clip online at http://articles.washingtonpost.com/2008-03-25/news/36926758_1_wssc-montgomery-county-montgomery-council
8/5/2009	The Gazette (Maryland)	Clip online at http://ww2.gazette.net/stories/08052009/gaitnew210851_32537.shtml
3/30/2009	Washington Post	Clip online at http://www.washingtonpost.com/wp-dyn/content/article/2009/03/29/AR2009032901115.html
10/7/2009	The Examiner (Washington, DC)	Clip online at http://washingtonexaminer.com/state-not-cracking-down-on-fraud-officials-say/article/22196
Around 11/20/2009	Washington Post	Clip online at http://voices.washingtonpost.com/annapolis/2009/11/montgomery_council_member_invi.html
4/15/2010	Frederick News Post + Speech	Online at http://www.fredericknewspost.com/archive/article_6eb0b9ff-18f3-5910-86f3-ae40f64f836a.html
9/28/2011	New York Times	Report online at http://www.nytimes.com/2011/10/06/us/stanford-hospital-patient-data-breach-is-detailed.html?pagewanted=all&_r=0

9/30/2011	Bloomberg	Not available
10/3/2011	InfoRiskToday.com	Clip online at http://www.inforisktoday.com/interviews/interview-new-hipaa-enforcer-i-1258
12/8/2011	Boston Globe	Clip online at http://www.boston.com/2011/12/14/hipaa/cY2coNakiUsR4HGOEm4aTM/story.html
1/18/2012	Detroit Free Press	Abstract available
2/9/2012	WFTV-TV (ABC) Orlando	Television - no clip
2/9/2012	Orlando Business Journal	No story on site
2/9/2012	WTMO-TV (Telemundo Orlando & holaciudad.com)	No story on site
2/15/2012	Latino Voice Live - Reading, PA	Radio - no clip; TPs
3/15/2012	The Report on Medicare Compliance	No, subscription only newsletter
3/15/2012	U.S. News & World Report	Not available
3/23/2012	Mother Jones	Online at http://www.motherjones.com/politics/2012/03/tom-perez-justice-department-trayvon-martin
4/17/2012	Hispanic Roundtable	Transcript
4/17/2012	CNN en Espanol	Television - no clip
4/18/2012	Univision	Television - no clip

4/23/2012	New American Media	No links
5/2/2012	WLCHfm/Radio Centro - Harrisburg/Lancaster, PA	Radio - no clip
5/23/2012	Radio Bilingue Linea Abierta	Radio - no clip
8/3/2012	NBC Universal/MSNBC	Television - no clip
8/30/2012	Univision radio, WQBA 1140 AM, "Pedaliando con Bernie"	Radio - no clip
9/19/2012	Atlantic Information Services, Inc.	Blocked link at http://aishealth.com/blog/compliance/ocrs-new-era-monetary-enforcement-puts-covered-entities-notice
12/13/2012	HealthInfoSecurity, Information Security Media Group	Transcript online at http://www.healthcareinfosecurity.com/hipaa-audits-next-phase-a-5397
1/3/2013	Modern Healthcare	Clip online at http://www.modernhealthcare.com/article/20130105/PODCAST/301069999
1/4/2013	Information Week	Report online at http://www.informationweek.com/healthcare/security-privacy/healthcare-settlement-highlights-risk-an/240145682?queryText=leon rodriguez
1/22/2013	Modern Healthcare	Clip online at http://www.modernhealthcare.com/article/20130125/PODCAST/301259942
3/1/2013	Wall Street Journal	ASPA form - transcript; no article written
3/6/2013	Congressional Quarterly/Roll Call	ASPA form - transcript; not available (article)
3/20/2013	Health Data Management	ASPA form - transcript; blocked link http://www.healthdatamanagement.com/news/hipaa-privacy-security-breach-enforcement-audit-ocr-45871-1.html?techlabs=1
3/20/2013	CSO Magazine	report online at http://www.pcadvisor.co.uk/news/security/3447932/big-data-investigations-opportunity-and-risk/

4/4/2013	The Wall Street Journal	Blocked link at http://blogs.wsj.com/riskandcompliance/2013/04/12/qa-leon-rodriguez-of-the-department-of-health-and-human-services/ Transcript blocked at http://stream.wsj.com/story/latest-headlines/SS-2-63399/SS-2-210518/
4/25/2013	Caribbean Business, Puerto Rico	Report online at http://www.caribbeanbusinesspr.com/prnt_ed/news02.php?nw_id=8447&ct_id=10
5/21/2013	Univision	Television - no clip
6/25/2013	Aging Today	ASPA form; transcript at http://www.asaging.org/blog/hipaa-and-patient-privacy-conversation-leon-rodriguez
8/6/2013	Healthcare IT News	ASPA form - transcript; no article issued
9/1/2013	HealthLeaders	Hard copy available
9/23/2013	WCSH (NBC Portland ME)	Television - no clip

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.

1. Director, Office for Civil Rights, U.S. Department of Health and Human Services, 2011-Present, appointed by HHS Secretary Kathleen Sebelius
2. Deputy Assistant Attorney General/Chief of Staff, U.S. Department of Justice, Civil Rights Division, January 2010–September 2011, appointed by Attorney General Eric Holder
3. County Attorney, Montgomery County, Maryland, 2007-2010, appointed by County Executive Isiah Leggett

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 served as 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.

a. Deputy Assistant Attorney General/Chief of Staff, U.S. Department of Justice, Civil Rights Division, 900 Pennsylvania

Avenue NW, Washington, DC 20001, January 2010–September 2011

b. County Attorney, Office of the County Attorney for Montgomery County, Maryland, 101 Monroe Street, Rockville, MD 20850, May 2007–January 2010
c. Attorney Shareholder, Ober, Kaler, Grimes & Shriver, 1401 H Street NW, Washington, DC 20005, May 2001-May 2007
d. Assistant United States Attorney (includes Chief White Collar Crimes Section, June 1998-April 1999, First Assistant United States Attorney, April 1999-May 2001) U.S. Attorney's Office, Western District of Pennsylvania, 633 U.S. Post Office & Courthouse, Pittsburgh, PA 15219, June 1997-May 2001
e. Trial Attorney, U.S. Department of Justice, Civil Rights Division, Criminal Section, 900 Pennsylvania Avenue NW, Washington, DC 20001, August 1994–June 1997
f. Assistant District Attorney, Kings County District Attorney's Office, 350 Jay Street, Brooklyn, NY 11201, August 1988–July 1994 (includes cross- designation from 1992-1994 as a Special Assistant U.S. Attorney for the Eastern District of New York)
g. Law Clerk, Brown, Rudnick, Freed & Gesmer, One Financial Center, Boston, MA 02111, Summer 1987
h. Researcher, Boston College Law School, Holocaust Human Rights Research Project, 885 Centre Street, Newton, MA, July 1986-May 1988 (intermittent)
i. Legal Assistant, New York County District Attorney's Office, One Hogan Place, New York, NY, July 1984-July 1985

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.

For the first thirteen years after I graduated from law school, I served as a prosecutor in three different jurisdictions – the Kings County District Attorney's office in Brooklyn, NY, the Criminal Section of the U.S. Department of Justice Civil Rights Division, and the U.S. Attorney's Office for the Western District of Pennsylvania in Pittsburgh, PA.

As an Assistant District Attorney in Brooklyn, NY, I spent my first six months handling a high-volume misdemeanor docket, along with general case intake responsibilities. The next six months were spent investigating major crimes in the Investigations Bureau, which I describe further below. I then spent two years as a trial prosecutor in the Sex Crimes/Special Victims Bureau, where I spent a portion of most days in court. Following that, I spent two years in the Organized Crime Bureau where I handled complex racketeering investigations, primarily focused on La Cosa Nostra organized crime. In conjunction with this posting, I was cross-designated as an Assistant U.S. Attorney for the Eastern District of New York. I was assigned in my last year to the newly created Official Corruption Unit in the District Attorney's Office.

From 1994 to 1997, I worked for the Criminal Section of the U.S. Department of Justice Civil Rights Division, where I handled investigations and prosecutions of criminal civil rights cases throughout the United States, including cases of human trafficking, misconduct under of color of law, racial assault and arson.

From 1997 to 2001, I was an Assistant U.S. Attorney for the Western District of Pennsylvania, where I focused my prosecutions on white collar fraud matters, with a particular emphasis on health care fraud. As First Assistant U.S. Attorney, I oversaw the full range of criminal and civil litigation handled by the office.

From 2001 to 2007, I was an attorney in private practice concentrating on health care fraud and abuse compliance investigations and litigation, general white collar criminal practice, long-term care survey and certification litigation, and health professional licensure matters.

As County Attorney for Montgomery County, Maryland from 2007 to 2010, I oversaw all legal services provided to County government, including litigation, code enforcement, human resources, collective bargaining, land use regulation, legislative/regulatory drafting and transactional services.

As Deputy Assistant Attorney General and Chief of Staff for the Civil Rights Division of the Department of Justice in 2010 and 2011, I specifically supervised the Office of Special Counsel for Unfair Immigration-Related Employment Practices.

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

As an Assistant District Attorney, my client was the People of the State of New York. As an Assistant United States Attorney and Civil Rights Division attorney, my client was the United States.

During my time at Ober Kaler Grimes & Shriver, my clients included health care providers - physicians, hospitals and hospital systems, nursing homes, long-term care companies and laboratories. I also represented individuals and businesses on other white collar compliance matters.

As County Attorney, my client was Montgomery County, Maryland government.

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;
   2. state courts of record;
   3. other courts;
   4. administrative agencies

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

Because of the different types of positions I have held, and to be as accurate as possible, I will describe the composition of my practice in each of the positions that I occupied during my active law practice. I would note in my current position, I am not acting as an attorney.

Deputy Assistant Attorney General/Chief of Staff, U.S. Department of Justice, Civil Rights Division, 900 Pennsylvania Avenue NW, Washington, DC 20001, January 2010–September 2011

In this position, I did not spend any time in tribunals. In my oversight role over the Office of the Special Counsel for Unfair Immigration-Related Employment Practices, I spent approximately 10% of my time overseeing civil matters that could be presented before administrative tribunals.

County Attorney, Office of the County Attorney for Montgomery County, Maryland, 101 Monroe Street, Rockville, MD 20850, May 2007–January 2010

In this position, I spent approximately 20% of my time overseeing civil litigation matters involving Montgomery County government, most of which were heard in the Montgomery County Circuit Court. I spent less that 1% of my time in each of Maryland State Court and United States District Court for the District of Maryland.

Attorney Shareholder, Ober, Kaler, Grimes & Shriver, 1401 H Street NW, Washington, DC 20005, May 2001-May 2007

In this position, I spent approximately 50% of my time handling matters that were either in federal courts or before federal grand juries. I also handled two matters that involved significant interaction with the Departmental Appeals Board of the U.S. Department of Health and Human Services, representing approximately 5% of my time. Approximately 50% of my practice was criminal and 50% was civil.

Assistant United States Attorney (includes Chief White Collar Crimes Section, June 1998-March 1999, First Assistant United States Attorney, March 1999-May 2001) U.S. Attorney's Office, Western District of Pennsylvania, 633 U.S. Post Office & Courthouse, Pittsburgh, PA 15219, June 1997-May 2001

My direct practice was criminal; however, my cases often involved parallel civil proceedings. For the first two years, my entire practice was in U.S. District Court for the Western District of Pennsylvania. During the second two years, I spent approximately 50% of my time overseeing civil and criminal matters in that same court.

Trial Attorney, U.S. Department of Justice, Civil Rights Division, Criminal Section, 900 Pennsylvania Avenue NW, Washington, DC 20001, August 1994–June 1997

In this position, my practice was exclusively in federal courts and grand juries throughout the United States.

Assistant District Attorney, Kings County District Attorney's Office, 350 Jay Street, Brooklyn, NY 11201, August 1988–June 1994

In this position, my practice was exclusively criminal and approximately 90% was in New York State Court at both the trial and appellate levels. I also spent approximately 20% of my time during 1992 and 1993 supporting Federal

prosecutors in U.S. District Court for the Eastern District of New York. As part of my collaboration with the U.S. Attorney's Office, I was formally cross-designated as an Assistant U.S. Attorney from 1993-1994.

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. (response forthcoming)

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

   I have tried a total of fifteen trial-level cases to verdict. All but one of these cases was before a jury. In eleven of the cases, I was sole trial counsel. In three of the cases, I served as co-counsel. In one of the cases, I was third-chair. All of these cases were criminal at either state or Federal levels.

   In addition, I have handled a number of appeals, both dispositive and interlocutory. Also, I handled a number of pre-trial hearings and sentencing hearings as a criminal prosecutor.

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

   I have not practiced before the Supreme Court.

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

    a. the date of representation;

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

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

Kings County District Attorney's Office (Brooklyn, New York)

1. PSNY v. Anthony Deets and Hubert Ramos (Indictment No. 1629/89) –Trial of two individuals accused of raping a developmentally-disabled teenager. Case involved effective cross-examination of DNA expert offered by defense. Defendant Deets was sentenced to fifteen years incarceration; defendant Ramos to ten years. Trial ended in conviction, and defendants sentenced to terms of imprisonment. I was sole counsel.

a. 1990 and 1991
b. Supreme Court of the State of New York, County of Kings, Criminal Division, Judge Anne Feldman
c. Counsel
Opposing counsel: (for Anthony Deets) Joyce David, 16 Court Street Tower Suite # 3604, Brooklyn, NY 11241, 718-875-2000 (for Hubert Ramos) Legal Aid Society, 111 Livingston Street, Brooklyn, NY, 718-722-3100

2. PSNY v. Andrew Garguilo, et al. (Indictment No. 10521/93) – Wiretap investigation, indictment and guilty plea of Genovese LCN family soldier and associates running multi-million dollar sports betting operation. Lead defendant Garguilo received a term of incarceration of three years and was required to forfeit $1.5M. I was lead counsel.

a. 1992-1993
b. Supreme Court of the State of New York, County of Kings, Criminal Division, Judge Marrus
c. Counsel
Co-counsel: Assistant District Attorney David Levine, now at 186 Joralemon Street, Brooklyn, NY 11201, 718-875-1212)
Opposing counsel: (for Garguilo): Judd Bernstein, 1790 Broadway, New York, NY 10019, 212-974-2400

3. PSNY v. Gregory Scarpa, Sr. (Indictment No. 10037/92) – Indictment and guilty plea on firearms possession charges of Colombo LCN family soldier, involved in multiple murder conspiracies during internecine war in Colombo Family. Scarpa's arrest took him off the street for the rest of his life. He pled guilty to multiple possession charges which resulted in his incarceration in New York City jail for two years, which were then followed until his death by a term of federal incarceration. I was sole State counsel in the court proceedings, and in a related investigation of Scarpa organized crime activities.

a. 1992–1993
b. Supreme Court of the State of New York, County of Kings, Criminal Division, Judge Norman George
c. Counsel
Opposing counsel: Steven Kartagener, 225 Broadway, Room 2700, New York, NY 10007, 212-732-9600

U.S. Department of Justice, Civil Rights Division, Criminal Section

4. United States v. Miguel Flores, Sebastian Gomez and Andres Ixcoy (Case. No. #: 2:96-cr-00806-DCN-1, 2, 3) – Indictment and pleas of individuals involved in enslavement of migrant workers in South Carolina and Florida. Flores and Gomez pled guilty to involuntary servitude counts, each receiving sentences of 180 months. I was co-counsel on this case.

a. 1994-1997
b. United States District Court for the District of South Carolina Judge David C. Norton
c. Counsel
Co-counsel: Luis C. deBaca, currently Ambassador at large, Office to Monitor and Combat Trafficking in Person, U.S. Department of State, 202-312-9827, CDeBacaL@state.gov
Assistant U.S. Attorney Marshall Prince, U.S. Attorney's Office, District of South Carolina, 1441 Main Street Suite 500, Columbia, SC 29201, 803-929-3000, marshall.prince@usdoj.gov

Opposing counsel:
(defendant Flores) Diedreich P. Von Lehe III, P.O. Box 1140, Charleston, SC 29402, 843-853-0040, dvl@dvl-law.com
(defendant Gomez) William Lee Runyon, Jr., William L. Runyon Jr. Law Office, Number 3 Gamecock Avenue, Suite 303, Charleston, SC 29407, 843-571-3515, runyonwilliamjr1@bellsouth.net
(defendant Ixcoy) Ann Briks Walsh, Federal Public Defender's Office, P.O. Box 876, Charleston, SC 29402, 843-727-4148, ann_walsh@fd.org

5. United States v. Donald York, Brian Charles, Darryl Hamilton and Michael Brown (Case. No. # 2:95-cr-00071-WOB-1,2,3,4; E.D.Ky.) – Indictment and guilty pleas of individuals on federal civil rights charges arising out of racially-motivated arsons and other racially-motivated attacks in Covington, Kentucky. Defendants York, Charles, Hamilton and Brown were sentenced to terms of imprisonment of ninety-two months, fifty-one months, one hundred ten months, and 28 months, respectively I was co-counsel on this case.

a. 1994-1995
b. United States District Court for the Eastern District of Kentucky, Judge William O. Bertelsman
c. Counsel
Co-counsel:
Assistant U.S. Attorney, Fred Stine, currently Judge Fred Stine, Circuit Court, Campbell County, 330 York Street, Newport, KY 41071, 859-292-6303, FredStine@kycourts.net
Assistant U.S. Attorney Edwin J. Walbourn III, U.S. Attorney's Office-Ft. Mitchell, 207 Grandview Drive Suite 400, Ft. Mitchell, KY 41017-2762, 859-655-3204, Fax: 859-655-3212, E.J.Walbourn@usdoj.gov

Opposing counsel:
(defendant York) Dean A. Pisacano, Hellings & Pisacano, P.S.C. 214 E. Fourth Street Covington, KY 41011, 859-431-7202, Fax: 859-431-2194, deanpisacano@fuse.net
(defendant Hamilton) Darrell A. Cox, 401 Madison Avenue, Covington, KY 41011, 859-491-9088, Fax: 859-491-9854, darrellcox@fuse.net
(defendant Brown) Douglas S. Weigle, Bartlett & Weigle Co., L.P.A., 432 Walnut Street Suite 1100, Cincinnati, OH 45202, 513-241-3992, Fax: 513-241-1816, dweigle@bartlettlaw.com
(defendant Charles) David F. Fessler, Fessler, Schneider & Grimme,14 N. Grand Avenue, Ft. Thomas, KY 41075, 859-291-9075, Fax: 859-291-9165, dfessler@fsgattorneys.com

6. United States v. Ramos-Velasquez, et al. (Case. No. # 3:97-cr-00057-DRD-1 - 16; D.P.R.) –This case involved civil rights charges arising out of the mass beating of over twenty maximum-security inmates by sixteen corrections officers in a prison in Rio Piedras, Puerto Rico. Other than two cooperating defendants, the fourteen remaining defendants ultimately pled guilty to obstruction of justice counts and were sentenced to five months incarceration and five month home detention, to be followed by a term of probation. I was lead counsel during the investigation and through the arraignment and initial conferences in the case.

a. 1994-1997
b. United States District Court for the District of Puerto Rico, Judge Daniel R. Dominguez
c. Counsel
Co-counsel:

William Ho-Gonzalez, currently Deputy Chief, U.S. Department of Justice, Criminal Division, Human Rights and Special Prosecutions Section, Washington, D.C., 202-305-0654, william.ho-gonzalez@usdoj.gov
Hiram Puig-Lugo, currently, Judge, Superior Court District of Columbia, 500 Indiana Avenue NW, Washington, D.C. 20001, 202-879-8370
Debra A. Carr, Director, Division of Policy, Planning and Program Development, U.S. Department of Labor, Office of Federal Contract Compliance Programs, Washington, D.C., 202-693-0104
Assistant U.S. Attorney Jeanette Mercado Rios, U.S. Attorney's Office, District of Puerto Rico, Chardon Tower, Suite 1201, 350 Carlos Chardon Street, San Juan, PR 00918, 787-766-5656
Opposing counsel:
(defendant Juan L. Velasquez-Ramos) Jorge L. Diaz-Reveron, Jorge L. Diaz Reveron Law Office, P.O. Box 191093, San Juan, PR 00919-1093, 787-510-3737, Fax: 787-712-5519, jdiazlaw@prtc.net
(Manuel Colon-Ortiz) Teodoro Mendez-Lebron, Mendez & Mendez Urb. Roosevelt 259 Ing. Ramon Ramos San Juan, PR 00918, 787-765-3920, Fax: 787-765-3933, tmendez_esq@onelinkpr.net
(Ramon De-Jesus-Velasquez): 07/15/1999, represented by Olga M. Shepard-De-Mari, 504 Carlota Matienzo, San Juan, PR 00918-3229, 787-758-4220, Fax: 787-765-8087, oshepard@prtc.net
(Jesus Echevarria-Rivera) Luis R. Rivera-Rodriguez, Luis Rafael Rivera Law Office, Capital Center Building Suite 401, 239 Arterial Hostos, San Juan, PR 00918, 787-763-1780
(Emeterio Lebron-Gonzalez) Carlos Perez-Olivo, 119-29 80th Road Kew Gardens, N.Y. 11415, 718-261-7695, Fax: 718-261-3482
(Edwin Lopez-Pabon) Benny F. Cerezo, Law Offices Benny Frankie Cerezo, 848 Hostos Avenue, Hyde Park, San Juan, PR 00927-4216, 787-758-8013, Fax: 787-758-8014, bfc@cerezo.com
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(Luis Pagan-Conde) Ivan Dominguez-Perez, Dominguez Law Office, 652 Munoz Rivera Ave., Suite 3125, San Juan, PR 00918-4261, 787-250-0220, Fax: 787-250-0295, ivan7@prtc.net
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(Efrain Ramos-Lebron) Raul Santiago-Melendez, 432 Cesar Gonzalez, San Juan, PR 00918, 787-753-0800, Fax: 787-753-3590, santmel@coqui.net
(Jose Ramos-Montanez) Mariangela Tirado-Vales, Mariangela Tirado Vales Law Office, P.O. Box 194786, San Juan, PR 00919-4786, 787-767-2844, Fax: 787-767-2846, mtvlaw@gmail.com

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(Freddy Ruiz-Montanez) Luis A. Medina-Torres, Luis Medina Torres Law Office, P.O. Box 191191, San Juan, PR 00919-1191, 787-765-3795, Fax: 756-7087, lumedina@coqui.net
(Luis Sanchez-Molina) Jorge E. Rivera-Ortiz, Rivera Ortiz Law Office, P.O. Box 1845, Manati, PR 00674-1845, 787-306-2395/787-363-4733, jeroesq@aol.com

United States Attorney's Office, Western District of Pennsylvania

7. United States v. Lazarus Lemon (Case. No. CR 98-45, W.D. Pa.) – Indictment and conviction after trial of Pittsburgh area optometrist on false claims charges arising out of repeated billing for medically unnecessary services to Medicare and Medicaid. Due to his age, defendant was sentenced to a period of probation of sixty months and was required to make restitution to Medicare and Medicaid. I was lead counsel on this case.

a. 1997-1998
b. United States District Court for the Western District of Pennsylvania, Judge Gary L. Lancaster
c. Counsel
Co-counsel:
Richard Linzer, Pennsylvania Medicaid Fraud Control Unit, currently K & L Gates, 210 6th Avenue, Pittsburgh, PA, 412-355 6268
Opposing counsel:
Michael L. Rosenfield, 1808 Law & Finance Building, Pittsburgh, PA 15219, 412-521-2886
Milton Charles Grimes, 3774 West 54th Street, Los Angeles, CA 90043, 323-295-3023, miltgrim@aol.com

8. United States v. Central Ambulance Service, Inc. (Case. No. CR 99-151, W.D. Pa.) – Indictment and guilty pleas of large ambulance company in Western Pennsylvania and its husband and wife owners on false claims charges arising out of systematic billings to Medicare, Medicaid and CHAMPUS for medically unnecessary ambulance services. Defendant Margaret Sanvito was sentenced to a term of imprisonment of twelve months and one day; defendant Anthony Sanvito to a term of probation of three years. The entirety of the company's assets were forfeited to the United States. I was lead counsel on this case.

a. 1997-1998
b. United States District Court for the Western District of Pennsylvania, Judge Gary L. Lancaster
c. Counsel
Co-counsel:
Richard Linzer, Pennsylvania Medicaid Fraud Control Unit, currently K & L Gates, 210 6th Avenue, Pittsburgh, PA, 412-355-6268
Opposing counsel:
Thomas R. Ceraso, 425 Finnin Road, New Kensington, PA 15068, 724-334-0922

9. United States v. John Gardner Black (Case. No. CR 99-203, W.D.Pa.) – Indictment and guilty plea on mail fraud and securities fraud charges against investment advisor who defrauded over fifty Pennsylvania school districts by overvaluing investments which he managed on their behalf. Total loss was $70 million. Defendant was sentenced to a term of imprisonment of forty-one months, and was ordered to pay restitution in the amount of $61.3M. I was lead counsel on this case

a. 1997-2000
b. United States District Court for the Western District of Pennsylvania, Judge Donetta Ambrose
c. Counsel
Co-counsel:
Assistant U.S. Attorney Robert Cessar, United States Attorney's Office, Western District of Pennsylvania, 700 Grant Street, Suite 4000, Pittsburgh, PA 15219, 412-894- 7329, Robert.cessar@usdoj.gov
Opposing counsel:
Richard L. Scheff, Montgomery, McCracken, Walker & Rhoads, 123 Broad Street, 24th Floor, Philadelphia, PA 19109, 215 772-7502, rscheff@mmwr.com

Office of the County Attorney, Montgomery County, Maryland

10. Montgomery County, MD v. Barwood, Inc. (Case. No. 8:09-cv-00567-PJM, D.Md.) – As County Attorney, represented Montgomery County, MD as sole counsel at oral argument in appeal of bankruptcy court order which held that Montgomery County taxi regulations were preempted by the United States bankruptcy code. District Court reversed the holding of the bankruptcy court, finding that county taxi regulations were an exercise of the County's police powers which could not be preempted by the bankruptcy laws. I argued the case, while co-counsel prepared the brief.

a. 2009
b. United States District Court for the District of Maryland, Judge Peter J. Messitte
c. Counsel
Co-counsel:
Deputy County Attorney John P. Markovs, Office of the County Attorney for Montgomery County, MD, 101 Monroe Street, Rockville, MD 20850, 240-777-6725, john.markovs@montgomerycountymd.gov
Associate County Attorney John P. Markovs, Office of the County Attorney for Montgomery County, MD, 101 Monroe Street, Rockville, MD 20850, 240-777-6700
Opposing counsel:
Alan M. Grochal, Tydings and Rosenberg, LLP, 100 E. Pratt Street, 26th Floor, Baltimore, MD 21202, 410-752- 9715, agrochal@tydingslaw.com

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.)

Kings County District Attorney's Office

1. Investigation of Colombo LCN Family Organized Crime – In 1992 and 1993, I was assigned to the Kings County DA's Organized Crime Bureau. A large portion of my time was dedicated to investigations arising out of the internecine war within the Colombo Organized Crime Family. My activities included drafting of search warrant and eavesdropping warrant applications, monitoring execution of eavesdropping warrants, prosecuting indictments, and directing the activities of NYPD and DA's office detectives involved in these cases. As part of this group of investigations, I was cross-designated as a Special Assistant United States Attorney for the Eastern District of New York.

2. Investigation of Gambino LCN Organized Crime Family – I was assigned to a high-level investigation of a senior Gambino family figure, involving preparation and supervision of eavesdropping warrant applications and supervising their implementation.

Ober, Kaler, Grimes & Shriver

3. Health Facilities Association of Maryland Report on Medicaid Eligibility Delays – Lead attorney in drafting report submitted to Maryland Governor Robert L. Ehrlich.

4. Representation of accounting firm executive in multi-target tax shelter fraud investigation – I was co-counsel during the investigation.

5. Represent correctional health vendor in resolving allegations by a state attorney general's office concerning Medicaid billing for health services rendered to prisoners – I was sole responsible attorney on this matter.

6. Representation of hospital related to potential violations of regulations under the Clinical Laboratory Improvement Amendments of 1988 and associated administrative resolution – I was sole responsible attorney on this matter.

7. Representation of hospital in resolution of investigation by Medicare, U.S. Department of Justice Civil Division, and U.S. Postal Inspection Service of alleged billing for medically unnecessary interventional cardiology services – I was sole responsible attorney on this matter.

8. Representation of nursing home in resolving investigation of failure of care health care fraud allegations – I was sole responsible attorney on this matter.

County Attorney, Montgomery County, Maryland

9. Fillmore Theatre Agreement – I served as lead counsel for the County in negotiation of an agreement with Lee Development Group, Inc. for conveyance of the previous J.C. Penney site in Silver Spring, MD, which was then leased by the County to Live Nation/Ticketmaster as site for the Silver Spring Fillmore Theater.

10. ARRA Audit Committee Montgomery County – In my role as County Attorney, I convened and led an audit committee whose role was to monitor implementation and utilization of ARRA grants.

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 courses.

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.

    None.

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 OGE 278.

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

    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 Homeland Security's Designated Agency Ethics Official (DAEO) 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 DAEO and that has been provided to this Committee. I am not aware of any other potential 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.

       In the event of a potential conflict of interest, I would consult the Department's DAEO.

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 an attorney in private practice from 2001 to 2007, I accepted court appointments at a substantially reduced fee in the U.S. District Court for the District of Columbia, devoting over 400 hours of service.

As an attorney in private practice from 2005 to 2007, I provided *pro bono* support to Legal and Human Resources Department of CASA de Maryland, on whose Board I was during that period, and also provided training on sexual harassment issues. These projects entailed approximately 100 hours of service.

Finally, I served on the Advisory Committee on Admissions and Grievances for the United States Circuit Court for the D.C. Circuit from 2006 to 2012, providing many hours of service in both committee meetings and reviewing cases and preparing opinions.

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	6	358	02	Notes payable to banks-secured			
U.S. Government securities-add schedule	18	280	00	Notes payable to banks-unsecured			
Listed securities-add schedule	422	449	29	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	40	000	00
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	586	552	77
Real estate owned-add schedule	888	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	23	625	00				
Cash value-life insurance							
Other assets itemize:	1747	834	34				
Thrift Savings Retirement Plan	271	573	64				
Ober Kaler Grimes & Shriver Retirement Plan (mutual fund holdings described in OGE 278)	207	783	43				
Montgomery County Retirement Savings Plan(mutual fund holdings described in OGE 278)	48	077	38				
TIAA-CREF Retirement Fund (Spouse) (mutual fund holdings described in OGE 278)	225	000	00				
MetLife Retirement Fund (Spouse) (mutual fund holdings described	241	217	61				

in OGE 278), 241,217.61							
Fidelity Inherited IRA Money Market Fund, $736,282.31	736	282	31				
Maryland 529 Accounts for DC1 and DC2,	18	500	00				
				Total liabilities	686	552	77
				Net Worth	2014	398	80
Total Assets	2686	921	60	Total liabilities and net worth	2686	921	60
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	None			Are any assets pledged? (Add schedule)	No		
On leases or contracts	None			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						

Committee on the Judiciary – Global Schedule

U.S. Government Securities

U.S. Savings Bonds for DC1 and DC2 (dependent children), $18,280.00

Listed Securities

Frontier Communications Corporation Common Stock, $319.29
Verizon Communications, Inc. Common Stock (CUS), $12,829.31
Apple, Inc., Common Stock, $4,946.40
McDonalds Corp., Common Stock, $4,844.50
Ford Motor Co., Common Stock, $3,510.00

Real estate owned

Residence in Garrett Park, MD

Real estate mortgages

Wells Fargo Home Mortgage, Mortgage on primary and sole residence, $586,552.77

U.S. Government Securities

U.S. Savings Bonds for DC1 and DC2 (dependent children), $18,280.00

Listed Securities

Frontier Communications Corporation Common Stock, $319.29
Verizon Communications, Inc. Common Stock (CUS), $12,829.31
Apple, Inc., Common Stock, $4,946.40
McDonalds Corp., Common Stock, $4,844.50
Ford Motor Co., Common Stock, $3,510.00

Real estate owned

Residence in Garrett Park, MD

Real estate mortgages

Wells Fargo Home Mortgage, Mortgage on primary and sole residence, $586,552.77

Other Assets

Thrift Savings Plan Retirement Fund, $271,573.64

Ober, Kaler Grimes & Shriver Retirement Plan (mutual fund holdings described in OGE 278), $207,783.43

Montgomery County Retirement Savings Plan (mutual fund holdings described in OGE 278), $48,077.38

TIAA CREF Retirement Fund (Spouse) (mutual fund holdings described in OGE 278), $225,000

MetLife Retirement Fund (Spouse) (mutual fund holdings described in OGE 278), $241,217.61

Fidelity IRA Money Market Fund, $736,282.31

Maryland 529 Accounts for DC1 and DC2, $18,500.00

United States Senate
Committee on the Judiciary
March 12, 2014

Statement of Leon Rodriguez, Nominee for Director – United States Citizenship and Immigration Services (USCIS)

Chairman Leahy, Ranking Member Grassley, Esteemed Members of the Judiciary Committee:

It is a great honor to be sitting before you today. I am here today as a member of the first in three generations of my family that has been able to live his adult life in the country where I was born. My grandparents fled anti-Semitism and poverty in Turkey and Poland in the late teens and early 20's to come to Cuba where my parents were born. Within a generation, my parents were fleeing the oppressive Castro regime in Cuba and seeking a fresh start in our wonderful country. I have been blessed to be able to raise my own family here, and I have the pleasure this morning of being accompanied by my wife Jill Schwartz, a research physician and my beautiful children, Talia and Elias.

I am an ardent patriot, one who believes that we are defined as Americans by the belief that there is always a new frontier to be reached, and that any wrong can and should be righted. I was raised in a family where two values mattered, devotion to family and to hard work – for me, these also form the essence of what it means to be an American.

With this personal history, I could think of no better opportunity than to lead the agency that extends the hand of welcome to new Americans and that works to ensure that those who wish us harm are not welcomed in our country.

As we continue to engage in the urgent national conversation about the future of immigration policy, the nation must have confidence that the leadership of U.S. Citizenship and Immigration Services has both the right abilities and values. That leadership must understand and be devoted to the nation's immigration laws – and bring the kind of judgment, work ethic, and talent needed to run an agency of

18,500 dedicated men and women that on any given day welcomes an average of 3,400 naturalized citizens, including a number bravely serving in our armed services, and otherwise adjudicates a daily average of 28,400 applications for immigration benefits.

I have been fortunate to have a varied and successful career in both government and the private sector that I believe uniquely prepares me for this important post. The first thirteen years of my career were spent as a state and federal prosecutor in three different offices. As an Assistant District Attorney in Brooklyn, New York assigned to investigate organized crime cases, and as a health care and white collar fraud prosecutor in Pittsburgh, Pennsylvania, I learned how to investigate violent criminal conspiracies and to detect even the most carefully concealed frauds. I believe these skills will serve me well as the head of an agency dedicated safeguarding the integrity of our immigration system. As a civil rights prosecutor in the U.S. Department of Justice Civil Rights Division, I led one of the early prosecutions of enslavement of migrant agricultural workers.

I have also held a variety of leadership positions in both federal and local government. As County Attorney for Montgomery County, Maryland, I counseled our police chief and County Executive as we sought to guarantee public safety and develop common-sense community policing policies. Now, as the Director of the Department of Health and Human Services Office for Civil Rights, I have lead the transformation of an agency that among other responsibilities, enforces the nation's health information privacy laws, which I know are of significant interest and importance to the members of this Committee. During my tenure, we have established the Office for Civil Rights as a respected enforcement presence in the health information technology sector, adapted our internal business processes to meet ever-growing intake volumes, while at the same time adhering to a high-impact enforcement model that ensures that the most important cases are handled timely and effectively. We have for the first time ever created a national basic skills academy for civil rights investigators that has been attended by

investigators from numerous agencies throughout the federal government.As I prepare for the opportunity to bring these skills to USCIS, I see several critical challenges that lie ahead:

1) Ensuring the integrity of all of USCIS' programs, by conducting the adjudication of immigration benefits in a manner that protects the American people from violence and from economic harm.
2) Continuing and completing the modernization of USCIS's business processes.
3) Providing expert advice on immigration policy matters to the Executive branch and to the Congress, as we all work to find solutions that honor our tradition as a land of opportunity and as a refuge for the persecuted.

If confirmed, I pledge to you that I will work diligently with this Committee to be responsive to your requests.

As the son and grandson of immigrants, who understands and loves the special promise of the United States of America, and as an experienced prosecutor and government agency leader I understand the need for an honest and efficient immigration adjudication process. If confirmed, I look forward to embracing this important challenge. Thank you so much for affording me the opportunity to address you today and to pursue this tremendous opportunity to serve the American people. I humbly and respectfully ask for your favorable consideration of my nomination.

STATEMENT OF SENATOR PATRICK LEAHY (D-VT.),
CHAIRMAN, SENATE JUDICIARY COMMITTEE
HEARING ON THE NOMINATION OF LEON RODRIGUEZ
TO BE DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES
MARCH 12, 2014

Today the Senate Judiciary Committee is holding a hearing to consider President Obama's nominee to be Director of the United States Citizenship and Immigration Services (USCIS), Leon Rodriguez. This office within the Department of Homeland Security is responsible for administering and processing asylum and refugee applications, immigration benefits, and naturalization and visa petitions, including the EB-5 Regional Center Program. This office must have a qualified director at the helm.

Since its inception in 1993, the EB-5 program has spurred capital investment and job creation across the country and particularly in Vermont. Vermont's Regional Center is a national leader in using this federal jobs program. I have seen this program transform regions of the state in extraordinary ways that will have lasting positive impacts for several Vermont businesses. In the way the program has been overseen at the state level and applied throughout the state, Vermont's process has become the gold standard for other states to emulate. Last year the Senate Judiciary Committee unanimously approved my amendment to enact broad improvements to this program during the Committee's consideration of comprehensive immigration reform legislation. This amendment was the product of cooperation with numerous stakeholders, USCIS, and the White House, and I was proud that it drew such strong support. It has now been more than nine months since the full Senate passed historic immigration reform legislation with a strong bipartisan vote of 68-32. The country cannot continue to wait. It is time for the House of Representatives to take up and pass the Senate bill, which included the improvements to EB-5 that I have long sought.

I have met with Mr. Rodriguez and found him to be an excellent candidate to lead such an important division. He has vast leadership and management experience, spanning both public and private practice, and often intersecting with issues of national origin and immigration status. He also understands how important the EB-5 program is to states like Vermont. He understands the challenges facing EB-5, including inexcusably long application processing delays, and he is committed to working with us in Congress to strengthen the program and make it permanent. I applaud President Obama for selecting Mr. Rodriguez and I look forward to advancing his nomination in this Committee and on the Senate floor.

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Statement of Senator Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary regarding the Nominations of:

Cheryl Ann Krause, to be United States Circuit Judge for the Third Circuit
Richard Franklin Boulware II, to be United States District Judge for the District of Nevada
Salvador Mendoza, Jr., to be United States District Judge for the Eastern District of Washington
Staci Michelle Yandle, to be United States District Judge for the Southern District of Illinois
Leon Rodriguez, to be Director of the United States Citizenship and Immigration Services, Department of Homeland Security

March 12, 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.

I'd like to remind my colleagues that the Senate has held more judicial nomination hearings in the first fourteen months of President Obama's second term than the Senate held during the entire 109th Congress.

These numbers demonstrate how busy and productive the Judiciary Committee has been with respect judicial nominees which is a testament of the good faith effort Senator Leahy and I have made as Chairman and Ranking Member.

Shortly after this hearing, the Senate will vote on five more judicial nominees. Upon confirming these five nominees, the Senate will have confirmed 59 lower court Article III judges thus far in President Obama's second term. By comparison, at this point in President Bush's second term, the Senate had confirmed only 25 lower court Article III judges. By now, the Senate has approved of 232 of President Obama's Article III judges and rejected just two.

In fact, the Senate has now confirmed more of President Obama's Article III judicial nominees in just over 14 months of the 113th Congress than it did for President Bush during the entire two years of the 109th Congress.

Again, I welcome the nominees and their families today and look forward to their testimony.

Senator Dianne Feinstein
Written Questions to Leon Rodriguez, Nominee to be Director of the
U.S. Citizenship and Immigration Services

Backlogs of Family-Based Petitions

USCIS is currently taking an average of 10 months to process the family-based I-130 petitions that U.S. citizens and lawful permanent residents must file to sponsor their relatives for lawful permanent resident status. The processing time for such cases is normally approximately five months.

I understand that USCIS has been routing some cases to less busy processing offices known as "regional centers" to reduce the backlog, and anticipates getting their processing times back to normal by May 2014.

- **Should you be confirmed, will you commit to reducing the processing times for family-based petitions so that families may be reunited as soon as possible?**

Senator Chuck Grassley
Questions for the Record

Cheryl Ann Krause
Nominee, United States Circuit Judge for the Third 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 Third 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. 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?

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 Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

    a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

    b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

25. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

26. 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 Supreme Court precedents faithfully and giving them full force and effect, even if you personally disagree with such precedents?

27. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v.*

Windsor. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

   i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

   ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

   iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

   iv. Are you committed to upholding this precedent?

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.
[3] *Id.* 2691.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

28. What would be your definition of an "activist judge"?

29. Please describe with particularity the process by which these questions were answered.

30. Do these answers reflect your true and personal views?

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

Senator Grassley
Questions for the Record

Richard Boulware,
Nominee: U.S. District Judge for the Southern District of Illinois

1. In your capacity as an officer of the Las Vegas NAACP, you have testified on their behalf to the Nevada Legislature on a variety of topics. Many of the issues dealt with criminal law and the effect on minorities. Your positions have, at times, been at odds with the law enforcement community in Las Vegas, specifically the District Attorney's office.

   Anyone who comes before a federal judge should feel that they will get a fair shake. You have been an advocate on a number of issues and you have also served as a federal public defender. I want to ensure you will impartially hear both sides. With that in mind, if you are confirmed, what will your approach to criminal law be?

2. Have you ever witnessed any federal judges approach a set of legal facts in a case differently because of their ethnicity or background?

3. You have expressed disappointment with the Supreme Court's ruling in the Shelby County Case.

   a. Do you still believe the Court decided *Shelby* incorrectly?

   b. Regardless of whether this remains your view, please explain why you believed, at the time of the interview, the Court decided *Shelby* incorrectly.

   c. What assurances can you give us that you will follow all applicable precedent, if confirmed, despite your own personal preferences?

4. According to your questionnaire, you have spent the majority of your career handling criminal matters. Since being nominated, what steps have you taken to prepare yourself to handle the complex civil cases that would come before you if you were confirmed?

5. What is the most important attribute of a judge, and do you possess it?

6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

7. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

8. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

    a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

        i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

        ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

        iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

        iv. Are you committed to upholding this precedent?

    b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

        i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

        ii. Will you commit to give this portion of the Court's opinion full force and effect?

    c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

        i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

        ii. Will you commit to give this portion of the Court's opinion full force and effect?

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.
[3] *Id.* 2691.

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

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?

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

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. 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?

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

Salvador Mendoza, Jr.,
Nominee: U.S. District Judge for the Eastern District of Washington

1. You are the judge currently presiding in the *State of Washington v. Arlene Flowers* case. This case involves a flower shop's denial of services to a same-sex couple for their ceremony. I recognize this case is currently pending.

   a. I understand that you have ruled on several pre-trial motions. Please describe the issues presented, your ruling, and the reasons therefore.

   b. Other than those orders already provided, have you issued any other orders since you were nominated? If so, please provide them.

2. According to press reports you said this about the case, "Believe me, ladies and gentleman, if there was a way ethically that I could not hear this case, I wouldn't." What did you mean by this statement?

3. As a judge, you have only handled state matters and as an attorney, you indicated that the majority of your practice was in federal court.

   a. Have you handled any trials in federal court?

   b. You questionnaire indicates that approximately twenty percent of your legal practice has been in federal court. Please elaborate on the type of legal work this has included (e.g., motions practice, trials, etc…).

   c. What steps do you plan to take to prepare yourself to handle federal matters, if confirmed?

4. During law school you wrote a comment that criticizes the Supreme Court's decision in *Hernandez v. New York* saying that it was "wrongly decided because it fails to take into account the effects of racism in our justice system, the anti-immigrant hysteria gripping the country, and the practical effect on Latinos."

   a. What is your current understanding of the law in this area?

   b. What assurances can you give the Committee that you will faithfully apply Supreme Court precedent in this area, if the matter was to arise before you?

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. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

   a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

      i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

      ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

      iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

      iv. Are you committed to upholding this precedent?

   b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

      i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

      ii. Will you commit to give this portion of the Court's opinion full force and effect?

   c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

      i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.
[3] *Id.* 2691.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

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?

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

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

Staci Yandle,
Nominee: U.S. District Judge for the Southern District of Illinois

1. In 2003 you gave a talk on gender and its impact in litigation and you said, "As female trial attorneys, we have a natural sensitivity to gender issues and, therefore are uniquely positioned to effectively address such issues during the litigation process." In your view, should gender make a difference in the decision making process of a judge? Please explain.

2. During an interview in 2012 on ethics and professionalism you said "life in general as a black female is challenging and rough." How does your background affect how you have practiced as an attorney? If confirmed, how will your background affect your judicial decision- making process?

3. It appears you have limited experience in the area of criminal law. Since being nominated, have you taken any steps to get up to speed in federal criminal law? What steps do you plan to take to prepare, if confirmed?

4. According to your questionnaire, the majority of your legal practice has been in state court.

   a. Have you handled any trials in federal court?

   b. You questionnaire indicates that approximately twenty percent of your legal practice has been in federal court. Please elaborate on the type of legal work this has included (e.g., motions practice, trials, etc…).

   c. What steps do you plan to take to prepare yourself to handle federal matters, if confirmed?

5. Why did you join the Illinois Gaming Board? What was your interest in casino regulation?

   a. According to press reports, the governor picked a new board member after you voted against a proposed casino. What were the circumstances surrounding your replacement?

6. You were a member of the Civil Rights Commission which published several reports during your time with them. In you questionnaire, you said that you voted on the listed reports. Please identify *how* you voted on each report. For any report you voted against please provide your reasons for doing so.

7. In an interview you gave to the Illinois State Bar Association on attorneys facing the challenges of diversity in 2008 you said, "Many of the plaintiffs who need representation look like me and there are many things, differences in our life experience in terms of understanding and perception and in telling your client's story to a jury, that if you don't totally understand it, that comes with difficulty. So what I'm saying to you is that our

community does not have sufficient number of attorneys like us to represent us." If a judge is a different ethnicity from the litigants before him or her or has had different life experiences, how does or should that affect the judge's approach to the matter before him or her?

8. What is the most important attribute of a judge, and do you possess it?

9. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

10. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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?

11. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

    a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

        i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

        ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

        iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

        iv. Are you committed to upholding this precedent?

    b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

        i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

12. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

13. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

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[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

14. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

15. 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.

16. 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?

17. 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?

18. If confirmed, how do you intend to manage your caseload?

19. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

20. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

21. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees". You have indicated that you are a member of the AAJ.

    a. Will you please explain your interest in and your work for the AAJ?

    b. 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.

    c. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

22. Please describe with particularity the process by which these questions were answered.

23. Do these answers reflect your true and personal views?

Questions for the Record for Leon Rodriguez

Nominee for Director of U.S. Citizenship and Immigration Services, U.S.D.H.S.

March 19, 2014

1. If confirmed as Director of U.S. Citizenship and Immigration Services (USCIS), you will be responsible for ensuring that foreign nationals receive only the benefits to which they are entitled under the immigration laws. Do you have any background or leadership experience in the area of immigration law or immigration policy?
2. In what ways, if any, would you depart from former Director Alejandro Mayorkas' policies?
3. Do you find any of former Director Mayorkas' actions, or any current DHS policies, to be objectionable? If so, what? What would you do differently?
4. During your confirmation hearing, I asked you if you would expand the Deferred Action for Childhood Arrivals (DACA) program. However, you did not answer. Please explain what actions you may take regarding the program, if confirmed.
5. The previous Director of USCIS implemented DACA without requiring the payment of a fee to cover the cost of the actual adjudication of the DACA application. The fee that DACA applicants currently pay is only the fee covering the adjudication and processing of the Employment Authorization Document and related biometrics collection fee. USCIS adjudicatory resources had to be reallocated to handle the hundreds of thousands of DACA cases and, as a result, processing of family-based immigrant visa petitions filed by U.S. citizens on behalf of foreign relatives has stretched from 5 to as many as 15 months.
    a. Do you support the previous Director's decision to not charge a substantive adjudication fee for DACA applications?
    b. If confirmed, do you intend to repeat the error of the previous USCIS Director and not charge a fee for the DACA applications when processing the upcoming wave of DACA renewal applications, thus causing further harm to U.S. citizens who have filed family-based petitions?
6. Aside from charging an adjudication fee for DACA applications, what other steps, if confirmed, would you immediately take to restore processing times for immediate relative petitions to their pre-DACA periods?
7. The previous Director of USCIS required that all potential denials of DACA cases be sent to headquarters for review. Will you continue this practice, or will you allow adjudicators in the field to make these decisions in a non-political manner?
8. Whistleblowers have informed me that USCIS refuses to share information related to DACA applicants with U.S. Immigration and Customs Enforcement (ICE) officials. Will you commit to improving information sharing with other law enforcement officials so that we can better protect the homeland and ensure that only those eligible are receiving immigration benefits, including DACA?
9. What actions would you consider taking to root out fraud and abuse in the DACA program? Specifically, what actions do you plan to take with regard to diploma mills?
10. At your hearing, Senator Durbin asked for your view on whether prosecutorial discretion exists in the context of immigration that he believes justifies the use of Executive Order to circumvent the proper constitutional process to modify the law: a bill signed into law

after passing both the Senate and the House of Representatives. In your response, you acknowledged your view that prosecutorial discretion exists in the immigration enforcement context. But you also said that such power is "not unlimited" and is "not uncabined."

a. Based on your experience, what is the proper role of prosecutorial discretion in the criminal context? What are its proper limitations, if any?
b. In your view, what is the proper role of prosecutorial discretion in the immigration enforcement context? What are its proper limitations, if any?
c. How would you describe the differences in the proper limitation of prosecutorial discretion between the criminal and immigration enforcement contexts?
d. Can an Executive Order overstep your view of the proper bounds of prosecutorial discretion in the immigration enforcement context?
e. If confirmed, what will you do if you are instructed by the Administration to follow an Executive Order that you believe exceeds the limitations of exercising prosecutorial discretion in immigration enforcement?

11. If USCIS denies an immigration benefit to an individual in the country, and that person does not have legal authority to remain, will you, if confirmed, require that USCIS turn over all documentation and proactively cooperate with ICE to initiate removal proceedings?
12. In the more than four years that she served as Secretary of the DHS, Secretary Napolitano never met with employees representing either the USCIS or ICE unions. There was a lot of discontent amongst the thousands of adjudicators and agents in the field who worked hard every day to adjudicate petitions and applications, and to enforce the laws. The National Citizenship and Immigration Services Council represents 12,000 agency employees. This union represents staff within USCIS who doesn't agree with the administration's plan to grant legal status to people here illegally. These officers also feel pressured to approve petitions and applications and fear retaliation if they do not "get to a yes." Will you meet with representatives from the National Citizenship and Immigration Services Council before you are confirmed so you understand their concerns?
13. Serious national security issues have come to light in recent months with respect to the EB-5 Regional Center program, which allows foreign nationals to obtain a green card if they invest in certain investment projects in the United States. In December 2013, the Homeland Security Inspector General identified concerns with USCIS's management of the Program. The OIG concluded that USCIS cannot administer and manage the EB-5 Regional Center program effectively, and that there's no evidence that there's an economic benefit to the country. In an internal memo to the DHS Secretary, ICE identified several vulnerabilities with the EB-5 program, including economic espionage, use by foreign governments for espionage purposes, use by terrorists, and money laundering. ICE's principal recommendation was that the EB-5 program be terminated. Other countries have similar concerns. Canada ended their investor visa program and the UK is likely to put severe restrictions on their own, including doubling the investment amount.
    a. Do you concur that more needs to be done to reduce national security risks and to prevent fraud and abuse in the program?
    b. Do you have any plans to administratively improve the program?

c. Would you support increasing the minimum EB-5 investment amount – something that would be within your authority to accomplish by regulation? If not, why not?
d. Will you make it a priority to reform the program if you are confirmed?
e. Would you consider placing a moratorium on the program if you determine, after being confirmed, that there are significant and serious national security issues?

14. E-Verify has been an effective tool for employers to determine if they have a legal workforce. This program will be critical if an immigration bill moves forward in Congress because it will very likely be made mandatory for all businesses.
    a. Do you support making E-Verify permanent and mandatory for all employers?
    b. Do you have any plans to change the E-Verify program absent an act of Congress?
15. If confirmed, it will be your job to help implement our nation's immigration laws. The administration is publicly pushing an immigration bill that *grants legal status to people who are in the country illegally.* Do you agree with the administration's support for Senate Bill 744?
16. Should people here illegally be eligible for immigration benefits, including legal status? If so, should those individuals be responsible for all costs associated with it? Should taxpayers shoulder any of the burden?
17. Should people here illegally who are in removal proceedings be eligible for immigration benefits, including legal status?
18. Should people who are subject to an order of removal from the United States be eligible for immigration benefits, including legal status?
19. Should an illegal immigrant convicted of a felony criminal offense be eligible for immigration benefits, including legal status?
20. Should an illegal immigrant convicted of multiple misdemeanors be eligible for immigration benefits, including legal status?
21. Should an illegal immigrant with even a single sex-related offense be eligible for immigration benefits, including legal status?
22. Should an illegal immigrant with even a single drunk driving offense be eligible for immigration benefits, including legal status?
23. Should illegal immigrant gang members be eligible for immigration benefits, including legal status?
24. If an illegal immigrant provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions? If an illegal immigrant provides information in an application that clearly renders him ineligible and commits a serious crime that would warrant his immediate removal, shouldn't the government be able to use that information to place him in removal proceedings?
25. Should people here illegally be required to submit to an in-person interview with adjudicators when applying for immigration benefits, including legal status? Would you not agree that, at a minimum, any illegal immigrant with a criminal record should be required to be interviewed as part of any sort of legalization process?
26. Should people here illegally that have been denied legal status be placed in immigration proceedings and removed? If not, why not?
27. If the Secretary of Homeland Security must revoke a visa for someone on U.S. soil, should that decision be reviewable in the U.S. courts?

28. As a result of some of the actions taken by Secretary Napolitano, particularly her Directive entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," several ICE agents, including the President of the ICE agents and officers union, the National ICE Council, Chris Crane, filed a complaint against Secretary Napolitano stating that "the Directive commands ICE officers to violate federal law . . . violate their oaths to uphold and support federal law, violates the Administrative Procedure Act, unconstitutionally usurps and encroaches upon the legislative powers of Congress, as defined in Article I of the United States Constitution, and violates the obligation of the executive branch to faithfully execute the law, as required by Article II, Section 3, of the United States Constitution." Moreover, Kenneth Palinkas, the president of the National Citizenship and Immigration Services Council, has likewise charged that USCIS employees are required by the agency "to grant immigration benefits to those who, under law, are not properly eligible." In short, the administration's policies have caused a great deal of discontent among immigration officers and agents, to say the least. Accordingly, if confirmed, what will you do to improve the morale of immigration officers who are concerned about these non-enforcement protocols issued by the administration?
29. All federal employees take an Oath, codified at 5 U.S.C. § 3331, to "support and defend the Constitution of the United States ... and that [they] will well and faithfully discharge the duties of the office on which [they] about to enter." How can an employee fulfill his or her oath if such an employee is threatened with reprisal for executing the laws enacted by Congress to which they are entrusted to administer, and for not complying with an administratively-created command to the contrary?
30. In January 2012, the DHS Inspector General released a report criticizing USCIS for pressuring its employees to rubberstamp applications for immigration benefits. In that report, nearly 25 percent of USCIS officers surveyed said supervisors had pressured them to approve applications that should have been denied.
    a. Do you believe that current USCIS screening procedures are sufficient to prevent fraud and threats to public safety and national security?
    b. If confirmed, would you change these policies? If so, how?
    c. Will you commit to ensuring that USCIS background checks for every applicant for immigration benefits are properly and effectively conducted?
    d. Should employee performance evaluations at USCIS be linked to the number of applicants for benefits approved, or adjudicated?
31. Do you believe it is appropriate for the Director of USCIS to personally intervene in a specific case and overrule line adjudicators at a Service center?
32. To what degree should the Director of USCIS ever become personally involved in drafting adjudicatory decisions?
33. Recently, the U.S. arrested a legal immigrant in Illinois who had been convicted and served ten years in an Israeli prison for her role in two terrorist bombings. According to press reports, she was able to obtain both a green card (in 1995) and citizenship (in 2004) by simply omitting her conviction on her applications. She continued to live in the U.S. for years despite the fact that the conviction was public knowledge. Are you confident that the current processes for screening applicants for immigration benefits are able to identify and keep out criminals and individuals who pose a threat to national security?
34. DHS currently receives a portion of funds from each H-1B and L-1 visa application, deposited into the H-1B and L Fraud Prevention and Detection Account, and provides these

funds to USCIS for fraud and abuse prevention efforts. ICE has a responsibility to investigate and prosecute the cases but does not receive any of these funds. Will you commit to ensuring that funding from the H-1B and L Fraud Prevention and Detection Account is properly shared among DHS components for both fraud prevention and for prosecution of employers who misuse the program?

35. Oversight conducted by several Senate Committees has revealed that DHS is not enforcing the law prohibiting the admission into the country of those who would be a public charge. This has been confirmed by ICE and USCIS officers and data on both admissions and removals. Oversight also discovered a number of administration activities, including advertisements in immigration materials and at foreign embassies, encouraging foreign nationals to use federal welfare programs. Can you please describe, in detail, how you would restore vigorous enforcement of the public charge law to protect taxpayers, including what efforts you would undertake to reduce noncitizen enrollment in means-tested welfare programs? Please be specific in your answer.
36. Are you aware of any discussions within the Department to establish a program for Syrian nationals to obtain a special "parole" status to live and wait – potentially for many years -- for their immigrant visas while in the United States? If so, can you please provide any details? Regardless of your knowledge of such discussions, if such a program were to be done, would you believe it to constitute an overreach of Executive authority that not only circumvents the Immigration and Nationality Act's numerical caps but also circumvents standard refugee processing protocols?
37. On February 27, 2014, the Government Accountability Office (GAO) released its report on the Department of Homeland Security's (DHS's) management of the Optional Practical Training (OPT) program – an immigration benefit that allows foreign students to obtain temporary work in their major area of study during and after completing an academic program in the United States. The GAO report reveals extensive and alarming DHS mismanagement of the OPT program, proving serious program integrity issues that bring to light potential risks to national security. The report says (1) foreign students, sometimes aided by school officials, are currently abusing the OPT program to acquire unauthorized employment in the United States, and (2) due to lack of oversight by DHS, no one in the Federal Government presently knows where tens of thousands of these foreign students are located, who they are working for, how much they are being paid, or what they are doing while staying in the United States. While Immigration and Customs Enforcement has direct supervision over the OPT program, USCIS does approve OPT work authorizations upon the recommendation of Designated School Officials (DSOs). The use of OPT has increased dramatically over the years, and vulnerabilities in the program threaten the homeland. What steps will you take, if confirmed, to overhaul the program and improve oversight of those who apply or receive OPT?
38. Every year, members of Congress introduce private relief bills for individuals who may have exhausted all administrative remedies to remain in the United States. Upon introduction, Immigration and Customs Enforcement does a report for Congress on the individual. If confirmed, will you commit to providing all members of the Judiciary Committee with the individual's A-file and any other documentation retained by the agency so that the private relief bill can be properly reviewed and considered?
39. The Senate Judiciary Committee has heard testimony from individuals who have been defrauded by foreign nationals who have utilized the VAWA self petitioning process to obtain legal status in the country. Individuals have claimed that foreign spouses will

fraudulently marry and falsely claim abuse in order to obtain a green card. Many of these defrauded Americans say their side of the story was never heard by USCIS. If confirmed, will you commit to reviewing the process? Will you consider requiring USCIS adjudicators to gather evidence from and interview the accused spouse and other witnesses?

40. In the Fiscal Year 2015 DHS budget, the administration requests $3 million to create a nonprofit entity called the "U.S. Citizenship Foundation." This Foundation would be aimed at "expanding instruction and training on citizenship rights and responsibilities" and "promote the importance of United States citizenship."
    a. Do you think it is necessary, in these difficult budget times, to use taxpayer dollars to create a nonprofit citizenship foundation?
    b. Do you believe the creation of this Foundation can only be done by statute? In other words, if confirmed, will you create this Foundation even if Congress does not appropriate funding for the project?
41. During your hearing, I asked you questions about a booklet entitled "Warning! Protect Yourself From Immigration Raids!" published by CASA de Maryland while you were still a board member.
    a. During the questioning, you said that you were unaware of that specific publication until I mentioned it during the hearing, despite the booklet receiving considerable press coverage at the time. To the best of your recollection, is that still true: that you were unaware of that booklet until your hearing?
    b. The booklet encouraged undocumented workers to not to give law enforcement a name, even while acknowledging that it is a crime in some jurisdictions. Do you believe that such advice is sound?
42. Also while you were a member of the board, CASA de Maryland was very vocal in expressing its outrage towards some citizens who recorded their observations of local congregating places of day laborers. I am not interested in debating the appropriateness of the Maryland minutemen's actions nor of the merits of a measured response. My concern is with the official statements made by CASA de Maryland on what I find to be a troubling escalation of the conflict. In response to the Minutemen's actions, the then-executive director stated that CASA de Maryland would "picket their houses, and the schools of their kids, and go to their work." The official CASA de Maryland spokeswoman defended these statements saying "it's perfectly legitimate of us to go to the Minutemen's homes and also protest."
    a. At the time did you think it was acceptable for protestors to target unsuspecting children at their schools or homes?
    b. If not, did you personally say anything publicly to contradict these official CASA de Maryland threats?
    c. If you did not, do you believe you should have?
43. If I were a line immigration adjudicator or enforcement official and I learned about certain aspects of your record (e.g., you oversaw an organization that encouraged undocumented workers to break the law, opposed a lawful and common sense solution to strengthen national security in the form of the REAL ID Act, and threatened to target children in retaliation over the actions of some citizens concerned about unlawful immigration). I would be very hesitant to trust that this new leader would help and support me to carry out successful immigration enforcement. How do you plan to

convince over 18,000 employees that you, as their new leader, will be one hundred percent supportive of their efforts to lawfully enforce federal immigration law and change any perception or preconceived notions these agents and employees might otherwise have formed about you?

44. Do you believe whistleblowers who know of problems with matters of national security should be prevented from bringing that information to Congress?
45. Will you commit to ensuring that every whistleblower is treated fairly and that those who retaliate against whistleblowers are held accountable?
46. At your hearing, we discussed the existence of emails between career prosecutors and leadership concerning the Department's declination to prosecute in the New Black Panther Party case. You acknowledged, as Chief of Staff, that you were part of the team that helped prepare Assistant Attorney General Thomas Perez for his testimony before the U.S. Commission on Civil Rights. During your hearing, your testimony on this point was somewhat unclear.
    a. Were you aware, prior to Assistant Attorney General Perez's testimony before the U.S. Commission on Civil Rights that there was correspondence between political leadership and career attorneys about the declination to prosecute?
    b. Did you make Mr. Perez aware of this correspondence prior to his testimony?
    c. Were you present when Mr. Perez testified before the Commission?
    d. Did you take any steps to correct the record at any point after he provided his testimony?
47. At your hearing, you assured me that your view of Congressional Oversight was that there needed to be a strong flow of communication between your agency and the Congress. Should you be confirmed, how will your approach to responding to requests from Congressional Members and Committees differ than the approach used by DOJ while you were there?

Senator Charles E. Grassley
Questions for the Record for Leon Rodriguez
Nominee for Director of U.S. Citizenship and Immigration Services, U.S.D.H.S.

Resubmission of Selected Questions

In a number of your responses to my previous submission, you replied that, if confirmed, you would look into the matter. The implication is that you are not able to be informed of these matters until you are confirmed. Yet, it is clear that you are able to get the necessary information from USCIS to answer specific answers to my questions (see e.g., your responses to Questions 6, 13.a., 30.d., 33, and 40.a.). Using the resources that are clearly made available to you, please respond to my earlier questions to which you often just repeated the same answer with little variation.

The questions in the first section are numbered to correspond with the original questions I submitted for the record. Occasionally, an additional question or two has been inserted that accompanies the related original question. Following these resubmitted questions is a series of follow up questions.

5. The previous Director of USCIS implemented DACA without requiring the payment of a fee to cover the cost of the actual adjudication of the DACA application. The fee that DACA applicants currently pay is only the fee covering the adjudication and processing of the Employment Authorization Document and related biometrics collection fee. USCIS adjudicatory resources had to be reallocated to handle the hundreds of thousands of DACA cases and, as a result, processing of family-based immigrant visa petitions filed by U.S. citizens on behalf of foreign relatives has stretched from 5 to as many as 15 months.

a. Do you support the previous Director's decision to not charge a substantive adjudication fee for DACA applications?

Your answer: If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter.

b. If confirmed, do you intend to repeat the error of the previous USCIS Director and not charge a fee for the DACA applications when processing the upcoming wave of DACA renewal applications, thus causing further harm to U.S. citizens who have filed family-based petitions?

Your answer: If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter.

7. The previous Director of USCIS required that all potential denials of DACA cases be sent to headquarters for review. Will you continue this practice, or will you allow adjudicators in the field to make these decisions in a non-political manner?

Your answer: If confirmed, I will carefully study this matter to ensure that we can continue to provide the most appropriate support for our adjudicators.

8. Whistleblowers have informed me that USCIS refuses to share information related to DACA applicants with U.S. Immigration and Customs Enforcement (ICE) officials. Will you commit to improving information sharing with other law enforcement officials so that we can better protect the homeland and ensure that only those eligible are receiving immigration benefits, including DACA?

Your answer: If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward.

NOTE: In addition to answering the original question, please also answer these follow up questions as well. If USCIS denies an immigration benefit to an individual in the country, and that person does not have legal authority to remain, will you, if confirmed, require that USCIS turn over all documentation and proactively cooperate with ICE to initiate removal proceedings? If not, please explain the circumstances in which information sharing would not take place.

13. Serious national security issues have come to light in recent months with respect to the EB-5 Regional Center program, which allows foreign nationals to obtain a green card if they invest in certain investment projects in the United States. In December 2013, the Homeland Security Inspector General identified concerns with USCIS's management of the Program. The OIG concluded that USCIS cannot administer and manage the EB-5 Regional Center program effectively, and that there's no evidence that there's an economic benefit to the country. In an internal memo to the DHS Secretary, ICE identified several vulnerabilities with the EB-5 program, including economic espionage, use by foreign governments for espionage purposes, use by terrorists, and money laundering. ICE's principal recommendation was that the EB-5 program be terminated. Other countries have similar concerns. Canada ended their investor visa program and the UK is likely to put severe restrictions on their own, including doubling the investment amount.

b. Do you have any plans to administratively improve the program?

Your answer: If confirmed, I will review the program to ensure it remains consistent with CIS's high standards of security and integrity.

c. Would you support increasing the minimum EB-5 investment amount – something that would be within your authority to accomplish by regulation? If not, why not?

Your answer: If confirmed I will commit to review this issue.

d. Will you make it a priority to reform the program if you are confirmed?

Your answer: If confirmed, I will commit to review the program for any additional improvements.

e. Would you consider placing a moratorium on the program if you determine, after being confirmed, that there are significant and serious national security issues?

Your answer: If confirmed I will commit to reviewing the program and take any appropriate action within my authority.

Questions 17 through 23: In my previous written questions, I asked you a series of questions about whether certain people in the country illegally should be entitled to benefits, including legal status. For almost every question, you answered each one about the complexity of immigration law and that the question could not be answered with a simple "yes" or "no." You stated that you support how the issues are addressed in S. 744, however, this bill does not prohibit many criminal aliens from accessing benefits or limit their application for legal status. In these instances, please explain when a person here illegally should be eligible for benefits, including legal status.

17. Should people here illegally who are in removal proceedings be eligible for immigration benefits, including legal status?

18. Should people who are subject to an order of removal from the United States be eligible for immigration benefits, including legal status?

19. Should an illegal immigrant convicted of a felony criminal offense be eligible for immigration benefits, including legal status?

20. Should an illegal immigrant convicted of multiple misdemeanors be eligible for immigration benefits, including legal status?

21. Should an illegal immigrant with even a single sex-related offense be eligible for immigration benefits, including legal status?

22. Should an illegal immigrant with even a single drunk driving offense be eligible for immigration benefits, including legal status?

23. Should illegal immigrant gang members be eligible for immigration benefits, including legal status?

24. If an illegal immigrant provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions? If an illegal immigrant provides information in an application that clearly renders him ineligible and commits a serious crime that would warrant his immediate removal, shouldn't the government be able to use that information to place him in removal proceedings?

Your answer: If confirmed I will work to ensure the safety and security of the United States and uphold current laws.

25. Should people here illegally be required to submit to an in-person interview with adjudicators when applying for immigration benefits, including legal status? Would you not agree that, at a minimum, any illegal immigrant with a criminal record should be required to be interviewed as part of any sort of legalization process?

Your answer: If confirmed, I certainly commit to review current procedures, and where needed, improve areas to address any security/fraud concerns.

26. Should people here illegally that have been denied legal status be placed in immigration proceedings and removed? If not, why not?

Your answer: If confirmed, I commit to uphold the law and carefully review this issue to ensure it remains consistent with the USCIS standards of security and integrity.

30. In January 2012, the DHS Inspector General released a report criticizing USCIS for pressuring its employees to rubberstamp applications for immigration benefits. In that report, nearly 25 percent of USCIS officers surveyed said supervisors had pressured them to approve applications that should have been denied.

a. Do you believe that current USCIS screening procedures are sufficient to prevent fraud and threats to public safety and national security?

Your answer: If confirmed I will review the current policies and procedure for fraud prevention and national security, and if needed I will make improvements.

b. If confirmed, would you change these policies? If so, how?

Your answer: If confirmed I will review the current policies and procedure for fraud prevention and national security, and if needed I will make improvements.

c. Will you commit to ensuring that USCIS background checks for every applicant for immigration benefits are properly and effectively conducted?

Your answer: If confirmed I will review the current policies and procedure, and if needed I will make improvements.

37. While Immigration and Customs Enforcement has direct supervision over the OPT program, USCIS does approve OPT work authorizations upon the recommendation of Designated School Officials (DSOs). The use of OPT has increased dramatically over the years, and vulnerabilities in the program threaten the homeland. What steps will you take, if confirmed, to overhaul the program and improve oversight of those who apply or receive OPT?

Your answer: If confirmed I will review USCIS' authority and obligations in this program and make improvements where necessary.

38. Every year, members of Congress introduce private relief bills for individuals who may have exhausted all administrative remedies to remain in the United States. Upon introduction, Immigration and Customs Enforcement does a report for Congress on the individual. If confirmed, will you commit to providing all members of the Judiciary Committee with the individual's A-file and any other documentation retained by the agency so that the private relief bill can be properly reviewed and considered?

Your answer: I have been informed that ICE has jurisdiction over DHS reports relating to private bills and that USCIS provides appropriate information on an individual's immigration history to ICE. If confirmed, I will uphold the law and provide information as allowed under the Privacy Act and applicable Departmental policies.

NOTE: In addition to answering the question above, please answer the following additional question: Also, what privacy rules would limit your ability to share information with Congress about a potential private relief bill recipient?

Question 40. In the Fiscal Year 2015 DHS budget, the administration requests $3 million to create a nonprofit entity called the "U.S. Citizenship Foundation." This Foundation would be aimed at "expanding instruction and training on citizenship rights and responsibilities" and "promote the importance of United States citizenship."

a. Do you think it is necessary, in these difficult budget times, to use taxpayer dollars to create a nonprofit citizenship foundation?

Your answer: I understand that the Fiscal Year 2015 DHS Budget requests authority to use $3 million of USCIS premium processing fee collections and that USCIS believes that this Foundation could be self-sufficient after three years. If confirmed I will carefully study this proposal.

b. Do you believe the creation of this Foundation can only be done by statute? In other words, if confirmed, will you create this Foundation even if Congress does not appropriate funding for the project?

Your answer: If confirmed, I will review this proposal and the funding capabilities of USCIS and look at the most appropriate steps forward and what USCIS may do under existing authorities.

Additional Questions for the Record

1. In my previous written questions, I asked you about your experience in immigration law. You mentioned that you advised Montgomery County officials about the Criminal Alien Program and Secure Communities Program.

    a. Can you be more specific about the advice you gave on those programs and what actions the county took?

    b. Do you support the programs in their current form?

2. In my previous written questions, I asked you about your experience in immigration law. You mentioned that you worked on the Obama-Biden transition team and assigned to various immigration-related functions of the Department of Justice. Can you elaborate on your work during this transition, including what you did for the immigration courts?

3. In my previous written questions, I asked you if you would expand DACA. You said it would be impossible to predict what action you would take. Given that this program expires in a few short months, it is important to know where you stand on this program and what changes you expect to make.

    a. Will you expand the program to encompass more people?

    b. Will you keep the parameters of the program exactly the same?

    c. Will the process for denials (requiring line adjudicators to send potential denials to headquarters) remain the same?

    d. Please provide any thoughts or discussions you have had pertaining to DACA and the renewal process for those with such benefits.

4. In my previous written questions, I asked if you would meet with representatives from the National Citizenship and Immigration Services Council before you are confirmed so you understand their concerns. You said you would meet them after your confirmation. Will you commit to meeting with the Council representatives within 60 days after a vote on your confirmation?

5. In my previous written questions, I asked you about reforming the EB-5 Regional Center program. I understand you support the changes in S. 744 regarding the program. Many of the provisions in S. 744 can be done administratively and do not need to wait for congressional action on legislation. Would you commit to making administrative reforms, including increasing the investment level, changing the formulation of targeted employment areas, increasing background checks and working with other government entities to detect fraud and abuse?

6. In my previous written questions, I asked if you thought it appropriate for the Director of USCIS to personally intervene in a specific case and overrule line adjudicators at a Service center. You responded saying it would be "incumbent upon him to do so in limited situations."

    a. Can you elaborate on these limited situations?

    b. What constitutes a "wrong" decision, in your view?

    c. What would be the process of review if an adjudicator makes the "wrong" decision?

d. Would you interject in a case if the attorney for the applicant/petitioner claims it is the "wrong" decision?

7. In my previous written questions, I asked about the use of H-1B fraud detection fees. However, your answer was unclear and vague. You implied that USCIS should keep the funding because it is fee based, while ICE receives appropriated dollars. I would ask for you to review the INA Section 287(v)(2)(B). DHS currently receives a portion of funds (as do the Departments of State and Labor) from each H-1B and L-1 visa application, and they are entirely used by USCIS. The law says the funds must be used to prevent and detect fraud, and does not specify that USCIS should retain all of the funds. ICE has a responsibility to investigate and prosecute the cases – which in turn helps deter fraud and abuse -- but does not receive any of these funds. Will you commit to ensuring that funding from this account is shared among DHS components, to include ICE? If you do not agree that ICE should receive this funding, please explain.

8. In Question 38, I asked you about abuse in the VAWA self petitioning process. While I understand you will study this issue if confirmed, can you please assure me that you are aware of the potential for abuse in this program? I recommend reading the testimony provided to the Senate Judiciary Committee during reauthorization of the Violence Against Women Act. I would appreciate any thoughts you have on this issue.

9. In your response to Question 47, you pledged to "work diligently to timely provide Congress the information that it needs." Who determines the information that Congress needs: Congress or the applicable Federal Agency?

10. During your tenure on the Board of Directors for Casa de Maryland, the organization funded and was very active in getting day labor centers established throughout the DC metro area. The organization is well known for its ties to day laborers and supporting the employment opportunities of people in the country who do not have proper documentation.

    a. Did you support this mission of Casa De Maryland?

    b. During your time on the Board, were you ever vocal against using taxpayer dollars to establish the centers?

    c. How can you assure Congress, and the American people, that you will not use the office to support policies that benefit unauthorized workers in the United States?

Questions from Senator Orrin Hatch to
USCIS Nominee Leon Rodriguez

Question #1:

The current R-1 process is painfully slow and creates inconvenience and hardship. The average processing time is about five months.

In my view, a two-month processing time where site visits have previously been done would be a reasonable solution for petitioners known to be non-fraudulent.

If confirmed, would you consider waiving the petition process for religious organizations with well-established missionary programs and an objective history of compliance?

Question #2:

I am concerned about those who change from F-1 to R-1 status. Sometimes R-1 visa petitions are denied because by the time USCIS adjudicates these petitions (usually about five months after filing), the school has had to terminate them in the Student and Exchange Visitor Information System.

Can I get your commitment that you will work to address this issue?

Question #3:

I am concerned about travel for foreign religious authorities who are living in the United States but need to travel abroad frequently.

In particular, after applying to adjust their U.S. immigration status, these non-U.S. national religious leaders cannot travel abroad for 90 days. If they do not get advance parole before traveling, USCIS deems their applications to be abandoned.

Would you consider treating applicants in R status like those in L and H status, who can travel freely without getting advance parole?

Question #4:

Last summer, USCIS decided to allow eligible applicants to file their I-601 waiver through the Nebraska Service Center.

For those whose waivers are approved it has significantly shortened the time that they need to be outside of the United States while processing their immigrant visas. This has greatly reduced the time that families are separated and consequently suffer all of the

difficulties associated with long separations. If confirmed, will you ensure that this process continues under your leadership?

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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

Cheryl Ann Krause
Nominee, United States Circuit Judge for the Third 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. Demographic factors should have no influence on the outcome of a case. Judges have a solemn duty to decide cases fairly, impartially and objectively, applying the law and precedent to the facts of the case before them without preconceived notions of the litigants or the outcome.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attributes of a judge in my view are an impartial and faithful adherence to applicable law and precedent, including respect for principles of judicial restraint, honesty and integrity, and respectful treatment of litigants, colleagues, and court personnel. I do possess those attributes and believe the way I have comported myself in my career reflects those attributes.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: In my view, a judge should be even-tempered, fair and open-minded, diligent in her approach to studying the applicable law and the record on appeal, mindful of the limited powers of an Article III judge and the distinct roles of the elected representatives of the people under Articles I and II, vigorous in her work ethic, clear and cogent in her writing, respectful in her treatment of litigants, professional and collegial in her interactions with fellow judges and court personnel, and dedicated to mentoring her law clerks and contributing to ongoing improvements in the administration of justice through, for example, participation on judicial committees. I consider all of these aspects important in the temperament of a judge and am confident that, if I am fortunate enough to be confirmed, my conduct will reflect them.

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: Personal beliefs do not have a place in impartial and objective judicial decision-making. I recognize and deeply respect the important role of *stare decisis* in our legal system and the stability and predictability that it provides. If I am confirmed, I am fully committed to following the precedent of the Supreme Court and Third Circuit without regard to any personal views I might hold.

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 the absence of controlling precedent, I would look to the sources of persuasive authority authorized by the Supreme Court and Third Circuit. Depending on the legal question presented and the facts and circumstances of the specific case, those sources would include the text and structure of any constitutional provision or statute at issue, canons of statutory construction adopted by the Supreme Court and Third Circuit, closely related or analogous decisions of those courts and decisions of other circuits, and original sources, such as the Federalist Papers, consistent with the guidance of the Supreme Court in cases like *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *Crawford v. Washington*, 541 U.S. 36 (2004).

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If I have the privilege of serving as an appellate judge, I would faithfully follow the decisions of the Supreme Court and Third Circuit in any case or controversy that came before me, regardless of any personal views I might have of those decisions.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: It is appropriate for a federal court to declare a Congressional statute unconstitutional only where the constitutional question cannot be avoided and the statute is clearly inconsistent with the Constitution. Enactments of Congress are presumed to be constitutional and should be interpreted to avoid constitutional problems where more than one plausible interpretation is possible. *Clark v. Martinez*, 543 U.S. 371, 381 (2005).

8. **Please describe your understanding of the workload of the Third Circuit. If confirmed, how do you intend to manage your caseload?**

Response: In FY 2013, according to the Administrative Office of U.S. Courts and the Clerk of the U.S. Court of Appeals for the Third Circuit, the Third Circuit had 3,912 filings and 2,845 merits determinations (including appeals and original proceedings), and each merits panel was assigned approximately 30 cases per sitting. If I have the honor of serving as a judge on this circuit, I would handle this substantial workload by keeping a steady and vigorous pace in my chambers, communicating regularly with my colleagues, law clerks and staff, and setting internal deadlines to ensure that motions are handled and opinions are issued in a timely and efficient manner. I would also seek out the advice of my colleagues as to their experience with best practices for managing this 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.**

Response: I consider the Constitution to be a domestic document that should be interpreted based on domestic sources, and, if confirmed, I would not rely on foreign law or views of the world community to determine its meaning. The Supreme Court has referenced international authorities in extremely limited circumstances, such as in interpreting the Eighth Amendment's prohibition on "cruel and unusual punishments," *Roper v. Simmons*, 543 U.S. 551, 575 (2005), and I would abide by those cases and all Supreme 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: I believe it essential to the public trust in the judicial system and respect for the rule of law that judges be and be perceived to be impartial and objective in interpreting the law and applying precedent, free of any political ideology or motivation. I consider this a core tenet for a federal judge, in addition to being a statutory and ethical mandate under 28 U.S.C. § 455 and the Code of Conduct for United States Judges. If confirmed, I would fully honor these obligations.

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 do not believe that a judge's personal views have any place in judicial decision-making. Judges have a solemn duty to administer equal justice under law and treat all those who appear before them fairly, impartially, and with an open mind. I can assure the Committee that I would adhere to these fundamental principles if I have the honor to serve as a judge and would strive to ensure that all litigants who appeared before me not only were treated fairly but felt that they were treated fairly and with respect and dignity.

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: A circuit court panel has no authority to overturn circuit precedent, and *en banc* review is only appropriate where there is a conflict between two panel decisions or with a decision of the Supreme Court, or where there is an issue of "exceptional importance." Fed. R. App. P. 35(a). Furthermore, if *en banc* review is granted, principles of *stare decisis* require careful consideration of the criteria for overruling precedent set forth by the Supreme Court in *Montejo v. Louisiana*, 556 U.S. 778, 792-93 (2009), and by the Third Circuit in *Al-Sharif v. United States Citizenship & Immigration Services*, 734 F.3d 207, 212 (2013) (*en banc*), including the workability of the precedent, its antiquity, the extent of reliance interests, and the soundness of its reasoning.

13. 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: The role of an attorney in zealously advocating for good faith interpretations of the law that promote the client's interests is very different from the role of a judge in applying law and precedent to the particular facts of the case impartially and objectively. In reaching decisions as a judge if confirmed, I would look to the text and structure of any constitutional provision or statute at issue, Supreme Court and Third Circuit precedent, decisions of other circuits for persuasive authority in the absence of controlling authority, and original sources consistent with the guidance of the Supreme Court in cases like *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *Crawford v. Washington*, 541 U.S. 36 (2004). I expect there will be a number of challenges in transitioning from an advocate to a judge if I have the privilege of being confirmed, including establishing procedures in chambers for efficient and effective case management and learning the court's internal operating procedures. If confirmed, I would solicit and welcome the advice of experienced colleagues who have successfully made this transition.

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: Collegiality is important at all levels of the federal judiciary but particularly among appellate judges who hear cases and deliberate as a panel, seek consensus to reach decisions, and review and comment on each other's drafts. If I have the good fortune to be confirmed, I would strive to continue the strong tradition of collegiality on the Third Circuit, including the professionalism and respect with which the judges treat each other, litigants, and court personnel.

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. I am not familiar with the speech or the context for this quotation but agree with the statement quoted.

    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: I do not understand Supreme Court jurisprudence to account for the "current preferences of society" in deciding constitutional challenges or requests to overrule longstanding Supreme Court or circuit precedent, and I would not do so if I am fortunate enough to be confirmed. I am aware that the Supreme Court has taken account of "evolving standards of decency" in considering the meaning of "cruel and unusual punishment" in its Eighth Amendment jurisprudence. *Roper v. Simmons*, 543 U.S. 551, 560-64 (2005). If confirmed, I would follow all applicable Supreme Court precedent.

17. **What is your judicial philosophy on applying the Constitution to modern statutes and regulations?**

Response: I view the Constitution as embodying fixed and enduring principles intended by our Founding Fathers to be applied to both newer and older statutes and regulations. If confirmed, I would apply those principles to any statutory or regulatory provisions challenged in a justiciable case or controversy, consistent with Supreme Court and Third Circuit precedent.

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: I do not believe a judge's opinions of "evolving norms and traditions of our society" have a role interpreting the Constitution. A judge's personal opinions should not factor into the objective and impartial application of law to the facts of a case, and, outside of the Supreme Court's consideration of "evolving standards of decency" in determining the meaning of "cruel and unusual punishment," *Roper v. Simmons*, 543 U.S. at 560-64, I do not understand the Supreme Court or Third Circuit to rely on "evolving norms and traditions" as an approach to constitutional interpretation.

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 observed that the Establishment Clause and Free Exercise Clause "often exert conflicting pressures" but that "there is room for play in the joints between the Clauses, some space for legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005) (citations and internal quotation marks omitted). Were I to be confirmed and to confront these issues in a concrete case or controversy, I would carefully study applicable Supreme Court and Third Circuit precedent and apply them to the particular facts of the case before me.

20. Do you believe that the death penalty is an acceptable form of punishment?

Response: The Supreme Court has held in *Gregg v. Georgia*, 428 U.S. 153 (1976), and subsequent cases that, so long as there are adequate procedural safeguards, the death penalty is constitutional, with certain exceptions, *e.g.*, for juvenile status and mental retardation. If confirmed, I would follow Supreme Court precedent in this, as in all areas.

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: To the extent this refers to a view that the meaning of the Constitution changes over time, I do not agree with it. The Constitution was intended by our Founding Fathers to embody profound and enduring principles to govern the structure and limited powers of the federal government, the relationship between the federal government and the States, and certain inalienable rights of citizens. While the factual scenarios to which these principles apply necessarily change over time as technology and society change, *see*, *e.g.*, *Kyllo v. United States*, 533 U.S. 27, 33-34 (2001), those principles remain fixed and constant, absent constitutional amendment.

22. Do you believe there is a right to privacy in the U.S. Constitution?

a. Where is it located?

Response: The Constitution does not use the term "right to privacy," but the Supreme Court has recognized a privacy interest in the freedom of association and belief under the First Amendment, *e.g.*, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958), in the freedom from unreasonable searches and seizures under the Fourth Amendment, *e.g.*, *Missouri v. McNeely*, 133 S. Ct. 1552, 1558 (2013), and in certain personal freedoms, such as the right to marital privacy, under the liberty aspect of the Due Process Clause of the Fifth and Fourteenth Amendments, *see Washington v. Glucksberg*, 521 U.S. 702, 719-20 (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: My understanding of the contours of that right tracks the relevant Supreme Court precedent. If I am confirmed and a justiciable case or controversy were to come before me in which a party asserted a privacy interest, I would carefully consider the constitutional provision at issue and any applicable Supreme Court and Third Circuit precedent and apply the law to the facts and circumstances of that case.

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: Controlling Supreme Court precedent does not support interpreting the Constitution or Bill of Rights based on "penumbras," "emanations," or "reading between the lines." The Supreme Court has observed there are certain fundamental rights that are "objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and internal quotation marks omitted). If confirmed and confronted in a justiciable controversy with an assertion of an unenumerated right, I would look to the text and original meaning of the constitutional provision at issue and apply the current precedent of the Supreme Court and Third Circuit.

b. **Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?**

Response: No. Under governing Supreme Court precedent, it is not appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution.

24. **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: Under applicable Supreme Court and Third Circuit case law, it is not appropriate for appellate judges to conduct research outside the record of a case except in highly unusual situations. The Federal Rules of Appellate Procedure direct that the record on appeal and the parties' appendices are limited to the record before the district court, the transcript and the docket. *See* Fed. R. App. P. 10(a), 16, 30. The Third Circuit has taken a strict approach to the application of these rules and held that appellate judges should not consider anything outside this record except in exceptional circumstances or in order to determine mootness. *See Acumed LLC v. Advanced Surgical Servs., Inc.*, 561 F.3d 199, 226 & n.25 (3d Cir. 2009). If confirmed, I would follow these rules and precedents.

b. **When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?**

Response: Whether it would be appropriate for an appellate judge to consider psychological and sociological scientific studies in deciding a particular case would turn on applicable Supreme Court and circuit precedent on the use of such materials, the relevance of the studies to the particular issues and facts and circumstances presented, whether the studies had been presented to or considered by the district court in reaching its decision below, and compliance with the relevant provisions of the Federal Rules of Appellate Procedure and Federal Rules of Evidence.

25. 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 in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), and *District of Columbia v. Heller*, 554 U.S. 570 (2008), did not address the precise standard of scrutiny in a Second Amendment challenge other than to indicate it exceeds rational basis review. The Third Circuit has applied a "means-end" analysis and held that the standard of scrutiny may vary depending on the type of law challenged and the nature of the Second Amendment restriction at issue. *See Drake v. Filko*, 724 F.3d 426, 435-37 (3d Cir. 2013); *United States v. Marzzarella*, 614 F.3d 85, 89, 96-98 (3d Cir. 2010). Were I to be confirmed, I would follow this precedent as well as any intervening guidance from the Supreme Court and Third Circuit.

26. 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 Supreme Court precedents faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I do not believe a judge's personal views have any role in judicial decision-making. If I have the privilege of serving as an appellate judge, I would honor my solemn obligation to faithfully follow and give full force and effect to the decisions of the Supreme Court in any case or controversy that came before me, regardless of any personal views I might hold of those decisions.

27. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize

yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

   i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

      Response: Yes. This statement narrows and qualifies the holding of *Windsor* and is therefore part of its holding.

   ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

      Response: I understand "those lawful marriages" to refer to the class described earlier in the same paragraph of "those persons who are joined in same-sex marriages made lawful by the State" and "those whom the State, by its marriage laws, sought to protect in personhood and dignity." *United States v. Windsor*, 133 S. Ct. 2675, 2695-96 (2013).

   iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

      Response: Yes. The Court's opinion is explicit that its holding is so limited.

   iv. **Are you committed to upholding this precedent?**

      Response: If confirmed as a judge, I am committed to faithfully upholding *Windsor* and all current Supreme Court precedent.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The Court's opinion constitutes binding precedent recognizing the "virtually exclusive province of the States" to define and regulate marriage subject to Congress's authority, "in enacting discrete statutes [to] make determinations that bear on marital rights and privileges" and "subject to constitutional guarantees." *Id.* at 2690-92 (internal quotation marks omitted).

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I am committed to giving full force and effect to *Windsor*, as I would any Supreme Court opinion, in its entirety.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I understand the Court's full opinion to be binding precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I am committed to giving full force and effect to *Windsor*, as I would any Supreme Court opinion, in its entirety.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

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[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I understand the Court's full opinion to be binding precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I am committed to giving full force and effect to *Windsor*, as I would any Supreme Court opinion, in its entirety.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I understand the Court's full opinion to be binding precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I am committed to giving full force and effect to *Windsor*, as I would any Supreme Court opinion, in its entirety.

28. What would be your definition of an "activist judge"?

Response: I understand the term "activist judge" to refer to a judge who injects personal views into judicial decision-making or a judge who reaches beyond the concrete case or controversy presented to decide issues not properly before the court. Neither is an approach to judicial decision-making to which I ascribe.

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[5] *Id.* (internal citations omitted).

29. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on March 19, 2014. After conducting research and drafting my answers, I reviewed my responses with a representative of the Office of Legal Policy of the Department of Justice. I continued reviewing and editing my responses on March 20 and 21, 2014, and on March 21, 2014, I authorized the Office of Legal Policy to submit them on my behalf to the Committee.

30. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Responses of Cheryl Ann Krause
Nominee, United States Circuit Judge for the Third Circuit

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy, if I am fortunate enough to be confirmed, would involve approaching each case fairly, impartially, with an open mind and without preconceived notions as to the parties or the outcome. I would adhere to principles of judicial restraint, with deference to the limited powers of an Article III judge and the distinct roles of the elected representatives of the people under Articles I and II. I would carefully and thoroughly analyze the threshold issue of justiciability and the text of any law at issue, the arguments of the parties, the opinion below, the record, and applicable precedent, and I would faithfully apply the law to the facts of the particular case before me. I am not sufficiently familiar with the full body of opinions of any single justice to identify one whose philosophy is most analogous with mine. However, I admire the Honorable Anthony M. Kennedy of the United States Supreme Court, for whom I had the privilege to clerk, for his love of learning, his deep knowledge of history and constitutional law, his vigorous work ethic, his collegiality, and the dignity and humility with which he conducts himself.

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 interpreting the Constitution, if I have the honor of serving as an appellate judge, I would look to its text and to original sources, such as the Federalist Papers, consistent with the guidance of the Supreme Court in cases like *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *Crawford v. Washington*, 541 U.S. 36 (2004).

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 to serve on the Court of Appeals, I would be bound by the precedent of the Supreme Court and would have no authority to overturn precedent within the circuit unless the court were sitting *en banc*, pursuant to Rule 35 of the Federal Rules of Appellate Procedure, since a panel is bound by the decisions of prior panels within the circuit. Under Rule 35, *en banc* review is only appropriate when there is a conflict between two panel decisions or with a decision of the Supreme Court, or where there is an issue of "exceptional importance." Even when these criteria are satisfied, principles of *stare decisis* still require careful consideration of whether to do so with consideration for the criteria described by the Supreme Court in *Montejo v. Louisiana*, 556 U.S. 778, 792-93 (2009), and by the Third Circuit in *Al-Sharif v. United States Citizenship & Immigration Services*, 734 F.3d 207, 212 (2013) (*en*

banc), including the workability of the precedent, its antiquity, the extent of reliance interests, and the soundness of its reasoning.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: This quotation from *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), reflects binding Supreme Court precedent and, if confirmed, I would follow that precedent and subsequent precedent concerning state sovereign interests and judicially enforceable limitations on federal power, including in *Printz v. United States*, 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144 (1992).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court's recent case law on the scope of Congress's Commerce Clause power has focused on economic activity and identified as permissible categories of regulation the use of the channels of interstate commerce, instrumentalities of interstate commerce, and activities with a substantial relation to interstate commerce. The Court noted in striking down the statutes at issue in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), the absence of a nexus to economic activity. However, Justice Scalia has observed that Congress's power under the Commerce Clause may extend to regulation of 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 in the judgment). If confirmed and confronted with this issue in a justiciable case or controversy, I would carefully consider the relevant Supreme Court and Third Circuit precedent, including intervening cases that might provide guidance, and the particular facts and circumstances presented in applying the law to the facts of the case before me.

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 Court held that the President's power to issue executive orders or executive actions must emanate from the Constitution itself or from authorization provided by Congress. *See id.* at 585. Justice Jackson's concurrence in that case provides the tripartite scheme commonly used by the Supreme Court and appellate courts for evaluating the legitimacy of the executive action at issue, depending on how closely it is tied to Congressional authorization. *See id.* at 635. If confirmed and presented with this question in a pending case, I would analyze the particular Presidential action at issue and apply relevant Supreme Court and Third Circuit precedent to the record before me to analyze whether the action was properly authorized by the Constitution or by Congress.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has held a right is "fundamental" for purposes of the Due Process Clause when it is "objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and internal quotation marks omitted). The Court has also required a "careful description of the asserted fundamental liberty interest." *Id.* at 721 (citations and internal quotation marks omitted). If I have the privilege of serving as an appellate judge, I would adhere to Supreme Court precedent and any relevant precedent of the Third Circuit in addressing substantive due process issues.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has identified two tiers of review above rational basis review for Equal Protection Clause analysis: intermediate scrutiny for classifications like gender that "frequently bear[] no relation to ability to perform or contribute to society" and therefore "generally provide[] no sensible ground for differential treatment," and strict scrutiny for classifications like race, alienage and national origin that 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." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985) (internal quotation marks omitted). If confirmed, I would adhere to Supreme Court and Third Circuit precedent in determining the tier of scrutiny appropriate to the facts and circumstances of any particular case that comes before me.

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: Justice O'Connor, in her majority opinion in *Grutter*, anticipated that the use of racial preferences would no longer be necessary in higher education 25 years from that decision. If confirmed and confronted with a case or controversy raising this issue, I would be bound by the Supreme Court's decision in *Grutter*, as in all cases, including any intervening guidance issued by the Court.

Senator Grassley
Questions for the Record

Richard Franklin Boulware II,
Nominee, U.S. District Judge for the District of Nevada

1. **In your capacity as an officer of the Las Vegas NAACP, you have testified on their behalf to the Nevada Legislature on a variety of topics. Many of the issues dealt with criminal law and the effect on minorities. Your positions have, at times, been at odds with the law enforcement community in Las Vegas, specifically the District Attorney's office.**

   Anyone who comes before a federal judge should feel that they will get a fair shake. You have been an advocate on a number of issues and you have also served as a federal public defender. I want to ensure you will impartially hear both sides. With that in mind, if you are confirmed, what will your approach to criminal law be?

   Response: If confirmed as a district court judge, my approach to criminal law cases and all types of cases would be to fairly and impartially render decisions based upon applicable Supreme Court and Ninth Circuit precedent without regard to any personal beliefs I might have or policy arguments I may have previously asserted on behalf of an organization.

2. **Have you ever witnessed any federal judges approach a set of legal facts in a case differently because of their ethnicity or background?**

   Response: No

3. **You have expressed disappointment with the Supreme Court's ruling in the Shelby County Case.**

   a. **Do you still believe the Court decided *Shelby* incorrectly?**

      Response: If confirmed as a district court judge, I would follow the Supreme Court precedent established in *Shelby*, without regard to any personal opinions I might have or policy arguments I may have previously asserted on behalf of an organization.

   b. **Regardless of whether this remains your view, please explain why you believed, at the time of the interview, the Court decided *Shelby* incorrectly.**

      Response: I was interviewed about the *Shelby* case in conjunction with my role with the local branch of the NAACP. As a policy matter, the NAACP is committed to seeking to expand opportunities for all citizens to be able to vote. My interview comments regarding the *Shelby* decision were part of a larger policy conversation about voting rights and not meant to be an in-depth or definitive

legal analysis. If confirmed as a district court judge, I would faithfully follow Supreme Court and Ninth Circuit precedent in voting rights cases.

c. **What assurances can you give us that you will follow all applicable precedent, if confirmed, despite your own personal preferences?**

Response: I give the committee my personal assurance that, if confirmed, I would faithfully and strictly follow all applicable precedent. I first developed my appreciation for the crucial role of precedent and *stare decisis* while clerking in the district court in the Southern District of New York. Over the years of my federal practice, I have gained an even greater appreciation for the centrality of precedent in maintaining the integrity and fairness of our legal system.

4. **According to your questionnaire, you have spent the majority of your career handling criminal matters. Since being nominated, what steps have you taken to prepare yourself to handle the complex civil cases that would come before you if you were confirmed?**

Response: Since being nominated I have observed various civil proceedings in the federal court in Las Vegas. I have also spoken with district court judges and civil practitioners in general terms about complex and less complex federal civil matters. I have also been reviewing the Federal Rules of Civil Procedure and the local civil rules of the district court in Nevada. During this nomination process, I will continue this multi-faceted approach in preparation for handling civil cases. I also anticipate receiving, if confirmed, additional training from the Federal Judicial Center regarding the administration of civil cases.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is a deep commitment to ensuring a fair and impartial process in the resolution of cases. I possess this attribute.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should have an equanimous demeanor with an emphasis on promoting respect for the process and civility in the courtroom. 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: If confirmed as a district court judge, I would faithfully and diligently follow Supreme Court and Ninth Circuit precedent without regard to any personal opinions I might have.

8. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

   a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

      i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

         Response: In the district in which I have been nominated, a district court judge recently upheld Nevada's state ban on same-sex marriages. *See Sevcik et al. v. Sandoval*, 2:12-cv-00578-RCJ-PAL. That ruling has been appealed to the United States Court of Appeals for the Ninth Circuit. In preparing to answer this question, I reviewed the *Windsor* decision and various briefing in the *Sevcik* case. During this preparation, it became apparent that the arguments in the briefs in the *Sevcik* case offer differing legal analysis regarding some of the very issues raised in this question, including an analysis of the holding and reach of *Windsor*. These issues are directly relevant to the resolution of the legal disputes in *Sevcik*. As the case may be remanded for consideration, I would not want to offer any legal analysis or comments regarding live disputes in a pending case in my district. As a general matter, I would follow all relevant Supreme Court and Ninth Circuit precedent on this issue as with all other issues.

      ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

         Response: Please see my response to Question 8(a)(i).

      iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

         Response: Please see my response to Question 8(a)(i).

      iv. **Are you committed to upholding this precedent?**

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

Response: I am committed to following the precedent in *Windsor* as I am committed to following all Supreme Court and Ninth Circuit precedent.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

   Response: Please see my response to Question 8(a)(i).

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

   Response: Please see my response to Question 8(a)(i).

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

   Response: Please see my response to Question 8(a)(i).

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

   Response: Please see my response to Question 8(a)(i).

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

   Response: Please see my response to Question 8(a)(i).

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Please see my response to Question 8(a)(i).

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Please see my response to Question 8(a)(i).

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Please see my response to Question 8(a)(i).

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If confirmed as a district judge, in deciding cases of first impression, I would first look to the text of the statute to determine if the plain language of the statute could resolve the issue. I would also consider canons of statutory construction established by the Supreme Court or Ninth Circuit for the interpretation of federal legislation. I would next look to relevant or analogous Supreme Court or Ninth Circuit precedent which addressed similar legal issues. I would seek to follow or apply, if possible, such analogous precedent to 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?**

Response: If confirmed as a district court judge, I would follow and apply Supreme Court and Ninth Circuit precedent without regard to my own opinion as to whether such precedent was or was not rightly decided.

11. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

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[5] *Id.* (internal citations omitted).

Response: The Supreme Court has explained that federal statutes enjoy a presumptive validity. *United States v. National Dairy Products Corp.*, 372 U.S. 29, 32 (1963). Under the doctrine of constitutional avoidance, the Supreme Court directs federal courts to seek to interpret federal statutes in a manner that avoids violating the Constitution. *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548, 571 (1973). A statute may be invalidated if it clearly violates the Constitution or if Congress lacked the authority for its enactment.

12. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: No.

13. 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: While the role of an advocate is different from the role of a judge, I have been representing clients for many years exclusively in federal court, and I believe that the legal arguments that I have advanced on behalf of these clients reflect and demonstrate my commitment to legal arguments based upon precedent and federal law without regard to 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?

Response: I give the committee my personal assurance that, if confirmed as a district court judge, I would maintain a deep commitment to ensuring a fair and impartial process in cases that come before me, regardless of any personal views I might have. My many federal court appearances in my federal court practice demonstrate my ability to be respectful and fair to other litigants in the courtroom.

15. If confirmed, how do you intend to manage your caseload?

Response: If confirmed as a district court judge, I intend to work with my colleagues in the District of Nevada and follow the established practices of the district to efficiently and fairly resolve cases. This would include maintaining and reviewing daily and weekly case reports indicating which cases require further judicial action. I would also seek to address dispositive motions as quickly as possible as well as refer appropriate cases for settlement early in the life of the case.

16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Judges do have a role in controlling the pace and conduct of litigation. If confirmed as a district court judge, I would be diligent in working with the parties to set a fair and expeditious calendar for each case. I would then seek to maintain this case calendar within reason given developments in the case.

17. **You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

    Response: If confirmed as a district court judge, I would reach decisions based upon Supreme Court and Ninth Circuit precedent applicable to the facts of the respective cases. I would conduct legal research to independently identify the applicable Supreme Court and Ninth Circuit precedent. I expect that developing an expertise in civil litigation will present the greatest challenge for me. However, I am confident that I can meet this challenge with hard work and with the assistance of my colleagues.

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: On March 19, 2014, I received these Questions for the Record. On March 19 and March 20, I prepared my answers to the questions. On March 20 I forwarded my

answers to an attorney in the Office of Legal Policy of the Department of Justice for review. On March 24, 2014, I finalized my responses and authorized transmittal of the answers to the Committee.

20. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Richard Franklin Boulware II,
Nominee, U.S. District Judge for the District of Nevada

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: If confirmed as a district court judge, my judicial philosophy would be a commitment to a fair and impartial process with a strict adherence to precedent and the rule of law. I have not sufficiently studied the opinions of the justices from the Warren, Burger, or Rehnquist Courts to be able to determine which justice's philosophy is most analogous to mine.

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: In cases such as *District of Columbia v. Heller*, 554 U.S. 570, 603 (2008), the Supreme Court indicated that the contemporaneous public understanding of the Constitution is an important factor for courts in interpreting the Constitution. If confirmed, I would follow the Supreme Court's precedent in *Heller* as well as any other controlling Supreme Court or Ninth Circuit precedent regarding the interpretation of the Constitution.

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 district court judge, I would not and could not overrule precedent. I would follow the precedent set forth by the Supreme Court and the Ninth Circuit.

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 confirmed as a district court judge, I would follow the Supreme Court's decision in *Garcia* as well as any other related Supreme Court or Ninth Circuit precedent regarding state sovereign interests.

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 outlined in various decisions, such as *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the tests or inquiries to determine the extent and limitations on Congress' Commerce Clause. Regarding the regulation of noneconomic activity, Justice Scalia has suggested that Congress may regulate noneconomic activity that has a substantial relation to interstate commerce. *See Gonzales v. Raich*, 545 U.S. 1, 37 (2005)(Scalia, J., concurring). If confirmed as a district court judge, I would follow Supreme Court and Ninth Circuit precedent in deciding cases related to the Commerce Clause.

6. **What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

   Response: The Supreme Court indicated in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952), that the "President's power, if any, to issue [an] order must stem either from an act of Congress or from the Constitution itself." The Court further provided a basic analytic framework for reviewing executive action in the *Youngstown* decision. In various subsequent cases, such as *Dames & Moore v. Regan*, 453 U.S. 654 (1981), the Supreme Court has explained and elaborated upon the analytic framework for reviewing executive action. If confirmed as a district court judge, I would follow the Supreme Court's precedent in this and all other areas of the law.

7. **When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

   Response: The Supreme Court has explained that a right may be fundamental if it is expressly stated in the Bill of Rights or if it is "deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). If confirmed as a district court judge, I would follow Supreme Court and Ninth Circuit precedent in deciding cases regarding fundamental rights.

8. **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 require strict scrutiny; and gender and illegitimacy, which require intermediate scrutiny. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-41 (1985). If confirmed as a district court judge, I would follow Supreme Court and Ninth Circuit precedent in determining when to apply heightened scrutiny under the Equal Protection Clause to a particular case.

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: I do not have any expectations regarding the continued use or lack of use of racial preferences in public higher education. If confirmed as a district court judge, I would follow the Supreme Court's decision in *Grutter* and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), and any other Supreme Court or Ninth Circuit precedent on the use of race in admissions to public institutions of higher education without regard to any expectations I might have.

Senator Grassley
Questions for the Record

Salvador Mendoza, Jr.,
Nominee: U.S. District Judge for the Eastern District of Washington

1. **You are the judge currently presiding in the *State of Washington v. Arlene's Flowers* case. This case involves a flower shop's denial of services to a same-sex couple for their ceremony. I recognize this case is currently pending.**

   a. **I understand that you have ruled on several pre-trial motions. Please describe the issues presented, your ruling, and the reasons therefore.**

   Response: On June 28, 2013, I decided a defense motion for recusal and a defense motion to withdraw an affidavit of prejudice filed against another judge. I denied both motions. I have detailed the issues presented, the rulings and the reasons for the decisions in my response to Senate Judiciary Committee Questionnaire (SJQ) question 14 (d) as follows: The defendants in State of Washington v. Arlene's Flowers Inc., et al., No. 13-2-00871-5, Benton County Superior Court, filed a motion requesting that I recuse myself from the case. They did so after I disclosed that I had previously served (prior to my appointment to Superior Court) as a trustee for Columbia Basin College (CBC), the employer for one of the plaintiffs. As a trustee I did not have any duties to supervise any employees of CBC except the President of the college. That plaintiff had presented data and other scholastic information to the Board of trustees in the past. I did not have a personal friendship with the individual and had not recognized him when I initially reviewed the file. Nonetheless, pursuant to Comment 5 of the Cannon of Judicial conduct 2.11, I felt it was important to disclose the information even when I did not feel it was a conflict of interest. I also noted on the record that my wife had purchased flowers on a few occasions from Arlene's Flowers in the past, but I also did not feel that was a conflict of interest. The defendants had already filed two affidavits of prejudice against other judges. I pointed out that under Revised Code of Washington 4.12.050, the parties were only entitled to file one affidavit per case. The defense attorneys then filed a motion attempting to withdraw an affidavit in order to file one against me. I denied the motion because it was not authorized by statute, court rule, or case law. The ruling has not been appealed.

   On July 17, 2013, I filed an order addressing three pretrial motions: 1) Plaintiff's motion to strike Defendant's affirmative defenses; 2) Plaintiff's motion to dismiss "Third Party" complaint; and 3) Defense motion to join Attorney General Ferguson under Civil Rule 20. I outline the issues presented, my ruling and the reason for the ruling in my order filed on July 17, 2013. Copy supplied.

   On July 24, 2013, I granted in part Defendant's motion to consolidate *Ingersoll, et al. v. Arlene's Flowers, et al.,* 13-2-00953-3 with *State of Washington v. Arlene's Flowers, et al.,* 13-2-00871-5. The motion was granted in part for pretrial discovery and dispositive motions pursuant to Superior Court Civil Rule 42(a) because both actions

presented common questions of law and fact and did not result in prejudice to the parties. I also concluded the decision is consistent with the court's principles on judicial economy. I reserved for later motions the issue of whether the cases should be tried together.

In an order dated October 7, 2013 and amended on December 16, 2013, I denied Defendant's motion for partial summary judgment. The Defendants challenged the Plaintiff's Consumer Protection Act (CPA) claim. I outlined the issues presented, my ruling and the reasons for the ruling in said order. Copy supplied.

b. **Other than those orders already provided, have you issued any other orders since you were nominated? If so, please provide them.**

Response: Yes. I authorized the first amended civil case scheduling order on January 24, 2014. Copy supplied.

2. **According to press reports you said this about the case, "Believe me, ladies and gentleman, if there was a way ethically that I could not hear this case, I wouldn't." What did you mean by this statement?**

Response: I don't remember the specific context of this statement. I believe I was referencing the fact that I had been a Superior Court judge for less than two months when I was assigned a high profile case. However, I was not going to skirt my ethical responsibility to hear the cases that come before me.

3. **As a judge, you have only handled state matters and as an attorney, you indicated that the majority of your practice was in federal court.**

a. **Have you handled any trials in federal court?**

Response: Yes. I have handled two federal criminal trials.

b. **You questionnaire indicates that approximately twenty percent of your legal practice has been in federal court. Please elaborate on the type of legal work this has included (e.g., motions practice, trials, etc...).**

Response: When I was a practicing lawyer in federal court, my legal practice included handling both privately retained and court appointed federal criminal felony cases. Many of the cases I handled involved complex cases with alleged large conspiracies spanning multiple states and countries. I handled cases in federal court in Washington, Montana, Illinois, and Michigan. The work involved all facets of courtroom litigation from initial appearances through trial. The motion practice included case budgeting and management of complex cases, bail motions, suppression hearings, sentencing hearings, and discovery motions.

c. **What steps do you plan to take to prepare yourself to handle federal matters, if confirmed?**

Response: Since my practice in federal court exclusively involved criminal cases, if confirmed, my focus would be on mastering federal civil cases. Although there are differences between state and federal civil law, my current role as the presiding civil judge in Benton and Franklin counties would likely benefit me if I were to transition to the federal bench. If I am confirmed as a Federal District judge, I will demonstrate the same level of commitment that I give to the cases that I currently preside over as a state Superior Court judge. Additionally, I would note that the Federal Rules of Evidence are the same for both criminal and civil cases. I have substantial familiarity with these based on my previous practice. I am committed to applying my strong work ethic to the areas of law that I am less familiar with.

4. **During law school you wrote a comment that criticizes the Supreme Court's decision in *Hernandez v. New York* saying that it was "wrongly decided because it fails to take into account the effects of racism in our justice system, the anti-immigrant hysteria gripping the country, and the practical effect on Latinos."**

a. **What is your current understanding of the law in this area?**

Response: In *Batson v. Kentucky*, 476 U.S. 79, 97-98 (1986), the Supreme Court held that the use of peremptory challenges on the basis of race violated the Equal Protection Clause of the Fourteenth Amendment. The Court established the following three-part test in analyzing these peremptory challenges: 1) the party objecting to the peremptory challenge must establish a prima facie case that the totality of the facts illustrate a racial discriminatory purpose; 2) the non-moving party has the burden of stating a race-neutral reason for the peremptory challenge; and 3) if the non-moving party meets its burden, the burden then shifts again to the moving party to show purposeful discrimination. *Id.* at 96. In *Hernandez v. New York*, 500 U.S. 352, 361 (1991), the Supreme Court concluded that use of peremptory challenges on the basis of fear that a bilingual juror would not follow the official English translation, was a race-neutral reason that did not violate the Equal Protection Clause of the Fourteenth Amendment. *Hernandez* and *Batson* are the binding case precedents in this area.

b. **What assurances can you give the Committee that you will faithfully apply Supreme Court precedent in this area, if the matter was to arise before you?**

Response: I can assure the Committee that if I am confirmed, I will base my decisions entirely on the facts presented and the binding case precedents of the Supreme Court and the Ninth Circuit. I believe my record as state court judge demonstrates that I fairly and impartially apply the laws to the facts of any given case. Any opinion that I may have had when I was a law student, will have no bearing on the decisions I will make as a U.S. District Court judge if I am fortunate enough to be confirmed.

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 adherence to the rule of law. As a Superior Court judge I have followed this important principle. If I am confirmed, I will continue to do the same.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge must be able to treat all the parties appearing before him or her with great respect and dignity. Good temperament from the judge will engender respect for the process and system of justice. I believe I meet this standard.

7. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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 beliefs on any case precedent will have no bearing on my decision in a case. I am committed to follow both the Supreme Court's and the Ninth Circuit's binding precedents.

8. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

   a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

      i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

         Response: I do believe that the statement is part of the Court's holding.

      ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

         Response: In *United States v. Windsor*, Justice Kennedy's reference to "lawful marriages" are those "marriages that are made lawful by the State." 133 S. Ct. 2675, 2695 (2013). Justice Kennedy writes that the definition and regulation of marriage has been traditionally within the authority of the individual states. *Id.*

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

at 2689-90. He notes that in addition to New York, 11 other states and the District of Columbia have recognized same-sex marriages as lawful marriages. *Id.* at 2689.

iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: The Court's holding only apples to § 3 of DOMA. *Id.* at 2679. This section amends the Dictionary Act in Title 1, §7, of the United States Code to provide a federal definition of "marriage" and "spouse." *Id.* The specific holding of the Court is that as applied to states where same-sex marriage has been legalized, DOMA is unconstitutional as a deprivation of the liberty of the person protected by the Due Process Clause of the Fifth Amendment of the Constitution. *Id.* at 2695.

iv. **Are you committed to upholding this precedent?**

Response: I am committed to upholding this and all other Supreme Court and Ninth Circuit binding case precedents.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The whole *Windsor* opinion along with all other cited U.S. Supreme Court precedents are binding authority.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.

Response: Yes. The whole *Windsor* opinion along with all other cited U.S. Supreme Court precedents are binding authority.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The whole *Windsor* opinion along with all other cited U.S. Supreme Court precedents are binding authority.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The whole *Windsor* opinion along with all other cited U.S. Supreme Court precedents are binding authority.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

Response: If there are no controlling precedents from either the Supreme Court or the Ninth Circuit, then I would be guided by accepted principles of statutory construction. I would first look at the text of the governing statute. If the language is clear, then my inquiry would be over. If it were not clear, I would look for guidance from the Ninth Circuit's and Supreme Court's related cases on the issue. If there were no such cases, I would then turn to other federal appellate court opinions on the subject at issue for persuasive authority.

10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: If I am confirmed as a District Court judge, my responsibility would be to follow all case precedents by both the Supreme Court and the Ninth Circuit. Any personal opinion I might have about the decision would play no role in the decision-making process.

11. 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. Thus, the statute will only be declared unconstitutional if it is clear that Congress has exceeded its authority to enact the statute or when the statute violates a provision of the Constitution.

12. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: No. District judges should be guided by domestic law as authorized by the Supreme Court precedents. If I am confirmed, I would not be guided by foreign law or take the view of the "world community" in deciding the cases that I handle.

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: As a Superior Court judge, I have been guided by the same principles that I would be guided by as a District Court judge if confirmed: that I would decide cases based upon the facts presented, the statutory text and the case law authority that apply. No other factors will guide my decisions.

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 can assure the Committee that my personal opinions have no place in deciding any cases that I am asked to preside over. I believe an important hallmark of our system of justice is the ability of our judges to treat all litigants that appear before them equally and

with respect. I am committed to these principles as a Superior Court judge and would be guided by the same if confirmed as a District Court judge.

15. If confirmed, how do you intend to manage your caseload?

Response: My general practice would be to file a case scheduling order at the beginning of each case. At the first scheduled hearing, I would discuss with the litigants any unique or unusual issues that may modify the scheduling order. On large and complex cases, the discussion would be more in depth and particularized to the specific needs of the case. The aim of these discussions would be to both promote efficiencies in the case and meet the needs of the litigants.

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. Judges play an important role in ensuring that cases are adjudicated in a timely manner. In my current position as a Superior Court judge for Benton and Franklin Counties, we have developed case management procedures to handle the large caseloads. If confirmed, I would work with the clerk of the court and the other judges in our district to ensure a case management system is in place to expeditiously handle matters in our district.

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: In deciding cases, I look at the facts presented and the specific issue I am called to decide. I first look to the statutory authority and case precedent, conducting my own independent legal research as needed. The relevant sources may be Washington State statutory authority, case precedent from Washington state appellate courts or the U.S. Supreme Court, the rules of evidence, the criminal or civil rules, or the Washington State or U.S. Constitution.

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 these questions on March 19, 2014 and drafted responses. I then discussed my responses with representatives from the Department of Justice. I then finalized my responses.

20. **Do these answers reflect your true and personal views?**

Response: Yes.

Questions for the Record
Senator Ted Cruz

Response from Salvador Mendoza, Jr.
Nominee, U.S. District Court Judge for the Eastern District of Washington

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy as a state judge is guided by the principles of patience, respect for the rule of law, and humility. I decide cases by applying the statutory authority and case precedent to the facts presented. If confirmed, I would continue to follow this philosophy. With regard to the philosophies of the Supreme Court justices, I have not studied them. As such, I am unaware of whose philosophy would be most analogous to mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), for example, the Supreme Court looked to the constitutional text in its original common meaning at the time of its adoption. I would follow this and all other Supreme Court and Ninth Circuit binding precedent on the principles of constitutional interpretation.

If a decision is precedent today while you're going through the confirmation process, under what circumstances would you overrule the precedent as a judge?

Response: None. If I am confirmed as a District Court Judge, I could not and would not overrule a binding case precedent.

Explain whether you agree that "State sovereign interests...are more properly protected by the 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 quote is from the holding in the Supreme Court binding precedent of *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) regarding the extent of Congress' power under the Commerce Clause. I would follow *Garcia* and all other binding case precedent without regard to whether I personally agree or disagree 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 evaluating Congress' power to regulate non-economic activity, I would apply the Supreme Court case precedent as stated in cases such as *United States v. Lopez*, 514 U.S. 549

(1995). In that case, the Court indicated that there are, "... three broad categories of activity that Congress may regulate under its commerce power." *Id.* at 558. "First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce." *Id.* at 558-59 (internal citations omitted); *see also United States v. Morrison*, 529 U.S. 598 (2000).

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court has indicated that when the President issues executive orders or actions that are not authorized by an act of Congress or under the Constitution, the judiciary can invalidate said action as exceeding the President's authority. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed and asked to decide the issue, I would follow this and all other binding precedent.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: For purposes of substantive due process analysis, the Supreme Court has held that a right is "fundamental" when it is "...objectively, deeply rooted in the Nation's history and tradition, ... and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citation and quotation marks omitted). I would apply this precedent and all other Supreme Court precedents in that determination.

When should a classification be subject to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has applied heightened scrutiny under the Equal Protection Clause to classifications of gender, race, religion, national origin, and ethnicity. Additionally, the Court has also applied heightened scrutiny to classifications when legislation encroaches on a "fundamental" right. *See, e.g., City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439-41 (1985). I would apply this Supreme Court holding all other case precedents if confirmed.

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 Supreme Court holding in *Grutter v. Bollinger*, 539 U.S. 306 (2003), and all other binding case precedents on affirmative action in public higher education regardless of what my personal expectation might be.

JOSIE DELVIN
BENTON COUNTY CLERK
JUL 17 2013
FILED 3 pm

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

STATE OF WASHINGTON, Plaintiff v. ARLENE'S FLOWERS, INC., d/b/a ARLENE'S FLOWERS AND GIFTS, and BARRONELLE STUTZMAN, Third Party Plaintiffs v. ROBERT W. FERGUSON, in his official Capacity as ATTORNEY GENERAL for the STATE OF WASHINGTON, Third-Party Defendant.	No. 13-2-00871-5 Order

THIS MATTER, having come before the Court on June 28, 2013 and on July 17, 2013 on motions of the parties wherein the Court heard arguments on the following three outstanding issues: 1) whether the Court should grant Plaintiff's motion to strike Defendant's affirmative

pm

defenses; 2) whether the Court should grant Plaintiff's motion to dismiss "Third Party" complaint; and 3) whether the Court should grant the defense motion to join Attorney General Ferguson under Civil Rule 20.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff's motion to strike affirmative defenses is denied, the Plaintiff's motion to dismiss the "Third Party" complaint is granted, and the Defendant's motion to join is denied. What both parties have essentially asked this Court to do is to overlook the Superior Court Civil Rules (CR). In reviewing the arguments of counsel, I'm reminded by the testimony of Justice Sonia Sotomayor in her confirmation hearings, "The job of a judge is to apply the law. And so it's not the heart that compels conclusions in cases, it's the law." (Hearings on the Nomination of Justice Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court, 111th Cong. (July 14, 2009)). Thus, while I think both sides have compelling argument as to why one or the other wants to side step the rules, the Court is not inclined to do so. The Plaintiffs have asked this Court to overlook their late filing in violation of CR 12. The Defendants have asked this Court to overlook their improper filing of the "Third Party Complaint" in violation of CR 14. This Court chooses to hold both parties accountable to the rules.

First, the State's motion to strike affirmative defenses fails because their motion does not comply with CR 12. Here, the Defendant's challenge the Plaintiff's motion as untimely. As detailed by the Defendants in this case, the rule requires the Plaintiffs to file their affirmative defenses within 20 days. The Plaintiffs failed to comply with the 20 day rule because they filed the motion to strike on the 23rd day. Even a more generous reading of the rule would still put the time outside of the 20 day limit. As such, the Court will deny the State's motion to strike

affirmative defenses. The Court is not making a decision on the merits of the motion to strike the affirmative defenses nor prohibiting the State from filing the appropriate additional CR 12 motions, their CR 56 summary judgment motion, or other motions if they see fit at a later time. However, under the facts and procedural history presented to the Court, the State's motion must fail.

Likewise, the Defendant's "Third Party Complaint" fails to meet the requirements of CR 14. Here, Defendants filed a "Third Party Complaint" adding Attorney General Ferguson as a third party defendant. As expressed in the hearing on the matter, the Court was puzzled by the filing as it didn't seem to comply with CR 14. After careful consideration of the parties briefing and the motion to join under CR 20, the Court will deny the motion to join and grant the motion to dismiss *without prejudice*. There is nothing in the Court's ruling that prevents the Defendants from filing their 42 U.S.C. §1983 claim against Attorney General Ferguson in another action. This Court will consider the motion to join if and/or when the case and that motion are properly before the Court. The Court appreciates the arguments on judicial economy. However, both parties have argued the importance of this case. It is the foundation of the case that would be unsteady if the Court were to begin the case by ignoring the rules and thereby allowing the motion to join and granting the motion to strike affirmative defenses. This Court will not do that.

DONE BY THE COURT this 17 day of July, 2013.

SALVADOR MENDOZA, JR.
SUPERIOR COURT JUDGE

JOSIE DELVIN
BENTON COUNTY CLERK
OCT 08 2013
FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

STATE OF WASHINGTON, Plaintiff v. ARLENE'S FLOWERS, INC., d/b/a ARLENE'S FLOWERS AND GIFTS, and BARRONELLE STUTZMAN, Defendants,	No. 13-2-00871-5 (Consolidated with 13-2-00953-3) Opinion and Order of the Court
ROBERT INGERSOLL and CURT FREED, Plaintiffs, v. ARLENE'S FLOWERS, INC., d/b/a ARLENE'S FLOWERS AND GIFTS, and BARRONELLE STUTZMAN, Defendants.	

THIS MATTER having come before the Court on October 4, 2013, on motion by Defendant Arlene's Flowers for partial summary judgment challenging the Consumer Protection

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Act (CPA) claim made by Plaintiffs Ingersol and Freed; and the Court having considered the briefing and declarations in support of their respective motions;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants motion is denied. To prevail on a private CPA claim, the Washington Supreme Court has laid out clear guidance indicating that the following five factors must be proven by the plaintiff, "...(1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public inters, (4) injury to a person's business or property, and (5) causation." Hangman Ridge Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 784 (1986). The Washington Law Against Discrimination (WLAD) indicates that, "...any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is for the purposes of applying the chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade and commerce." RCW 49.60.030(3). Discrimination on the basis of sexual orientation is a violation of the WLAD. 49.60.030(1).

Here the Plaintiffs argue that the violation of the WLAD satisfies the requirements as set out in Hangman Ridge. This Court does not agree. The Washington Supreme Court recently addressed the issue in Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27 (2009). The Court indicated, "...plaintiff's injury, the fourth element, is an element distinct from occurrence of a violation in trade or commerce... ". Id. at 45. Thus, while the Plaintiffs have satisfied the first three elements of Hangman Ridge, they must also satisfy the fourth (injury) and fifth (causation) elements. Toward that end, the Plaintiffs argue that they have established an injury sufficient to

support a CPA claim. Among other things, Plaintiffs indicate that the expenses associated with the wasted travel to and from Arlene's (gas and mileage) and the costs associated with selecting a new florist are a sufficient basis to meet the injury element of Hangman Ridge. While this injury may be minor in terms of actual quantifiable dollars, the case law establishes that these losses occasioned by the inconvenience of having to obtain a different florist and the cost of gas and mileage are sufficient to meet the injury element for a CPA claim. Moreover, at this stage of the proceeding, where the Court must view the facts in a light most favorable to the non-moving party, this Court concludes that the fourth and fifth elements as required by Hangman Ridge are established. As such, the Defendant's Motion for Partial Summary Judgment is denied.

DONE BY THE COURT this 7 day of October, 2013.

SALVADOR MENDOZA, JR.
SUPERIOR COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of October, 2013, I caused to be delivered the following document(s) by US Mail, E-Mail, Hand-Delivery **OR** Inter-City Legal Processing & Messenger Service.

CASE NUMBER: 13-2-00871-5

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TIFFANY HUSOM
Administrative Assistant

JOSIE DELVIN
BENTON COUNTY CLERK
DEC 17 2013
FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

STATE OF WASHINGTON, Plaintiff, v. ARLENE'S FLOWERS, INC., d/b/a ARLENE'S FLOWERS AND GIFTS; and BARRONELLE STUTZMAN, Defendants.	No. 13-2-00871-5 (Consolidated with No. 13-2-00953-3) Amended Oct 7, 2013 Opinion and Order of the Court
ROBERT INGERSOLL AND CURT FREED, Plaintiffs, V. ARLENE'S FLOWERS, INC., D/B/A ARLENE'S FLOWERS AND GIFTS; AND BARRONELLE STUTZMAN, Defendants.	

COPY

THIS MATTER having come before the Court on October 4, 2013, on motion by Defendant Arlene's Flowers for partial summary judgment challenging the Consumer Protection

Act (CPA) claim made by Plaintiffs Ingersoll and Freed; and the Court having considered the briefing and declarations in support of their respective motions, including the following:

1. Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

2. Defendants' Memorandum of Authorities in Support of Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

3. Declaration of Alicia M. Berry in support of Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

4. Declaration of Barronelle Stutzman in Support of Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

5. Plaintiffs Robert Ingersoll and Curt Freed's Opposition to Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

6. Declaration of Curt Freed in Support of Opposition to Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

7. Declaration of Robert Ingersoll in Support of Opposition to Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

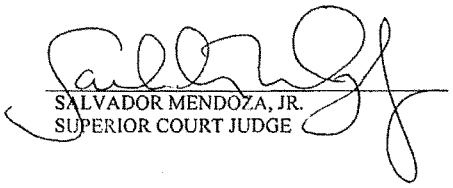
8. Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants' motion is denied. To prevail on a private CPA claim, the Washington Supreme Court has laid out clear guidance indicating that the following five factors must be proven by the plaintiff, " ... (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a person's business or property, and (5) causation." Hangman Ridge Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 784 (1986). The Washington Law Against Discrimination (WLAD) indicates that, " ... any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in

the Consumer Protection Act, chapter 19.86 RCW, is for the purposes of applying the chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade and commerce." RCW 49.60.030(3). Discrimination on the basis of sexual orientation is a violation of the WLAD. 49.60.030(1).

Here the Plaintiffs argue that the violation of the WLAD satisfies the requirements as set out in Hangman Ridge. This Court does not agree. The Washington Supreme Court recently addressed the issue in Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27 (2009). The Court indicated, " ... plaintiffs injury, the fourth element, is an element distinct from occurrence of a violation in trade or commerce ... ". Id. at 45 . Thus, while the Plaintiffs may satisfy the first three elements of Hangman Ridge by establishing a violation of the WLAD, they must also satisfy the fourth (injury) and fifth (causation) elements. Toward that end, the Plaintiffs argue that they have established an injury sufficient to support a CPA claim. Among other things, Plaintiffs indicate that the expenses associated with the wasted travel to and from Arlene's (gas and mileage) and the costs associated with selecting a new florist are a sufficient basis to meet the injury element of Hangman Ridge. While this injury may be minor in terms of actual quantifiable dollars, the case law establishes that these losses occasioned by the inconvenience of having to obtain a different florist and the cost of gas and mileage, if proven to the trier or fact, may be sufficient to meet the injury element for a CPA claim. Moreover, at this stage of the proceeding, where the Court must view the facts in a light most favorable to the non-moving party, this Court concludes that the facts are sufficient to defeat Defendants' Motion for Partial Summary Judgment. As such, the Defendants' Motion for Partial Summary Judgment is denied.

DONE BY THE COURT this 16 day of December, 2013.



SALVADOR MENDOZA, JR.
SUPERIOR COURT JUDGE

JOSIE DELVIN
BENTON COUNTY CLERK
JAN 27 2014
FILED

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON AND FRANKLIN COUNTIES

INGERSOLL, ROBERT .et al	)	
	)	
	)	Case No. 13-2-00953-3
Plaintiff(s),	)	1st Amended
	)	CIVIL CASE SCHEDULE ORDER
v.	)	(ORACS)
ARLENE'S FLOWERS INC .et al	)	
	)	
Defendant(s).	)	

I. SCHEDULE

		DUE DATE
1	Cancellation/Confirmation of Status Conference	02/03/2014
2	Last Date for Filing Motions to Change Trial Date	03/03/2014
3	Status Conference (telephonic)	**03/06/2014**
4	Plaintiff's Disclosure of Lay and Expert Witnesses	03/03/2014
5	Defendant's Disclosure of Lay and Expert Witnesses	04/28/2014
6	Disclosure of Plaintiff's Rebuttal Witnesses	05/12/2014
7	Disclosure of Defendant's Rebuttal Witnesses	05/27/2014
8	Discovery Completed	08/04/2014
9	Last Date for Filing Statement of Arbitrability	08/04/2014
10	Last Date for Filing Jury Demand	08/18/2014
11	Settlement Position Statements filed by all parties	08/18/2014
12	Last Date for Filing Dispositive Pretrial Motions	08/18/2014
13	Settlement Conference (in person)	**09/04/2014**
14	Last Date for Filing and Serving Trial Management Report	09/29/2014
15	Pretrial Management Conference (in person)	**10/02/2014**
16	Trial Memoranda and Motions In Limine to be filed	09/29/2014
17	Trial Date and Motions in Limine	**10/13/2014**

II. ORDER

IT IS ORDERED that all parties comply with the foregoing schedule.

Dated this 24th day of January, 2014.

SALVADOR MENDOZA, JR.
SUPERIOR COURT JUDGE

Senator Grassley
Questions for the Record

Staci Yandle,
Nominee: U.S. District Judge for the Southern District of Illinois

1. **In 2003 you gave a talk on gender and its impact in litigation and you said, "As female trial attorneys, we have a natural sensitivity to gender issues and, therefore are uniquely positioned to effectively address such issues during the litigation process." In your view, should gender make a difference in the decision making process of a judge? Please explain.**

   Response: Considerations of a judge's gender or the gender of litigants should play no role in a judge's decision-making process except in the limited circumstances when a litigant's gender is relevant and material to the subject matter of the case such as in Title VII cases alleging discrimination based on gender. If confirmed, my decision making would be based upon an application of the law to the facts of each particular case.

2. **During an interview in 2012 on ethics and professionalism you said "life in general as a black female is challenging and rough." How does your background affect how you have practiced as an attorney? If confirmed, how will your background affect your judicial decision- making process?**

   Response: The manner in which I have practiced law as an attorney has been based upon my knowledge and understanding of the law, my work ethic and principles of professional responsibility. As an African American female trial attorney, I have advocated for the increased diversity of the trial bar through the recruitment and mentorship of minorities and women. If confirmed, my judicial decision-making process would be to apply the law to the facts of each particular case and would not be affected by my background or the background of the litigants who appear before me.

3. **It appears you have limited experience in the area of criminal law. Since being nominated, have you taken any steps to get up to speed in federal criminal law? What steps do you plan to take to prepare, if confirmed?**

   Response: Since being nominated, I have made a conscious effort to become more familiar with federal criminal law and procedure. I have begun reviewing the federal sentencing guidelines, the *Manual on Recurring Problems in Criminal Trials*, Sixth Edition and the *Bench Book for United States District Judges*, Sixth Edition. If confirmed, I plan to continue my review of these and other sources including recent Supreme Court and Seventh Circuit decisions in the area of criminal law and to attend continuing education programs on criminal law offered by the Administrative Office of the United States Courts. I would also consult with my future colleagues including those who had limited experience in criminal law prior to becoming a district court judge.

4. **According to your questionnaire, the majority of your legal practice has been in state court.**

   a. **Have you handled any trials in federal court?**

      Response: I have tried two cases to verdict in federal court.

   b. **You questionnaire indicates that approximately twenty percent of your legal practice has been in federal court. Please elaborate on the type of legal work this has included (e.g., motions practice, trials, etc...).**

      Response: Although I have only tried two cases to verdict in federal court, I have handled a number of cases in federal court as sole or lead counsel which were resolved prior to trial. In that regard, I have drafted and filed pleadings, conducted discovery and argued motions including dispositive motions.

   c. **What steps do you plan to take to prepare yourself to handle federal matters, if confirmed?**

      Response: During my 27 years in private practice, 20% of the cases I have handled have been in federal court. As a result, I am generally familiar with federal civil practice and procedure. If confirmed, in addition to taking the steps described in my response to question 3 with respect to federal criminal law, I will continue to stay abreast of the Federal Rules of Civil Procedure, the Federal Rules of Evidence and will attend continuing education programs offered by the Administrative Office of the United States Courts.

5. **Why did you join the Illinois Gaming Board? What was your interest in casino regulation?**

   Response: I joined the Illinois Gaming Board because I was asked by Governor George Ryan if I would accept an appointment to the board and I agreed to serve. Prior to my appointment, I had no experience in casino regulation or the gaming industry.

   a. **According to press reports, the governor picked a new board member after you voted against a proposed casino. What were the circumstances surrounding your replacement?**

      Response: I served on the Illinois Gaming Board until my term expired. I was not reappointed by the governor upon the expiration of my term.

6. **You were a member of the Civil Rights Commission which published several reports during your time with them. In you questionnaire, you said that you voted on the listed reports. Please identify *how* you voted on each report. For any report you voted against please provide your reasons for doing so.**

Response: As a member of the Illinois Advisory Committee to the Civil Rights Commission, I voted to approve each of the reports prepared by the staff of the committee during my term.

7. **In an interview you gave to the Illinois State Bar Association on attorneys facing the challenges of diversity in 2008 you said, "Many of the plaintiffs who need representation look like me and there are many things, differences in our life experience in terms of understanding and perception and in telling your client's story to a jury, that if you don't totally understand it, that comes with difficulty. So what I'm saying to you is that our community does not have sufficient number of attorneys like us to represent us." If a judge is a different ethnicity from the litigants before him or her or has had different life experiences, how does or should that affect the judge's approach to the matter before him or her?**

   Response: The fact that a judge has a different ethnic background or different life experiences from the litigants that appear before them should have no effect on the judge's approach to a matter. If confirmed, I would approach each matter with neutrality and integrity regardless of the ethnicity or background of the litigants.

8. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is integrity, which includes the ability to be impartial and unbiased. I possess this attribute.

9. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge should be decisive, even-tempered, patient and respectful to all participants in the legal process as well as the public. I meet this standard.

10. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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 faithfully follow the precedents of the Supreme Court and Seventh Circuit regardless of whether or not I personally agree with such precedents.

11. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize**

yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

   i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

      Response: Yes.

   ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

      Response: It is my understanding that Justice Kennedy is referring to same-sex marriages that a State has recognized as lawful.

   iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

      Response: Yes. It is my understanding that the holding applies to section 3 of the Defense of Marriage Act's prohibition against federal recognition of same-sex marriages that a State has recognized as lawful.

   iv. **Are you committed to upholding this precedent?**

      Response: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Seventh Circuit.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

      Response: Yes. I believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.

Response: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Seventh Circuit.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

   Response: Yes. I believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

   Response: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Seventh Circuit.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

   Response: Yes. I believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

   Response: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Seventh Circuit.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

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[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Seventh Circuit.

12. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In deciding cases of first impression, I would first look to the text of the Constitutional provision, statute or regulation in question in order to determine the plain meaning. If the language was unambiguous, I would apply the plain meaning to the facts. If the language was ambiguous, I would look to Supreme Court and Seventh Circuit decisions interpreting analogous provisions and, if necessary, decisions from other circuits for persuasive authority.

13. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent regardless of any personal opinions I might have.

14. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes enacted by Congress are presumed constitutional. It is only appropriate for a federal court to declare a statute enacted by Congress unconstitutional if the statute clearly exceeds congressional authority or violates a Constitutional provision.

15. **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.

16. **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 our federal judicial system depends upon the commitment of its judges to follow the law as written. If confirmed, I would be guided by this principle and would decide all matters before me based upon an application of binding precedent to the facts without regard to political ideology or any other outside motivation.

17. **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 experience in litigating cases has given me a perspective and understanding of the importance of neutrality and fairness by judges to all litigants. If confirmed, any personal views I might have would not play a role in my decision-making. Rather, I would be guided solely by the rule of law.

18. **If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I intend to manage my caseload by setting reasonable but firm deadlines. In addition to my own personal involvement, I would utilize court personnel and magistrate judges to facilitate the prompt resolution of pretrial matters. I would consistently monitor the advancement of cases and would dispose of cases by summary disposition when appropriate.

19. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: I do believe judges have a role in controlling the pace and conduct of litigation. If confirmed, I would utilize the steps described in my response to question 18 in order to control and manage my docket.

20. **You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: Although I have spent my career as an advocate for my clients, I understand that the role of a judge is not to advocate for any particular position or litigant but to decide matters with absolute impartiality. If confirmed, I would decide cases based upon the text of applicable statutes and the precedent of the higher courts as applied to the facts. I expect the most challenging part of the transition would be becoming more knowledgeable in criminal law and procedure. However, I am confident that I can meet the challenge through a commitment to self-study and continuing education.

21. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity**

of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees". You have indicated that you are a member of the AAJ.

a. **Will you please explain your interest in and your work for the AAJ?**

   Response: I initially became interested in AAJ (formerly, The Association of Trial Lawyers of America) because of the availability and quality of its continuing legal education programs and the networking opportunities it offered. Over the years, in large part because I benefited from the membership support services offered by the organization and the opportunities to further develop and enhance my practice, I agreed to serve on various committees and boards within the organization.

b. **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: Yes. In April 2013, I informed John Bowman with AAJ that I was going to apply for the position of U.S. District Court Judge for the Southern District of Illinois. Various members and staff of AAJ contacted and congratulated me when I was recommended by Senator Durbin as a candidate for nomination and when I was nominated. I don't recall the specific dates of these contacts.

c. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

   Response: No.

22. **Please describe with particularity the process by which these questions were answered.**

    Response: I received these questions on March 19, 2014 and prepared my responses on March 19-20, 2014. I submitted my responses to the Department of Justice Office of Legal Policy for review. I then finalized my responses and authorized their transmittal to the Committee.

23. **Do these answers reflect your true and personal views?**

    Response: Yes.

Staci M. Yandle
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 decide matters impartially and promptly. In doing so, I would apply the law to the particular facts of the case and would follow binding precedent. I have not studied or analyzed the judicial philosophies of Supreme Court Justices and am therefore unable to state which Justice's judicial philosophy is the most analogous to mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed, I would follow the guidance on constitutional interpretation enunciated by the Supreme Court, including that provided in *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *Heller*, the Court looked to the normal and ordinary meaning of words used in the Second Amendment as they were understood at the time of ratification.

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 court judge, I would be bound by the precedent of the Supreme Court and the Seventh Circuit Court of Appeals. 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, I would be bound by the Supreme Court's decision in *Garcia* and subsequent decisions in which the Court identified constitutional limitations on congressional power. I would follow this precedent without regard to any personal beliefs I may have regarding the Court's decision in this or any case.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: While the Supreme Court has recognized limits on Congress' power to regulate non-economic activity pursuant to the Commerce Clause, *see, e.g.*, *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995), in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia noted that "Congress may regulate even noneconomic local activity if that

regulation is a necessary part of a more general regulation of interstate commerce." *Id.* at 37 (Scalia, J., concurring). If confirmed, I would follow Supreme Court and Seventh Circuit precedent regarding the extent of Congress' power 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 held that the President's authority to act "must stem from either an act of Congress or from the Constitution itself." *Medellin v. Texas*, 552 U.S. 491, 525 (2008) (internal citations omitted). The applicable judicial analysis that must be conducted in order for a court to determine whether a particular executive order or action is authorized by an act of Congress or the Constitution is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would follow Supreme Court and Seventh 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: Pursuant to Supreme Court precedent, fundamental rights for purposes of the substantive due process clause include "the specific freedoms protected by the Bill of Rights," and "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and which are "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Gluckberg*, 521 U.S. 702, 720-721 (1997) (internal citations and quotations omitted). If confirmed, I would follow the precedent of the Supreme Court and Seventh Circuit in determining whether a right is "fundamental" under 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 a classification must be subjected to heightened scrutiny under the Equal Protection Clause when the classification burdens a fundamental right or is based on race, religion, national origin, gender or illegitimacy. *See, e.g., Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439-441 (1985). If confirmed, I would follow the precedent of the Supreme Court and Seventh Circuit in deciding issues under the Equal Protection Clause.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have no expectations as to whether or not the use of racial preferences will be necessary in public higher education 15 years from now. If confirmed, I would be bound by and would follow the Supreme Court's holding in *Grutter, Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), and any subsequent precedent in deciding cases involving the use of racial preferences in public higher education admission decisions.

Questions from Senator Orrin Hatch to USCIS Nominee Leon Rodriguez

Question #1:

The current R-1 process is painfully slow and creates inconvenience and hardship. The average processing time is about five months.

In my view, a two-month processing time where site visits have previously been done would be a reasonable solution for petitioners known to be non-fraudulent.

If confirmed, would you consider waiving the petition process for religious organizations with well-established missionary programs and an objective history of compliance?

> If confirmed, I commit to reviewing this program, including on-site inspections, to determine whether it is consistent with the USCIS standards of efficiency, security and integrity. As I will with all USCIS benefit areas, I will work to make the Agency's processes as efficient as possible. It is my understanding that in 2008 USCIS revised the religious worker regulations to improve DHS's ability to detect and deter fraud and other abuses of the religious worker program.

Question #2:

I am concerned about those who change from F-1 to R-1 status. Sometimes R-1 visa petitions are denied because by the time USCIS adjudicates these petitions (usually about five months after filing), the school has had to terminate them in the Student and Exchange Visitor Information System.

Can I get your commitment that you will work to address this issue?

> If confirmed, I certainly commit to a careful study of this issue to determine how to most appropriately address and resolve these concerns. I understand that USCIS has regular monthly meetings with Immigration and Customs Enforcement (ICE) Student Exchange and Visitor Program (SEVP) and I support continued coordination with SEVP.

Question #3:

I am concerned about travel for foreign religious authorities who are living in the United States but need to travel abroad frequently.

In particular, after applying to adjust their U.S. immigration status, these non-U.S. national religious leaders cannot travel abroad for 90 days. If they do not get advance parole before traveling, USCIS deems their applications to be abandoned.

Would you consider treating applicants in R status like those in L and H status, who can travel freely without getting advance parole?

If confirmed, I commit to carefully studying the travel parameters for those in R status to determine the most appropriate steps, including exploring possible regulatory actions, to address this issue. I understand that departures from the U.S. have different effects depending upon which section of law the foreign national is applying for adjustment of status.

Question #4:

Last summer, USCIS decided to allow eligible applicants to file their I-601 waiver through the Nebraska Service Center.

For those whose waivers are approved it has significantly shortened the time that they need to be outside of the United States while processing their immigrant visas. This has greatly reduced the time that families are separated and consequently suffer all of the difficulties associated with long separations. If confirmed, will you ensure that this process continues under your leadership?

If confirmed, I will carefully study this matter to ensure that we can continue to provide the most appropriate support for this process.

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Senator Dianne Feinstein
Written Questions to Leon Rodriguez, Nominee to be Director of the U.S. Citizenship and Immigration Services

Backlogs of Family-Based Petitions

USCIS is currently taking an average of 10 months to process the family-based I-130 petitions that U.S. citizens and lawful permanent residents must file to sponsor their relatives for lawful permanent resident status. The processing time for such cases is normally approximately five months.

I understand that USCIS has been routing some cases to less busy processing offices known as "regional centers" to reduce the backlog, and anticipates getting their processing times back to normal by May 2014.

- **Should you be confirmed, will you commit to reducing the processing times for family-based petitions so that families may be reunited as soon as possible?**

  If confirmed, I can commit to continuing the policy for the agency to process petitions in a timely and efficient manner that ensures a fair and accurate adjudication. I understand from USCIS, that they are working to get the processing times in I-130 immediate relative petitions back down to their processing time goal by this summer.

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Senator Charles E. Grassley
Questions for the Record for Leon Rodriguez
Nominee for Director of U.S. Citizenship and Immigration Services, U.S.D.H.S.

1. **If confirmed as Director of U.S. Citizenship and Immigration Services (USCIS), you will be responsible for ensuring that foreign nationals receive only the benefits to which they are entitled under the immigration laws. Do you have any background or leadership experience in the area of immigration law or immigration policy?**

My background in immigration law and policy runs through my entire educational and professional background. As a law student at Boston College Law School, I was the coordinator in my second and third-years of the Holocaust/Human Rights Research Project (H/HRRP). The project sponsored both scholarship and an annual conference on the precedential value of legal proceedings against alleged Nazi war criminals for other instances of mass violation of human rights. During my tenure, we were particularly focused on the legal issues surrounding de-naturalization and deportation proceedings against Nazi war criminals. In recognition of my leadership with H/HRRP, I received the Susan Grant Desmarais Award for Public Service, the highest award for public service given by the law school.

From 1994 to 1997, I served as a prosecutor with the U.S. Department of Justice Civil Rights Division. A significant portion of my docket involved human trafficking cases, including ones involving alien smuggling and other violations of the immigration laws. In particular, I was the lead prosecutor in the case of U.S. v. Flores, a case involving the enslavement of Mexican and Guatemalan nationals who had been smuggled from border areas in Arizona to farms in South Carolina and Florida.

As County Attorney for Montgomery County, Maryland I was called upon on several occasions to advise our County Executive, Chief of Police and the Director of our Department of Corrections and Rehabilitation on various issues related to the relationship between immigration issues and law enforcement. The issues involved both the County's participation in the Criminal Alien Program and Secure Communities Program. Among the issues on which I worked was the development in cooperation with the Chief of Police and the State's Attorney was the development of criteria, including an expanded list of criminal offenses, upon which arrestees would be referred to Immigration and Customs Enforcement.

During my work on the Obama-Biden transition team, I was assigned to review various immigration-related functions of the Department of Justice, including the immigration courts.

Finally, as Chief of Staff and Deputy Assistant Attorney General in the Department of Justice Civil Rights Division, I was responsible for overseeing the Office of Immigration-Related Unfair Employment Practices, which enforces the laws prohibiting discrimination in employment based on immigration status or national origin against individuals legally entitled to work in the United States. The cases handled by this office required an understanding of the various categories of immigration status that afforded individuals employment eligibility. Several of the cases handled by this office involved the e-verify system and required an understanding of the significance of temporary non-confirmations and final non-confirmations under the E-verify system. Additionally, during my tenure in the Civil Rights Division, I was designated by the Deputy Attorney General to serve on a panel interviewing candidates for the immigration courts.

I would also note my background as a fraud, organized crime and money laundering prosecutor. For example, as the First Assistant United States Attorney in Pittsburgh, I was the lead prosecutor in the case of U.S. v. John Gardner Black, which involved the successful prosecution of an investment adviser who had defrauded Pennsylvania school districts of $60 million public funds. Such experiences have prepared me to oversee the national security and anti-fraud aspects of USCIS's work.

2. **In what ways, if any, would you depart from former Director Alejandro Mayorkas' policies?**

As a nominee, I do not have the opportunity to fully evaluate USCIS's policies and procedures as I would as a sitting director. As such, I would not pre-judge at this time whether, in the hopeful event of my confirmation, I would change any policies or procedures that existed under former Director Mayorkas.

3. **Do you find any of former Director Mayorkas' actions, or any current DHS policies, to be objectionable? If so, what? What would you do differently?**

It is my general view that former Director Mayorkas is an exemplary public servant, who was an effective leader of USCIS. I am not aware of specific policies that existed under his tenure that I would deem objectionable or would seek to change in the hopeful event of my confirmation. Having said that, I am always prepared to take a fresh look at the agency's policies and practices based on feedback offered by the Senator and others.

4. **During your confirmation hearing, I asked you if you would expand the Deferred Action for Childhood Arrivals (DACA) program. However, you did not answer. Please explain what actions you may take regarding the program, if confirmed.**

   I am committed to following and executing the laws of the United States, and leading all of the operations of USCIS in the most efficient and fair manner possible. However, it would be impossible for me to predict what action I would take with respect to a policy like DACA prior to my confirmation.

5. **The previous Director of USCIS implemented DACA without requiring the payment of a fee to cover the cost of the actual adjudication of the DACA application. The fee that DACA applicants currently pay is only the fee covering the adjudication and processing of the Employment Authorization Document and related biometrics collection fee. USCIS adjudicatory resources had to be reallocated to handle the hundreds of thousands of DACA cases and, as a result, processing of family-based immigrant visa petitions filed by U.S. citizens on behalf of foreign relatives has stretched from 5 to as many as 15 months.**

   a. **Do you support the previous Director's decision to not charge a substantive adjudication fee for DACA applications?**

      If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter.

   b. **If confirmed, do you intend to repeat the error of the previous USCIS Director and not charge a fee for the DACA applications when processing the upcoming wave of DACA renewal applications, thus causing further harm to U.S. citizens who have filed family-based petitions?**

      If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter.

6. **Aside from charging an adjudication fee for DACA applications, what other steps, if confirmed, would you immediately take to restore processing times for immediate relative petitions to their pre-DACA periods?**

   If confirmed, I can commit to continuing the policy for the agency to process petitions in a timely and efficient manner that ensures a fair and accurate adjudication. I understand from USCIS, that they are working to get the processing times in I-130 immediate relative petitions back down to their processing time goal by this summer.

7. **The previous Director of USCIS required that all potential denials of DACA cases be sent to headquarters for review. Will you continue this practice, or will you allow adjudicators in the field to make these decisions in a non-political manner?**

   If confirmed, I will carefully study this matter to ensure that we can continue to provide the most appropriate support for our adjudicators.

8. **Whistleblowers have informed me that USCIS refuses to share information related to DACA applicants with U.S. Immigration and Customs Enforcement (ICE) officials. Will you commit to improving information sharing with other law enforcement officials so that we can better protect the homeland and ensure that only those eligible are receiving immigration benefits, including DACA?**

   If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward.

9. **What actions would you consider taking to root out fraud and abuse in the DACA program? Specifically, what actions do you plan to take with regard to diploma mills?**

   As a former federal fraud prosecutor, I take any fraud against the United States quite seriously. If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter and reviewing this process to ensure it remains consistent with the USCIS standards of efficiency, security and integrity.

10. At your hearing, Senator Durbin asked for your view on whether prosecutorial discretion exists in the context of immigration that he believes justifies the use of Executive Order to circumvent the proper constitutional process to modify the law: a bill signed into law after passing both the Senate and the House of Representatives. In your response, you acknowledged your view that prosecutorial discretion exists in the immigration enforcement context. But you also said that such power is "not unlimited" and is "not uncabined."

a. Based on your experience, what is the proper role of prosecutorial discretion in the criminal context? What are its proper limitations, if any?

In my experience, prosecutorial discretion, which is well-recognized in American jurisprudence, enables law enforcement authorities, in criminal and other cases to prioritize cases based on principled criteria in light of the resources made available for enforcement. A broad range of factors can be considered in determining how to prioritize enforcement, such as the resources available to a law enforcement authority, the level of seriousness of an offense and other considerations of fairness and public interest. That discretion is limited by the basic duty to faithfully execute applicable laws and any other specific limitations on that discretion that may exist under the Constitution and statute.

b. In your view, what is the proper role of prosecutorial discretion in the immigration enforcement context? What are its proper limitations, if any?

It is my general understanding that the role of prosecutorial discretion is broadly speaking similar in the criminal and immigration contexts. As noted, prosecutorial discretion must be exercised as appropriate in light of the relevant laws and factors for any particular situation.

c. How would you describe the differences in the proper limitation of prosecutorial discretion between the criminal and immigration enforcement contexts?

It is my general understanding that the limitations on prosecutorial discretion are broadly speaking the same in the criminal and immigration contexts, and as noted prosecutorial discretion should be exercised in light of the relevant laws and factors for any particular context.

d. **Can an Executive Order overstep your view of the proper bounds of prosecutorial discretion in the immigration enforcement context?**

As I acknowledged during my confirmation hearing, prosecutorial discretion exists in the immigration enforcement context, but that power is "not unlimited" and is "not uncabined."

e. **If confirmed, what will you do if you are instructed by the Administration to follow an Executive Order that you believe exceeds the limitations of exercising prosecutorial discretion in immigration enforcement?**

I am committed to faithfully executing the laws of the United States and to providing sound advice to the Administration. I would not discharge my office in any way that I thought to be impermissible under the law.

11. **If USCIS denies an immigration benefit to an individual in the country, and that person does not have legal authority to remain, will you, if confirmed, require that USCIS turn over all documentation and proactively cooperate with ICE to initiate removal proceedings?**

If confirmed, I commit to uphold the law and carefully review this issue to ensure it remains consistent with the USCIS standards of security and integrity.

12. **In the more than four years that she served as Secretary of the DHS, Secretary Napolitano never met with employees representing either the USCIS or ICE unions. There was a lot of discontent amongst the thousands of adjudicators and agents in the field who worked hard every day to adjudicate petitions and applications, and to enforce the laws. The National Citizenship and Immigration Services Council represents 12,000 agency employees. This union represents staff within USCIS who doesn't agree with the administration's plan to grant legal status to people here illegally. These officers also feel pressured to approve petitions and applications and fear retaliation if they do not "get to a yes." Will you meet with representatives from the National Citizenship and Immigration Services Council before you are confirmed so you understand their concerns?**

    If confirmed, I would welcome meeting with these and other CIS employees and would want to spend a great deal of time meeting with and working with the agency's employees.

13. **Serious national security issues have come to light in recent months with respect to the EB-5 Regional Center program, which allows foreign nationals to obtain a green card if they invest in certain investment projects in the United States. In December 2013, the Homeland Security Inspector General identified concerns with USCIS's management of the Program. The OIG concluded that USCIS cannot administer and manage the EB-5 Regional Center program effectively, and that there's no evidence that there's an economic benefit to the country. In an internal memo to the DHS Secretary, ICE identified several vulnerabilities with the EB-5 program, including economic espionage, use by foreign governments for espionage purposes, use by terrorists, and money laundering. ICE's principal recommendation was that the EB-5 program be terminated. Other countries have similar concerns. Canada ended their investor visa program and the UK is likely to put severe restrictions on their own, including doubling the investment amount.**

    a. **Do you concur that more needs to be done to reduce national security risks and to prevent fraud and abuse in the program?**

        I understand that USCIS has made substantive changes and improvements within the EB-5 program to date, including assigning FDNS officers to work within the program office to ensure proper security screening and background checks are administered on each of the application types associated with the program to prevent fraud and national security risks. Furthermore, I have also been advised that USCIS recommended certain improvements to the program, and that these are reflected in S. 744. If confirmed, I will review the program to ensure that that USCIS's existing high standards of integrity and security are maintained.

b. **Do you have any plans to administratively improve the program?**

If confirmed, I will review the program to ensure it remains consistent with CIS's high standards of security and integrity.

c. **Would you support increasing the minimum EB-5 investment amount – something that would be within your authority to accomplish by regulation? If not, why not?**

If confirmed I will commit to review this issue.

d. **Will you make it a priority to reform the program if you are confirmed?**

If confirmed, I will commit to review the program for any additional improvements.

e. **Would you consider placing a moratorium on the program if you determine, after being confirmed, that there are significant and serious national security issues?**

If confirmed I will commit to reviewing the program and take any appropriate action within my authority.

14. **E-Verify has been an effective tool for employers to determine if they have a legal workforce. This program will be critical if an immigration bill moves forward in Congress because it will very likely be made mandatory for all businesses.**

a. **Do you support making E-Verify permanent and mandatory for all employers?**

I do support the enhancements to E-Verity as part of bipartisan efforts to enact common sense, comprehensive immigration reform. Several E-Verify provisions, including phasing in mandatory employer use of E-Verify were included in S.744.

b. **Do you have any plans to change the E-Verify program absent an act of Congress?**

No. It is my understanding that the E-Verify program currently in effect has worked well and has a relatively low error rate.

15. If confirmed, it will be your job to help implement our nation's immigration laws. The administration is publicly pushing an immigration bill that *grants legal status to people who are in the country illegally.* Do you agree with the administration's support for Senate Bill 744?

I do agree with the administration's support for Senate Bill 744, which was also supported by a majority of the Senate. I do not believe that there is much dispute that our immigration system is broken. Like many law enforcement, business, labor and faith leaders, I believe that Senate Bill 744 provides a path toward an immigration system consistent with the national interest, including its provisions that bring undocumented persons out of the shadows, require them to pay a penalty, and to take their proper place in line before they earn citizenship.

16. Should people here illegally be eligible for immigration benefits, including legal status? If so, should those individuals be responsible for all costs associated with it? Should taxpayers shoulder any of the burden?

I support the framework for addressing these issues that is contained in S.744, which includes provisions requiring individuals to pay fees that cover the costs of applying for legal status.

17. Should people here illegally who are in removal proceedings be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a "yes" or "no". I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

18. Should people who are subject to an order of removal from the United States be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a "yes" or "no". I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744. I support the framework for addressing these issues that is contained in S.744.

19. Should an illegal immigrant convicted of a felony criminal offense be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a "yes" or "no". I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

20. Should an illegal immigrant convicted of multiple misdemeanors be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a "yes" or "no". I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

21. Should an illegal immigrant with even a single sex-related offense be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a "yes" or "no". I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

22. Should an illegal immigrant with even a single drunk driving offense be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a "yes" or "no". I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

23. Should illegal immigrant gang members be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a "yes" or "no". I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

24. If an illegal immigrant provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions? If an illegal immigrant provides information in an application that clearly renders him ineligible and commits a serious crime that would warrant his immediate removal, shouldn't the government be able to use that information to place him in removal proceedings?

If confirmed I will work to ensure the safety and security of the United States and uphold current laws.

25. Should people here illegally be required to submit to an in-person interview with adjudicators when applying for immigration benefits, including legal status? Would you not agree that, at a minimum, any illegal immigrant with a criminal record should be required to be interviewed as part of any sort of legalization process?

If confirmed, I certainly commit to review current procedures, and where needed, improve areas to address any security/fraud concerns.

26. Should people here illegally that have been denied legal status be placed in immigration proceedings and removed? If not, why not?

If confirmed, I commit to uphold the law and carefully review this issue to ensure it remains consistent with the USCIS standards of security and integrity.

27. If the Secretary of Homeland Security must revoke a visa for someone on U.S. soil, should that decision be reviewable in the U.S. courts?

The scope of judicial review over immigration decisions would not be within my jurisdiction, if confirmed as Director of USCIS.

28. As a result of some of the actions taken by Secretary Napolitano, particularly her Directive entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," several ICE agents, including the President of the ICE agents and officers union, the National ICE Council, Chris Crane, filed a complaint against Secretary Napolitano stating that "the Directive commands ICE officers to violate federal law . . . violate their oaths to uphold and support federal law, violates the Administrative Procedure Act, unconstitutionally usurps and encroaches upon the legislative powers of Congress, as defined in Article I of the United States Constitution, and violates the obligation of the executive branch to faithfully execute the law, as required by Article II, Section 3, of the United States Constitution." Moreover, Kenneth Palinkas, the president of the National Citizenship and Immigration Services Council, has likewise charged that USCIS employees are required by the agency "to grant immigration benefits to those who, under law, are not properly eligible." In short, the administration's policies have caused a great deal of discontent among immigration officers and agents, to say the least. Accordingly, if confirmed, what will you do to improve the morale of immigration officers who are concerned about these non-enforcement protocols issued by the administration?

Having served in four other government leadership positions, each of which involved staff involved in making decisions of an adjudicatory nature, I know how important it is that staff trust in the integrity of its leadership. One of the most important ways to earn that trust is to genuinely listen to your staff, including when their views may be contrary to your own or to the existing practices of your agency. If confirmed, I will engage with staff and their labor representatives on any and all concerns they may have about their mission.

29. All federal employees take an Oath, codified at 5 U.S.C. § 3331, to "support and defend the Constitution of the United States ... and that [they] will well and faithfully discharge the duties of the office on which [they] about to enter." How can an employee fulfill his or her oath if such an employee is threatened with reprisal for executing the laws enacted by Congress to which they are entrusted to administer, and for not complying with an administratively-created command to the contrary?

As I indicated above, the exercise of prosecutorial discretion has been well-recognized in American jurisprudence. In my long experience as a prosecutor and in other law enforcement environments, it is my view that the application of prosecutorial discretion is appropriate to the proper operation of a law enforcement organization. The articulation of the agency's enforcement priorities for use of its available resources, and setting of criteria for the exercise of discretion rests with the leadership of the agency. Ordinarily, employees are expected to abide by lawful decisions as to how an agency will prioritize its use of resources, including through the appropriate use of prosecutorial discretion.

30. In January 2012, the DHS Inspector General released a report criticizing USCIS for pressuring its employees to rubberstamp applications for immigration benefits. In that report, nearly 25 percent of USCIS officers surveyed said supervisors had pressured them to approve applications that should have been denied.

a. Do you believe that current USCIS screening procedures are sufficient to prevent fraud and threats to public safety and national security?

If confirmed I will review the current policies and procedure for fraud prevention and national security, and if needed I will make improvements.

b. If confirmed, would you change these policies? If so, how?

If confirmed I will review the current policies and procedure for fraud prevention and national security, and if needed I will make improvements.

c. Will you commit to ensuring that USCIS background checks for every applicant for immigration benefits are properly and effectively conducted?

If confirmed I will review the current policies and procedure, and if needed I will make improvements.

d. Should employee performance evaluations at USCIS be linked to the number of applicants for benefits approved, or adjudicated?

I understand that USCIS has already addressed this issue in coordination with Union officials.

31. Do you believe it is appropriate for the Director of USCIS to personally intervene in a specific case and overrule line adjudicators at a Service center?

As the leader of USCIS, the Director is responsible for all of its actions and decisions, including its adjudications. While it would not be possible or appropriate for the Director to intervene in all adjudications, it is appropriate, indeed incumbent upon him, to do so in limited situations, such as when the outcome of adjudication is wrong, or when adjudication may present a legal, factual or policy issue of broad application. I would note, however, that regardless of which USCIS official decides a case, it is of paramount importance that cases be decided according to the facts and the law, and nothing else.

32. To what degree should the Director of USCIS ever become personally involved in drafting adjudicatory decisions?

As the leader of USCIS, the Director is responsible for all of its actions and decisions, including its adjudications. While it would not be possible or appropriate for the Director to intervene in all adjudications, it is appropriate, indeed incumbent upon him, to do so in limited situations, such as when the outcome of adjudication is wrong, or when adjudication may present a legal, factual or policy issue of broad application. I would note, however, that regardless of which USCIS official decides a case, it is of paramount importance that cases be decided according to the facts and the law, and nothing else.

33. Recently, the U.S. arrested a legal immigrant in Illinois who had been convicted and served ten years in an Israeli prison for her role in two terrorist bombings. According to press reports, she was able to obtain both a green card (in 1995) and citizenship (in 2004) by simply omitting her conviction on her applications. She continued to live in the U.S. for years despite the fact that the conviction was public knowledge. Are you confident that the current processes for screening applicants for immigration benefits are able to identify and keep out criminals and individuals who pose a threat to national security?

I understand that USCIS screens all applicants (including those applying for naturalization and lawful permanent residence) against terrorism information, including Terrorist Screening Database (TSDB) records in TECS, and currently requires a final query of terrorism-related information immediately prior to adjustment of status or the naturalization ceremony. I also understand that USCIS relies heavily on our law enforcement and intelligence community partners for uncovering indicators of potential national security concern posed by applicants and petitioners. If confirmed, I commit to reviewing this process to ensure it remains consistent with the USCIS standards of integrity, security and efficiency.

34. DHS currently receives a portion of funds from each H-1B and L-1 visa application, deposited into the H-1B and L Fraud Prevention and Detection Account, and provides these funds to USCIS for fraud and abuse prevention efforts. ICE has a responsibility to investigate and prosecute the cases but does not receive any of these funds. Will you commit to ensuring that funding from the H-1B and L Fraud Prevention and Detection Account is properly shared among DHS components for both fraud prevention and for prosecution of employers who misuse the program?

It is my understanding that the DHS share of these funds is used for fraud prevention activities, as directed by statute. USCIS antifraud work depends upon the availability of fee-based funding, as opposed to the appropriated funds provided to ICE. I look forward if confirmed to working with other DHS components on issues of mutual interest, including combatting suspected fraud.

35. Oversight conducted by several Senate Committees has revealed that DHS is not enforcing the law prohibiting the admission into the country of those who would be a public charge. This has been confirmed by ICE and USCIS officers and data on both admissions and removals. Oversight also discovered a number of administration activities, including advertisements in immigration materials and at foreign embassies, encouraging foreign nationals to use federal welfare programs. Can you please describe, in detail, how you would restore vigorous enforcement of the public charge law to protect taxpayers, including what efforts you would undertake to reduce noncitizen enrollment in means-tested welfare programs? Please be specific in your answer.

It is my understanding that the U.S. Department of Health and Human Services and other benefit administering agencies, determine the eligibility for an individual to receive any means-tested benefits in light of applicable laws. I understand that USCIS assists benefit granting agencies by verifying through the Systematic Alien Verification for Entitlements (SAVE) Program with determinations of immigration status. If confirmed, I will ensure that USCIS is following the law.

36. Are you aware of any discussions within the Department to establish a program for Syrian nationals to obtain a special "parole" status to live and wait – potentially for many years -- for their immigrant visas while in the United States? If so, can you please provide any details? Regardless of your knowledge of such discussions, if such a program were to be done, would you believe it to constitute an overreach of Executive authority that not only circumvents the Immigration and Nationality Act's numerical caps but also circumvents standard refugee processing protocols?

I am not aware of such discussions. I would not offer a view on this issue without a full opportunity to review the facts and circumstances and applicable legal provisions.

37. On February 27, 2014, the Government Accountability Office (GAO) released its report on the Department of Homeland Security's (DHS's) management of the Optional Practical Training (OPT) program – an immigration benefit that allows foreign students to obtain temporary work in their major area of study during and after completing an academic program in the United States. The GAO report reveals extensive and alarming DHS mismanagement of the OPT program, proving serious program integrity issues that bring to light potential risks to national security. The report says (1) foreign students, sometimes aided by school officials, are currently abusing the OPT program to acquire unauthorized employment in the United States, and (2) due to lack of oversight by DHS, no one in the Federal Government presently knows where tens of thousands of these foreign students are located, who they are working for, how much they are being paid, or what they are doing while staying in the United States. While Immigration and Customs Enforcement has direct supervision over the OPT program, USCIS does approve OPT work authorizations upon the recommendation of Designated School Officials (DSOs). The use of OPT has increased dramatically over the years, and vulnerabilities in the program threaten the homeland. What steps will you take, if confirmed, to overhaul the program and improve oversight of those who apply or receive OPT?

If confirmed I will review USCIS' authority and obligations in this program and make improvements where necessary.

38. Every year, members of Congress introduce private relief bills for individuals who may have exhausted all administrative remedies to remain in the United States. Upon introduction, Immigration and Customs Enforcement does a report for Congress on the individual. If confirmed, will you commit to providing all members of the Judiciary Committee with the individual's A-file and any other documentation retained by the agency so that the private relief bill can be properly reviewed and considered?

I have been informed that ICE has jurisdiction over DHS reports relating to private bills and that USCIS provides appropriate information on an individual's immigration history to ICE. If confirmed, I will uphold the law and provide information as allowed under the Privacy Act and applicable Departmental policies.

39. The Senate Judiciary Committee has heard testimony from individuals who have been defrauded by foreign nationals who have utilized the VAWA self petitioning process to obtain legal status in the country. Individuals have claimed that foreign spouses will fraudulently marry and falsely claim abuse in order to obtain a green card. Many of these defrauded Americans say their side of the story was never heard by USCIS. If confirmed, will you commit to reviewing the process? Will you consider requiring USCIS adjudicators to gather evidence from and interview the accused spouse and other witnesses?

If confirmed, I certainly commit to a careful review of this issue to determine if any changes need to be made to the process while protecting the confidentiality, potential safety concerns and sensitivities associated with VAWA petitioners.

40. In the Fiscal Year 2015 DHS budget, the administration requests $3 million to create a nonprofit entity called the "U.S. Citizenship Foundation." This Foundation would be aimed at "expanding instruction and training on citizenship rights and responsibilities" and "promote the importance of United States citizenship."

a. Do you think it is necessary, in these difficult budget times, to use taxpayer dollars to create a nonprofit citizenship foundation?

I understand that the Fiscal Year 2015 DHS Budget requests authority to use $3 million of USCIS premium processing fee collections and that USCIS believes that this Foundation could be self-sufficient after three years. If confirmed I will carefully study this proposal.

b. Do you believe the creation of this Foundation can only be done by statute? In other words, if confirmed, will you create this Foundation even if Congress does not appropriate funding for the project?

If confirmed, I will review this proposal and the funding capabilities of USCIS and look at the most appropriate steps forward and what USCIS may do under existing authorities.

41. During your hearing, I asked you questions about a booklet entitled "Warning! Protect Yourself From Immigration Raids!" published by CASA de Maryland while you were still a board member.

a. During the questioning, you said that you were unaware of that specific publication until I mentioned it during the hearing, despite the booklet receiving considerable press coverage at the time. To the best of your recollection, is that still true: that you were unaware of that booklet until your hearing?

To the best of my recollection, I was not aware of the booklet until my hearing.

b. The booklet encouraged undocumented workers to not to give law enforcement a name, even while acknowledging that it is a crime in some jurisdictions. Do you believe that such advice is sound?

As a law enforcement official myself, I do not condone violation of the law. Without the benefit of having reviewed the booklet in its totality, I would not comment on the soundness of any advice it offers.

42. Also while you were a member of the board, CASA de Maryland was very vocal in expressing its outrage towards some citizens who recorded their observations of local congregating places of day laborers. I am not interested in debating the appropriateness of the Maryland minutemen's actions nor of the merits of a measured response. My concern is with the official statements made by CASA de Maryland on what I find to be a troubling escalation of the conflict. In response to the Minutemen's actions, the then-executive director stated that CASA de Maryland would "picket their houses, and the schools of their kids, and go to their work." The official CASA de Maryland spokeswoman defended these statements saying "it's perfectly legitimate of us to go to the Minutemen's homes and also protest."

a. At the time did you think it was acceptable for protestors to target unsuspecting children at their schools or homes?

As a father myself, I would never condone the intimidation of children as a method of protest. To my knowledge, no person affiliated with CASA de Maryland ever engaged in protests at the homes or workplaces of Maryland minutemen or at their children's schools or otherwise targeted the children of the Minutemen. As I understood the statements by CASA executive leadership at the time, they did not represent an imminent intention to protest at the described locations, but rather were meant to underscore what was seen as the intimidating nature of the actions taken by the Maryland Minutemen with respect CASA clients and staff.

b. If not, did you personally say anything publicly to contradict these official CASA de Maryland threats?

For reasons stated in my response to 42a, I did not publicly contradict the CASA de Maryland's executive leadership.

c. If you did not, do you believe you should have?

For the reasons stated in my response to 42a, I do not believe that any action would have been warranted on my part at the time.

43. If I were a line immigration adjudicator or enforcement official and I learned about certain aspects of your record (e.g., you oversaw an organization that encouraged undocumented workers to break the law, opposed a lawful and common sense solution to strengthen national security in the form of the REAL ID Act, and threatened to target children in retaliation over the actions of some citizens concerned about unlawful immigration). I would be very hesitant to trust that this new leader would help and support me to carry out successful immigration enforcement. How do you plan to convince over 18,000 employees that you, as their new leader, will be one hundred percent supportive of their efforts to lawfully enforce federal immigration law and change any perception or preconceived notions these agents and employees might otherwise have formed about you?

As a former state and federal prosecutor, and as a government executive in several different legal and law enforcement environments, an allegiance to enforcement of the law has been one of the hallmarks of my career. As I indicated in response to the question about my experience with immigration law and policy, I have engaged in scholarly activity in support of denaturalization and deportation proceedings against human rights violators, have criminally prosecuted human traffickers, and supported the Montgomery County, Maryland Police Department in developing policies for communicating relevant law enforcement information to applicable federal authorities.

If confirmed as USCIS director, I believe my mission to be to extend a warm hand of welcome to those entitled to be in the United States, and to make sure that those who are not entitled to admission to the United States, particularly those who mean harm to the American people, do not get to enter or remain here. I would communicate this basic philosophy about USCIS' mission to the staff at every opportunity, and would emphasize my long professional history defending exactly these principles.

44. Do you believe whistleblowers who know of problems with matters of national security should be prevented from bringing that information to Congress?

No. Applicable laws must be observed.

45. Will you commit to ensuring that every whistleblower is treated fairly and that those who retaliate against whistleblowers are held accountable?

It is my view that both the law and good government require fair treatment of whistleblowers. I will make sure that whistleblowers are not subjects of retaliation and will make sure that the laws that protect whistleblowers are followed.

46. At your hearing, we discussed the existence of emails between career prosecutors and leadership concerning the Department's declination to prosecute in the New Black Panther Party case. You acknowledged, as Chief of Staff, that you were part of the team that helped prepare Assistant Attorney General Thomas Perez for his testimony before the U.S. Commission on Civil Rights. During your hearing, your testimony on this point was somewhat unclear.

a. Were you aware, prior to Assistant Attorney General Perez's testimony before the U.S. Commission on Civil Rights that there was correspondence between political leadership and career attorneys about the declination to prosecute?

I was generally aware that there was correspondence between Departmental leadership offices and career attorneys about the decisions made to modify relief against two defendants in the New Black Panther Party case and to dismiss the case against the national party and its president. Although I do not believe that I reviewed any of that correspondence, it was my understanding at the time that the nature of that correspondence was to keep political leadership informed about the status of the case and the decision being made by the career leadership of the Civil Rights Division.

b. Did you make Mr. Perez aware of this correspondence prior to his testimony?

I did not communicate with Mr. Perez about this correspondence prior to his testimony.

c. Were you present when Mr. Perez testified before the Commission?

No.

d. Did you take any steps to correct the record at any point after he provided his testimony?

No. I did not and do not have any reason to believe that the testimony required correction.

47. At your hearing, you assured me that your view of Congressional Oversight was that there needed to be a strong flow of communication between your agency and the Congress. Should you be confirmed, how will your approach to responding to requests from Congressional Members and Committees differ than the approach used by DOJ while you were there?

As I stated at the hearing, it is my view that good government dictates that open communication between an agency and Congress be the norm. I am not in a position to speak to the approach used across all components in the Department of Justice, but if confirmed, I would work diligently to timely provide Congress the information that it needs.

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Senator Charles E. Grassley
Questions for the Record for Leon Rodriguez
Nominee for Director of U.S. Citizenship and Immigration Services, U.S.D.H.S.

Resubmission of Selected Questions

In a number of your responses to my previous submission, you replied that, if confirmed, you would look into the matter. The implication is that you are not able to be informed of these matters until you are confirmed. Yet, it is clear that you are able to get the necessary information from USCIS to answer specific answers to my questions (see e.g., your responses to Questions 6, 13.a., 30.d., 33, and 40.a.). Using the resources that are clearly made available to you, please respond to my earlier questions to which you often just repeated the same answer with little variation.

The questions in the first section are numbered to correspond with the original questions I submitted for the record. Occasionally, an additional question or two has been inserted that accompanies the related original question. Following these resubmitted questions is a series of follow up questions.

Introduction/Response to the above statement:

I appreciate and respect your request for further information regarding my views and perspectives. Within the parameters of my current position as a nominee I have attempted to provide additional information.

Having twice before taken over the helm of government agencies, and on two other occasions assumed a position as a senior agency leader during periods of transition, experience has taught me that the most important and dispositive input on operational and policy issues comes from being in an agency itself. In particular, having the expert input of seasoned staff and stakeholders and having the benefit of information held by the agency form the basis of thoughtful decisions. The questions that you raise are very important and essential to any form of effective enforcement and administration of the immigration laws.

I firmly believe that the nominee to such an important position of public trust should be a person who will commit to do their very best. I do so commit to you that if I am confirmed as Director I will do my very best—to study the law, analyze the policies, understand the operational factors, review the praise and criticism, weigh the pros and cons, and come to an informed understanding. I believe I should do so before making either insubstantial promises or an uninformed or under-informed decision that could affect the lives of millions of people now and in the future. Only when I am in the position to avail myself of all of the relevant information would I be able to make the needed smart, informed decisions based on the law and all of the relevant factors. I therefore provide the responses below with this understanding as the nominated, but not confirmed, Director of USCIS.

I would like, as part of this response, to underscore my professional experience as a state and federal prosecutor and public servant, working on a wide range of cases including health care

fraud, organized crime, and street crime. My commitment to protecting the American public from violence and protecting taxpayers from fraud is as strong now as it has been throughout my career in law enforcement positions. That commitment and the lessons of those professional experiences will undoubtedly inform my decisions and views on many of the issues raised below in the hopeful event of my confirmation.

I look forward to working with you and the Chairman in a productive manner that continues to protect the people of this country while supporting our pledge as a welcoming nation to immigrants.

5. The previous Director of USCIS implemented DACA without requiring the payment of a fee to cover the cost of the actual adjudication of the DACA application. The fee that DACA applicants currently pay is only the fee covering the adjudication and processing of the Employment Authorization Document and related biometrics collection fee. USCIS adjudicatory resources had to be reallocated to handle the hundreds of thousands of DACA cases and, as a result, processing of family-based immigrant visa petitions filed by U.S. citizens on behalf of foreign relatives has stretched from 5 to as many as 15 months.

a. Do you support the previous Director's decision to not charge a substantive adjudication fee for DACA applications?

Your answer: If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter.

Further answer: As the nominee, I understand I am not privy to the internal factors upon which USCIS and its leadership base its operational and policy decisions. Nor should I be until such time as I may be confirmed as Director of USCIS.

However, within the parameters of the information available to me as a nominee, I do understand USCIS, as a fee-based agency, balances its need for fiscal operating stability with the need and desire to provide its customers with the greatest accessibility to its services. Based upon the information currently available to me, I believe USCIS appropriately sought to achieve this balance by limiting the fee to the cost of adjudication of the Employment Authorization Document and biometrics.

In addition, where such an evaluation by USCIS results in an impact upon other programs, I further understand USCIS appropriately seeks to reallocate its resources to carry out its mission in a timely manner grounded in core principles of integrity, security and efficiency. With respect to your concern regarding the processing of family-based immigrant visa petitions, it is my understanding USCIS has reallocated resources to rapidly reduce these processing times to previously stated timelines by this summer. If I am confirmed, I will certainly, as previously stated, further study this decision to determine the most appropriate balance for the agency's current and long-term needs.

b. If confirmed, do you intend to repeat the error of the previous USCIS Director and not charge a fee for the DACA applications when processing the upcoming wave of DACA renewal applications, thus causing further harm to U.S. citizens who have filed family-based petitions?

Your answer: If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter.

Further answer: Within the parameters of the information available to me as a nominee, I do understand that as a fee-based agency, USCIS ensures its programs are adequately funded through its fees. I understand that the delays in processing family-based petitions were related to USCIS's overall capacity to process cases and should be addressed by the summer. If I am confirmed, I will certainly, as previously stated, further study this situation to determine the most appropriate balance for the agency's current and long-term needs, including whether or not there should be a separate processing fee for DACA requests.

7. The previous Director of USCIS required that all potential denials of DACA cases be sent to headquarters for review. Will you continue this practice, or will you allow adjudicators in the field to make these decisions in a non-political manner?

Your answer: If confirmed, I will carefully study this matter to ensure that we can continue to provide the most appropriate support for our adjudicators.

Further answer: Within the parameters of the information available to me as a nominee, it is my understanding that in certain instances the review of a case by those in the supervisory chain may extend to the USCIS headquarters in limited circumstances. While I understand as a nominee it is not appropriate for me to opine on the internal adjudicative policies of USCIS, if confirmed I will carefully review such policies. I will do so to ensure USCIS's immigration officers and their leadership receives the most appropriate support to effectively render decisions on cases in a timely manner which supports integrity, security and efficiency. I can assure you that if confirmed, I will take all steps necessary to ensure that decisions made by USCIS are made based on the facts, applicable law, and consistent application of policy, and not on political or other inappropriate considerations. This has been my approach in prior leadership positions and will continue to be my approach if confirmed.

8. Whistleblowers have informed me that USCIS refuses to share information related to DACA applicants with U.S. Immigration and Customs Enforcement (ICE) officials. Will you commit to improving information sharing with other law enforcement officials so that we can better protect the homeland and ensure that only those eligible are receiving immigration benefits, including DACA?

Your answer: If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward.

Further answer: As a former federal prosecutor, I am certainly committed to ensuring the appropriate sharing of information with our Department partners in a timely and effective manner to meet our common goal of the integrity of our national security process. If confirmed, I will certainly commit to further study of the nature of our information sharing across all of the USCIS programs to determine in what manner any improvements may be needed.

NOTE: In addition to answering the original question, please also answer these follow up questions as well. If USCIS denies an immigration benefit to an individual in the country, and that person does not have legal authority to remain, will you, if confirmed, require that USCIS turn over all documentation and proactively cooperate with ICE to initiate removal proceedings? If not, please explain the circumstances in which information sharing would not take place.

Response to Note above: As noted above, as the nominee, I understand I am not privy to the internal factors upon which USCIS and its leadership may base its determinations regarding the specific sharing of information. Nor am I currently privy to a complete understanding of the statutory and regulatory framework governing the decisions of USCIS in any of its complex decision making. I further recognize that, absent this information, I cannot make an informed assessment of the parameters of USCIS policy regarding information sharing. In the event of my confirmation, I most certainly will further study the authorities and processes currently in place to determine the most appropriate parameters.

13. Serious national security issues have come to light in recent months with respect to the EB-5 Regional Center program, which allows foreign nationals to obtain a green card if they invest in certain investment projects in the United States. In December 2013, the Homeland Security Inspector General identified concerns with USCIS's management of the Program. The OIG concluded that USCIS cannot administer and manage the EB-5 Regional Center program effectively, and that there's no evidence that there's an economic benefit to the country. In an internal memo to the DHS Secretary, ICE identified several vulnerabilities with the EB-5 program, including economic espionage, use by foreign governments for espionage purposes, use by terrorists, and money laundering. ICE's principal recommendation was that the EB-5 program be terminated. Other countries have similar concerns. Canada ended their investor visa program and the UK is likely to put severe restrictions on their own, including doubling the investment amount.

b. Do you have any plans to administratively improve the program?

Your answer: If confirmed, I will review the program to ensure it remains consistent with CIS's high standards of security and integrity.

Further answer: Within the parameters of the information available to me as a nominee, it is my understanding that USCIS has undertaken significant steps to improve the USCIS ability and expertise needed to manage the complex EB-5 caseload. If confirmed as Director, I will undertake a further review of the EB-5 program to ensure it is operating with the appropriate resources and support to be consistent with the highest standards of security, integrity and efficiency. In addition, I will work diligently to fulfill the commitments it has made to

implement the recommendations of the program made by the Office of the Inspector General in a recent audit.

c. Would you support increasing the minimum EB-5 investment amount – something that would be within your authority to accomplish by regulation? If not, why not?

Your answer: If confirmed I will commit to review this issue.

Further answer: As the nominee, I am not currently privy to a complete understanding of the statutory and regulatory framework as well as operational considerations governing the decisions of USCIS in any of its complex decision making, including the EB-5 program. If confirmed, I will certainly undertake further study of the authorities of USCIS and its capacity to take regulatory action in this and other areas. I recognize that only then may I make a prudent and informed decision in this area.

d. Will you make it a priority to reform the program if you are confirmed?

Your answer: If confirmed, I will commit to review the program for any additional improvements.

Further answer: Within the parameters of the information available to me as a nominee, it is my general understanding that USCIS has undertaken significant steps to administratively improve the USCIS ability and expertise needed to manage the complex EB-5 caseload. If confirmed as Director, I will undertake a further review of the EB-5 program to ensure it is indeed operating with the appropriate resources and support to be consistent with the highest standards of security, integrity and efficiency.

In addition, it is my understanding that USCIS submitted extensive technical assistance to Congress to draft legislation, which was largely incorporated into the Senate-passed S. 744 immigration bill. It is my understanding that these provisions would further bolster USCIS's oversight authorities to: (a) deny or terminate EB-5 Regional Centers and individual petitions based on a discretionary national interest finding; (b) exclude individuals from Regional Center participation who have engaged in fraud, misrepresentation, criminal misuse, or threats to national security; and (c) require Regional Centers to certify their compliance with all applicable securities laws and terminate those not in compliance.

e. Would you consider placing a moratorium on the program if you determine, after being confirmed, that there are significant and serious national security issues?

Your answer: If confirmed I will commit to reviewing the program and take any appropriate action within my authority.

Further answer: As noted above, within the parameters of the information available to me as a nominee, it is my understanding that USCIS has undertaken significant steps to administratively improve the USCIS ability and expertise needed to manage the complex EB-5 caseload. It is further my understanding that USCIS has undertaken significant steps within its own authority to

enhance the national security framework which supports the EB-5 operation working in partnership with other federal and Department partners. If confirmed, I will undertake a careful review of the current national security infrastructure of the program to determine if further steps for improvement are warranted. This review would include whether any adjustments or moratoriums may be warranted.

Questions 17 through 23: In my previous written questions, I asked you a series of questions about whether certain people in the country illegally should be entitled to benefits, including legal status. For almost every question, you answered each one about the complexity of immigration law and that the question could not be answered with a simple "yes" or "no." You stated that you support how the issues are addressed in S. 744, however, this bill does not prohibit many criminal aliens from accessing benefits or limit their application for legal status. In these instances, please explain when a person here illegally should be eligible for benefits, including legal status.

17. Should people here illegally who are in removal proceedings be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a "yes" or "no".

I am aware that a wide variety of legal and factual circumstances apply to determine whether an individual in removal proceedings is eligible for immigration benefits. In my position as a nominee I do not have access to all of the information I would need to offer a thoughtful view on this issue prior to my confirmation. I would note my understanding that USCIS would engage in a robust regulatory process to determine how to implement the requirements of any legislation ultimately passed.

18. Should people who are subject to an order of removal from the United States be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a "yes" or "no".

I am aware that a wide variety of legal and factual circumstances underlie the issuance of orders of removal and eligibility for immigration benefits. In my position as a nominee I do not have access to all of the information I would need to offer a thoughtful view on this issue prior to my confirmation.

19. Should an illegal immigrant convicted of a felony criminal offense be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a "yes" or "no".

I understand that current immigration laws in this context are very complex, but in most cases, individuals who have been found guilty of a serious crime are not eligible for and should not receive immigration benefits. Accordingly, I support the framework for addressing these issues that is contained in S. 744. If confirmed, I will certainly further review the statutory and regulatory framework regarding the eligibility for immigration benefits.

20. Should an illegal immigrant convicted of multiple misdemeanors be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a "yes" or "no".

I understand that current immigration laws in this context are very complex, but I do believe that in most cases, individuals who have been found guilty of a serious crime are not eligible for and should not receive immigration benefits. Accordingly, I support the framework for addressing these issues that is contained in S. 744. If confirmed, I will certainly further review the statutory and regulatory framework regarding the eligibility for immigration benefits, including the impact that prior misdemeanor convictions should have on eligibility for immigration benefits. I would note, based on my criminal justice experience that the phrase "multiple misdemeanors" could range from an individual convicted of certain traffic-related offenses to an individual convicted of multiple crimes of violence.

21. Should an illegal immigrant with even a single sex-related offense be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a "yes" or "no".

I understand that current immigration laws in this context are very complex, but I do believe that in most cases, individuals who have been found guilty of a serious crime, especially one involving sexual assault, should not receive immigration benefits. If confirmed, I will certainly further review the statutory and regulatory framework regarding the eligibility for immigration benefits.

22. Should an illegal immigrant with even a single drunk driving offense be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a "yes" or "no".

As I have indicated previously, I believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. Given the wide range of circumstances that surround individuals convicted of drunk-driving offenses, I believe that offering an informed view on this question would require further study.

23. Should illegal immigrant gang members be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a "yes" or "no".

I understand that current immigration laws in this context are very complex, but I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. As a former organized crime prosecutor, I understand that there may be evidence that an individual involved in violent conduct or other criminal activity that is insufficient to sustain criminal conviction, but is sufficient to sustain sanctions in a civil or administrative context. In such circumstances, I do think there may be a basis to withhold immigration benefits. If confirmed, I will certainly further review the statutory and regulatory framework regarding the eligibility for immigration benefits as it affects this question.

24. If an illegal immigrant provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions? If an illegal immigrant provides information in an application that clearly renders him ineligible and commits a serious crime that would warrant his immediate removal, shouldn't the government be able to use that information to place him in removal proceedings?

Your answer: If confirmed I will work to ensure the safety and security of the United States and uphold current laws.

Further answer: I understand that as the nominee I am not privy to the internal factors upon which USCIS and its leadership may base its determinations regarding its adjudicative work. Nor am I currently privy to a complete understanding of the statutory and regulatory framework governing the decisions of USCIS in any of its complex decision making-including the use of information gained from an immigration application benefit.

However, if confirmed, I will commit to you to work to ensure the safety and security of the United States and uphold the law. I will certainly commit to review current procedures, and where needed, improve areas to address any security and fraud concerns.

25. Should people here illegally be required to submit to an in-person interview with adjudicators when applying for immigration benefits, including legal status? Would you not agree that, at a minimum, any illegal immigrant with a criminal record should be required to be interviewed as part of any sort of legalization process?

Your answer: If confirmed, I certainly commit to review current procedures, and where needed, improve areas to address any security/fraud concerns.

Further answer: I understand that as the nominee I am not privy to the internal factors upon which USCIS and its leadership may base its determinations regarding its adjudicative work. Nor am I currently privy to a complete understanding of the statutory and regulatory framework and operational considerations governing the decisions of USCIS in any of its complex decision making-including the eligibility for an immigration benefit.

If confirmed, I will commit to you to work to ensure the safety and security of the United States and uphold the laws. I will certainly commit to review current procedures, and where needed, improve areas to address any security and fraud concerns, including the specific question of where an in-person interview should be required of various categories of individuals applying for immigration benefits.

26. Should people here illegally that have been denied legal status be placed in immigration proceedings and removed? If not, why not?

Your answer: If confirmed, I commit to uphold the law and carefully review this issue to ensure it remains consistent with the USCIS standards of security and integrity.

Further answer: I understand that as the nominee I am not privy to the internal factors upon which USCIS and its leadership may base its determinations regarding its adjudicative work. Nor am I currently privy to a complete understanding of the statutory and regulatory framework governing the decisions of USCIS in any of its complex decision making-including whether to refer an individual for immigration proceedings

It is my general understanding that there is a wide range of circumstances in which individuals may be denied legal status to be present in the United States and that the determination of whether those individuals should be placed in removal proceedings will depend on their specific circumstances and on a variety of other resource considerations. I will commit to studying this issue in the hopeful event of my confirmation.

30. In January 2012, the DHS Inspector General released a report criticizing USCIS for pressuring its employees to rubberstamp applications for immigration benefits. In that report, nearly 25 percent of USCIS officers surveyed said supervisors had pressured them to approve applications that should have been denied.

a. Do you believe that current USCIS screening procedures are sufficient to prevent fraud and threats to public safety and national security?

Your answer: If confirmed I will review the current policies and procedure for fraud prevention and national security, and if needed I will make improvements.

Further answer: As noted above, as the nominee, I understand I am not privy to a complete understanding of the full range of the current USCIS screening procedures-nor the complete results of such efforts. Within the parameters of the information available to me as a nominee, it is my understanding that USCIS actively works across the agency and with its law enforcement partners. In order to ensure that such issues were given utmost consideration, it is my understanding that the prior director established the Fraud Detection-National Security Directorate. It is my further understanding that these efforts by USCIS ensure that its screening procedures effectively prevent fraud and threats to public safety and national security.

If confirmed, I will commit to you to undertake further review of the current procedures, and where needed, improve areas to address any security and fraud concerns and will lead by example with my commitment to public safety and ensuring national security.

b. If confirmed, would you change these policies? If so, how?

Your answer: If confirmed I will review the current policies and procedure for fraud prevention and national security, and if needed I will make improvements.

Further answer: As noted above, if confirmed, I will commit to you to undertake further review of the current procedures, and where needed, improve areas to address any security and fraud concerns and will lead by example with my commitment to public safety and ensuring national security.

c. Will you commit to ensuring that USCIS background checks for every applicant for immigration benefits are properly and effectively conducted?

Your answer: If confirmed I will review the current policies and procedure, and if needed I will make improvements.

Further answer: As noted above, if confirmed, I will commit to you to undertake further review of the current procedures, including USCIS background checks to ensure that they are optimizing our national security and anti-fraud mission. It is my understanding that presently, the vast majority of individuals requesting benefits are subject to biometric checks for this purpose. Where needed, I will certainly undertake to improve areas to address any security and fraud concerns and will lead by example with my commitment to public safety and ensuring national security.

37. While Immigration and Customs Enforcement has direct supervision over the OPT program, USCIS does approve OPT work authorizations upon the recommendation of Designated School Officials (DSOs). The use of OPT has increased dramatically over the years, and vulnerabilities in the program threaten the homeland. What steps will you take, if confirmed, to overhaul the program and improve oversight of those who apply or receive OPT?

Your answer: If confirmed I will review USCIS' authority and obligations in this program and make improvements where necessary.

Further answer: As the nominee, I am not wholly familiar with the full range of benefits and services administered by USCIS. Nor am I wholly familiar with the use of OPT. Within the parameters of the information available to me as a nominee, it is my understanding that you previously expressed concerns to the Government Accountability Office (GAO) regarding the OPT program. It is also my understanding that GAO then released a report on March 7th of this year in which questions were raised regarding current oversight of the OPT program. If confirmed, I will certainly review in depth the findings from this GAO report to determine what appropriate further steps USCIS should take to further improve its partnership in this program.

38. Every year, members of Congress introduce private relief bills for individuals who may have exhausted all administrative remedies to remain in the United States. Upon introduction, Immigration and Customs Enforcement does a report for Congress on the individual. If confirmed, will you commit to providing all members of the Judiciary Committee with the individual's A-file and any other documentation retained by the agency so that the private relief bill can be properly reviewed and considered?

Your answer: I have been informed that ICE has jurisdiction over DHS reports relating to private bills and that USCIS provides appropriate information on an individual's immigration history to ICE. If confirmed, I will uphold the law and provide information as allowed under the Privacy Act and applicable Departmental policies.

Further answer: As a general matter, I stand by my prior answer on this question given that primary jurisdiction over these cases rests with ICE. If confirmed, I will certainly commit to reviewing the applicable Departmental statutory and regulatory framework and policies to understand the circumstances under which such documentation may be shared with the members of the Judiciary Committee.

NOTE: In addition to answering the question above, please answer the following additional question: Also, what privacy rules would limit your ability to share information with Congress about a potential private relief bill recipient?

Further answer: It is my understanding that the Privacy Act applies to records concerning aliens. As noted previously, I have been informed that ICE has jurisdiction over DHS reports relating to private bills and that USCIS provides appropriate information on an individual's immigration history to ICE. If confirmed, I will certainly commit to reviewing the applicable

Departmental statutory and regulatory framework and policies to understand the circumstances under which such documentation may be shared with the members of the Judiciary Committee.

40. In the Fiscal Year 2015 DHS budget, the administration requests $3 million to create a nonprofit entity called the "U.S. Citizenship Foundation." This Foundation would be aimed at "expanding instruction and training on citizenship rights and responsibilities" and "promote the importance of United States citizenship."

a. Do you think it is necessary, in these difficult budget times, to use taxpayer dollars to create a nonprofit citizenship foundation?

Your answer: I understand that the Fiscal Year 2015 DHS Budget requests authority to use $3 million of USCIS premium processing fee collections and that USCIS believes that this Foundation could be self-sufficient after three years. If confirmed I will carefully study this proposal.

Further answer: Based upon the information available to me as a nominee, it is my understanding that the FY 2015 President's Budget includes a proposal to establish the United States Citizenship Foundation. It is also my understanding that the FY 2015 Budget also proposes a one-time provision providing USCIS authority to use $3.0 million of USCIS premium processing fee collections in order to fund the Foundation's creation and initial three years of operation.

It is also my understanding that the U.S. Citizenship Foundation would function as a charitable and nonprofit corporation authorized to accept private donations to support the purposes of the Foundation, which include expanding instruction and training on citizenship rights and responsibilities, supporting a multi-sector approach to immigrant civic integration in the United States, and promoting the importance of United States citizenship.

Based upon the information I currently have available to me, I understand that there are an estimated 8.8 million permanent residents eligible to apply for naturalization. Accordingly, I believe that the one-time investment in the proposed United States Citizenship Foundation will provide expanded opportunities by leveraging funds from the private sector to complement and further develop immigrant civic integration initiatives.

b. Do you believe the creation of this Foundation can only be done by statute? In other words, if confirmed, will you create this Foundation even if Congress does not appropriate funding for the project?

Your answer: If confirmed, I will review this proposal and the funding capabilities of USCIS and look at the most appropriate steps forward and what USCIS may do under existing authorities.

Further answer: As mentioned previously, if confirmed, I will review this proposal and the funding capabilities of USCIS to better understand whether the Foundation may only be created by statute. Until such time as I may be confirmed, I cannot speak to the full scope of my

authorities to act to create the Foundation under my authority as Director. Accordingly, I will most certainly, as previously noted, undertake a careful study of the most appropriate steps forward and whether USCIS may act under existing authorities.

Additional Questions for the Record

1. **In my previous written questions, I asked you about your experience in immigration law. You mentioned that you advised Montgomery County officials about the Criminal Alien Program and Secure Communities Program.**

   a. **Can you be more specific about the advice you gave on those programs and what actions the county took?**

      Given that the legal advice provided to County government is subject to attorney-client privilege, I am constrained from disclosing that advice. I left County government prior to its implementation of Secure Communities. I am not aware whether and to what extent the County implemented the Secure Communities program.

   b. **Do you support the programs in their current form?**

      I do support the expansion of participation in the Criminal Alien Program undertaken by the Montgomery County Police Department, as I believe it promoted public safety in our County. As I am not fully informed about the County's participation in the Secure Communities Program, I am unable to offer a view on this topic.

2. **In my previous written questions, I asked you about your experience in immigration law. You mentioned that you worked on the Obama-Biden transition team and assigned to various immigration-related functions of the Department of Justice. Can you elaborate on your work during this transition, including what you did for the immigration courts?**

   I was assigned to gather information about certain immigration functions of the Department of Justice, including the immigration courts, the Office of Immigration Litigation in the Civil Division, and also issues related to detention and district court capacity for the criminal immigration caseload. With respect to the immigration courts, we were gathering information on staffing levels for the Courts, as well as other issues relating to the quality of adjudication in the immigration courts.

3. **In my previous written questions, I asked you if you would expand DACA. You said it would be impossible to predict what action you would take. Given that this program expires in a few short months, it is important to know where you stand on this program and what changes you expect to make.**

a. Will you expand the program to encompass more people?

As noted above, as the nominee, I understand I am not privy to all of the internal factors upon which USCIS, DHS as a whole, and its leadership base operational and policy decisions. This includes USCIS determinations regarding the current and future state of USCIS programs, including the DACA program and the upcoming renewal period for recipients of DACA. It is also my understanding that the form for renewal has now been published for public comment. I will commit to further study to better understand the parameters that govern the future operation of the DACA program. I do appreciate the timeframes applicable to the current program, and the need to assess its future operation upon my confirmation.

b. Will you keep the parameters of the program exactly the same?

I will commit to further study to better understand the parameters of the future operation of the DACA program.

c. Will the process for denials (requiring line adjudicators to send potential denials to headquarters) remain the same?

Within the parameters of the information available to me as a nominee, it is my understanding that in certain instances the review of a case by those in the supervisory chain may extend to the USCIS headquarters in limited circumstances. While I understand as a nominee it is not appropriate for me to opine on the internal adjudicative policies of USCIS, if confirmed I will carefully review such policies. I will do so to ensure USCIS's immigration officers and their leadership receives the appropriate support to effectively render decisions on cases in a timely manner which supports integrity, security and efficiency. I can assure you that if confirmed, I will take all steps necessary to ensure that decisions made by USCIS are made based on the facts, applicable law, and consistent application of policy, and not on political or other inappropriate considerations. This has been my approach in prior leadership positions and will continue to be my approach if confirmed to the leadership of USCIS.

d. Please provide any thoughts or discussions you have had pertaining to DACA and the renewal process for those with such benefits.

I have not engaged in any deliberations about the future of the DACA program. I am generally aware of the possible renewal process. Given that I do not presently have access to the internal operational and substantive factors associated with the future of the DACA program, I have otherwise refrained from pre-judging what action if any I would take or what advice I would give to DHS leadership and the administration with respect to the DACA program.

4. **In my previous written questions, I asked if you would meet with representatives from the National Citizenship and Immigration Services Council before you are confirmed so you understand their concerns. You said you would meet them after your confirmation. Will you commit to meeting with the Council representatives within 60 days after a vote on your confirmation?**

   Yes. I look forward to constructive engagement with the National Citizenship and Immigration Services Council.

5. **In my previous written questions, I asked you about reforming the EB-5 Regional Center program. I understand you support the changes in S. 744 regarding the program. Many of the provisions in S. 744 can be done administratively and do not need to wait for congressional action on legislation. Would you commit to making administrative reforms, including increasing the investment level, changing the formulation of targeted employment areas, increasing background checks and working with other government entities to detect fraud and abuse?**

   As previously noted, within the parameters of the information available to me as a nominee, it is my understanding that USCIS has undertaken significant steps to administratively improve the USCIS ability and expertise needed to manage the complex EB-5 caseload. This includes the steps by USCIS to significantly expand security checks to cover Regional Centers and executives participating in the program, thereby closing a significant gap in USCIS vetting. In addition, I also understand that USCIS is strengthening and enhancing its partnership with other government agencies on enforcement, such as initiating interagency review of EB-5 processes and enhancing referral protocols with ICE, the FBI, and SEC.

   If confirmed as Director, I will also undertake a further review of the EB-5 program to understand the question you raise with respect to the investment level and the formulation of targeted employment areas to understand the most appropriate next steps to take.

6. **In my previous written questions, I asked if you thought it appropriate for the Director of USCIS to personally intervene in a specific case and overrule line adjudicators at a Service center. You responded saying it would be "incumbent upon him to do so in limited situations."**

   a. **Can you elaborate on these limited situations?**

      As a general matter, intervention would be appropriate in those situations where the decision made is contrary to either the law or facts of the case, is decided contrary to consistently-applied USCIS policy, or presents a novel question of law or policy that needs to be resolved at the leadership level.

   b. **What constitutes a "wrong" decision, in your view?**

A wrong decision is one made contrary to either the law or facts of the case, or that is decided contrary to consistently-applied USCIS policy.

c. **What would be the process of review if an adjudicator makes the "wrong" decision?**

As a nominee, I am not fully knowledgeable about the internal USCIS procedures for review of adjudicator decisions. If confirmed, I do commit to a full review of this process and to making any adjustments to ensure the fairness, integrity and efficiency of the adjudication process.

d. **Would you interject in a case if the attorney for the applicant/petitioner claims it is the "wrong" decision?**

As stated above, my view is that intervention and/or review is appropriate in those situations where the decision made is contrary to either the law or facts of the case, is decided contrary to consistently-applied USCIS policy, or presents a novel question of law or policy that needs to be resolved at the leadership level.

7. **In my previous written questions, I asked about the use of H-1B fraud detection fees. However, your answer was unclear and vague. You implied that USCIS should keep the funding because it is fee based, while ICE receives appropriated dollars. I would ask for you to review the INA Section 287(v)(2)(B). DHS currently receives a portion of funds (as do the Departments of State and Labor) from each H-1B and L-1 visa application, and they are entirely used by USCIS. The law says the funds must be used to prevent <u>and</u> detect fraud, and does not specify that USCIS should retain all of the funds. ICE has a responsibility to investigate and prosecute the cases – which in turn helps deter fraud and abuse -- but does not receive any of these funds. Will you commit to ensuring that funding from this account is shared among DHS components, to include ICE? If you do not agree that ICE should receive this funding, please explain.**

As the nominee, I do not, as yet, have a full and complete understanding of the funding authorities under which USCIS operates. While I have not examined the issue in great detail, based on my experience as a public official, I understand there are numerous factors to consider when allocating funding. In this specific example, I understand that both USCIS and ICE have critical roles to perform in preventing and detecting fraud to ensure the integrity of the immigration system. I commit to partnering with the DHS Office of the Chief Financial Officer to examining the issue with ICE.

8. **In Question 38, I asked you about abuse in the VAWA self petitioning process. While I understand you will study this issue if confirmed, can you please assure me that you are aware of the potential for abuse in this program? I recommend reading the testimony provided to the Senate Judiciary Committee during reauthorization of the Violence Against Women Act. I would appreciate any thoughts you have on this issue.**

I have read the testimonies from the Senate Judiciary Committee hearing including the statement from the retired INS special agent. As a former prosecutor, I have always taken all assertions and allegations of potential fraud or abuse seriously with profound concern, and will do the same for this issue. If confirmed, I will carefully review this issue to determine if any changes need to be made to the process.

9. **In your response to Question 47, you pledged to "work diligently to timely provide Congress the information that it needs." Who determines the information that Congress needs: Congress or the applicable Federal Agency?**

   It is clearly Congress' prerogative to determine what information it seeks to discharge its oversight role, and it is the executive branch's duty to work with Congress in good faith to fulfill its oversight role. The applicable federal agency may also identify additional or different information that it believes will be helpful to Congress in discharging its oversight responsibilities. Optimally, the oversight process is a collaborative process between Congress and the applicable agency that advances the public interest by helping identify the information that is most helpful to Congress in fulfilling its oversight responsibilities.

10. **During your tenure on the Board of Directors for Casa de Maryland, the organization funded and was very active in getting day labor centers established throughout the DC metro area. The organization is well known for its ties to day laborers and supporting the employment opportunities of people in the country who do not have proper documentation.**

    a. **Did you support this mission of Casa De Maryland?**

       I supported CASA de Maryland generally because of its role in assisting and advocating for low-income immigrants in Montgomery County, Maryland. Like many citizens and business leaders in Montgomery County, I believed that in the context of Montgomery County, Maryland, CASA provided a necessary service to those individuals, in a manner that promoted public safety and community stability. It has also been my understanding that the function of the day laborer centers, in facilitating casual labor referrals for these individuals, is consistent with applicable law.

    b. **During your time on the Board, were you ever vocal against using taxpayer dollars to establish the centers?**

       For the reasons stated above, I was supportive of the use of local tax resources to support the day laborer centers.

    c. **How can you assure Congress, and the American people, that you will not use the office to support policies that benefit unauthorized workers in the United States?**

My long record as a state and federal prosecutor, and in other law enforcement capacities, evidences my commitment to enforcing the law. That commitment will continue should I be confirmed to serve the American people as USCIS director. I do support S.744 and believe that it offers a strong path to resolving the status of unauthorized workers in the United States.

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ELEVENTH CIRCUIT
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FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

STAFF COUNSEL
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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
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1050 Connecticut Avenue, NW
Washington, DC 20036

Please respond to:

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Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

VIA EMAIL AND FIRST-CLASS MAIL

February 6, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: ***Nomination of Cheryl Ann Krause to the United States Circuit Court for the Third Circuit***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Cheryl Ann Krause who has been nominated for a position on the United States Circuit Court for the Third Circuit. The Committee is of the opinion that Ms. Krause is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Ms. Krause.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: Cheryl Ann Krause, 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 February 6, 2014.

Stanford Law School

M. Elizabeth Magill
Richard E. Lang Professor
of Law and Dean

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
Tel 650 723-4455
Fax 650 723-4669
emagill@stanford.edu

March 10, 2014

The Honorable Patrick Leahy
Chair, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510

Subject: Nomination of Cheryl A. Krause to the U.S. Court of Appeals for the Third Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We write as the three former deans and the current dean of Stanford Law School to express our enthusiastic support for Cheryl A. Krause, who has been nominated for the U.S. Court of Appeals for the Ninth Circuit.

Cheryl Krause graduated at the top of her class at Stanford Law School in 1993. She was first in her class after her first year of law school, and she and her partner were the champions of the school-wide Kirkwood Moot Court Competition. Ms. Krause herself was selected as the best oral advocate in that final round. Following her graduation from law school, she clerked for Judge Kozinski, now the Chief Judge of the U.S. Court of Appeals for the Ninth Circuit, and for U.S. Supreme Court Justice Anthony Kennedy. Following her clerkships, she has pursued a wonderfully varied career—as a law teacher, law firm lawyer and partner, and an Assistant United States attorney. She has been repeatedly recognized as one of the finest lawyers in the United States. Along the way, she has somehow found time to perform an enormous amount of pro bono legal representation and has been repeatedly recognized for those contributions as well.

We write to tell you about Ms. Krause's reputation at Stanford. That reputation can only be captured through a series of adjectives that faculty use to describe their impression of her: exceptional, stellar, admirable, brilliant, incomparable. She is remembered as an academic stand-out in and out of the classroom, a student leader, a superb young lawyer, and a student who, faculty predicted, would always combine a challenging legal practice with pro bono and public service throughout her career.

Faculty members describe her as "brilliant," "among the small handful of top students I have ever taught " "the best student oral advocate I have ever seen," "truly possessing a judicial temperament," and "ideally qualified temperamentally and intellectually suited" to be a judge. Ms. Krause's career after law school has fulfilled these impressions and predictions and more. She has forged a remarkable path as a lawyer, and it is one that has prepared her well for a career on the bench.

We hope that you will give her your most serious consideration. We are optimistic that you will find her record as impressive as that of her former teachers and mentors at Stanford Law School.

Sincerely,

Paul Brest
Professor Emeritus and former Dean, Stanford Law School

Kathleen M. Sullivan
Partner, Quinn Emanuel Urquhart & Sullivan
(former Dean, Stanford Law School)

Larry Kramer
President, William and Flora Hewlett Foundation
(former Dean, Stanford Law School)

M. Elizabeth Magill
Dean and Richard E. Lang Professor of Law
Stanford Law School

3501 Sansom Street
Philadelphia, PA 19104-6204
Tel. 215.898.7483
Fax. 215.573.2025

March 7, 2014

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Cheryl Ann Krause

Dear Chairman Leahy and Ranking Member Grassley:

As faculty members at the University of Pennsylvania Law School who have had the privilege of working with Cheryl Ann Krause, we write to express our enthusiastic support of her nomination to the U.S. Court of Appeals for the Third Circuit.

Since she was first appointed a Lecturer in Law in 2003, Cheryl has taught Penn Law courses in cybercrime, evidence, and appellate advocacy, and has guest-lectured in three courses taught by other faculty. As a partner at the Dechert firm, Cheryl has been the lead person teaching our Federal Appellate Litigation Externship, in which Penn Law students are assigned to litigation teams at Dechert working on pro bono cases pending before the Third Circuit. In the early 2000s, Cheryl was a Barrister member of the University of Pennsylvania Law School American Inn of Court (an organization that seeks to promote ethics and professionalism by bringing together law students, practitioners, and judges for periodic discussions on legal issues), and she participated in presenting three Inn of Court programs on different topics.

In her teaching and mentoring at the Law School, Cheryl has demonstrated the talents that will make her a first-rate judge. Not only does Cheryl bring to her tasks a

powerful analytical capacity, but also she has consistently displayed fair-mindedness and intellectual curiosity. Her knack for providing students and young lawyers with rigorous yet constructive feedback signals that she would show respect to the lawyers who appear before the Court while subjecting their contentions to penetrating scrutiny. Cheryl possesses excellent judgment and high integrity, and her interpersonal skills would make her a valued and collegial member of the Court.

In sum, we believe that Cheryl's legal acumen, temperament, and experience make her a superb candidate for a seat on the U.S. Court of Appeals for the Third Circuit and we heartily support her nomination.

Sincerely,

Stephanos Bibas
Professor of Law and Criminology[1]
Director, Supreme Court Clinic

Stephen B. Burbank
David Berger Professor for the Administration of Justice

Jill E. Fisch
Perry Golkin Professor of Law
Co-Director, Institute for Law and Economics

Michael A. Fitts
Dean and Bernard G. Segal Professor of Law

Paul M. George
Associate Dean for Curriculum Development and Biddle Law Library

Seth F. Kreimer
Kenneth W. Gemmill Professor of Law

Kermit Roosevelt
Professor of Law

David Rudovsky
Senior Fellow

Theodore Ruger
Professor of Law
Deputy Dean

Louis S. Rulli
Practice Professor of Law and Clinical Director

Catherine T. Struve
Professor of Law

Amy L. Wax
Robert Mundheim Professor of Law

Christopher S. Yoo
John H. Chestnut Professor of Law, Communication, and Computer & Information Science
Director, Center for Technology, Innovation & Competition

---

[1] Titles are provided for identification purposes only.

Dechert LLP

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+1 215 994 4000 Main
+1 215 994 2222 Fax
www.dechert.com

CHERYL A. KRAUSE

cheryl.krause@dechert.com
+1 215 994 2139 Direct
+1 215 655 2139 Fax

March 13, 2014

Via Electronic Mail

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

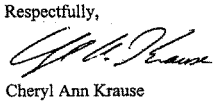
The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

I write to apologize for and clarify two inadvertent misstatements I made at my nomination hearing yesterday in response to Senator Grassley's question regarding my law review article on the after-acquired evidence defense to employment discrimination claims. First, I incorrectly stated it was written in 1994 rather than 1993. And second, I incorrectly stated that the Supreme Court had cited the article in a 1995 opinion. The article was cited in U.S. Court of Appeals opinions but not by the Supreme Court.

Again, my apologies for these mistakes in my testimony.

Respectfully,



Cheryl Ann Krause

CHAIR
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11 Times Square
New York, NY 10036-8299

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THIRD CIRCUIT
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1 Riverfront Plaza, Fl. 16
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Newark, NJ 07102-5423

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SIXTH CIRCUIT
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STAFF COUNSEL
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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
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Washington, DC 20036

Please respond to:

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E-Mail: bplevan@proskauer.com

VIA EMAIL AND FIRST-CLASS MAIL

January 17, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: ***Nomination of Richard F. Boulware to the United States District Court for the District of Nevada***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Richard F. Boulware who has been nominated for a position on the United States District Court for the District of Nevada. A substantial majority of the Committee is of the opinion that Mr. Boulware is Qualified and a minority of the Committee is of the opinion that Mr. Boulware is Not Qualified for this position.

A copy of this letter has been provided to Mr. Boulware.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: Richard F. Boulware, 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 December 20, 2013.

CHAIR
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11 Times Square
New York, NY 10036-8299

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THIRD CIRCUIT
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Newark, NJ 07102-5423

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STAFF COUNSEL
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denise.cardman@americanbar.org

AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
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Please respond to:

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E-Mail: bplevan@proskauer.com

VIA EMAIL AND FIRST-CLASS MAIL

January 17, 2014

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 Salvador Mendoza to the United States District Court for the Eastern District of Washington***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Salvador Mendoza who has been nominated for a position on the United States District Court for the District of Nevada. A substantial majority of the Committee is of the opinion that Judge Mendoza is Qualified and a minority of the Committee is of the opinion that Judge Mendoza is Not Qualified for this position.

A copy of this letter has been provided to Judge Mendoza.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Salvador Mendoza (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 December 20, 2013.

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STAFF COUNSEL
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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
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VIA EMAIL AND FIRST-CLASS MAIL

January 17, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: ***Nomination of Staci MichelleYandle 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 Staci Michelle Yandle who has been nominated for a position on the United States District Court for the Southern District of Illinois. The Committee is of the opinion that Ms. Yandle is Unanimously Qualified for this position.

A copy of this letter has been provided to Ms. Yandle.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: Staci Michelle Yandle, 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 December 20, 2013.

JOHNSON, BRUZZESE & TEMPLE
ATTORNEYS AT LAW

1720 GULF TOWER
707 GRANT STREET
PITTSBURGH, PENNSYLVANIA 15219

TELEPHONE 412-338-4790
FACSIMILE 412-227-3851

RECEIVED JAN 27 2014

January 9, 2014

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20501

RE: Leon Rodriguez

Dear Senator Leahy:

It is my pleasure to highly recommend Leon Rodriguez to serve as Director of the United States Citizenship and Immigration Services, Department of Homeland Security.

I have known Leon for almost seventeen years. I first met him when he served as an Assistant United States Attorney for the Western District of Pennsylvania some years after I served as United States Attorney for the Western District of Pennsylvania.

Leon was a standout as an Assistant United States Attorney, not only for his trial skills and knowledge of the law, but also based upon the experience he brought to his position and his leadership skills. This resulted in his selection to become First Assistant United States Attorney.

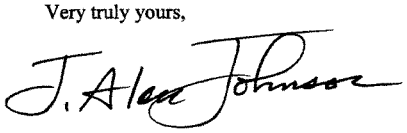
Prior to becoming an Assistant United States Attorney, he served as a trial attorney in the Civil Rights Division of the Department of Justice from 1994 to 1997. He also served as a Senior Assistant District Attorney at the Kings County District Attorney's Office in New York from 1988 to 1994.

In addition to being an outstanding attorney, he possessed a strong sense of fairness, justice and devotion to the United States Constitution. These attributes have served him well as Chief of Staff and Deputy Assistant Attorney General for Civil Rights at the Department of Justice from 2010 to 2011 and thereafter as Director of the Office for Civil Rights at the Department of Health and Human Services.

In closing, let me say that Leon Rodriguez brings distinction to any position he accepts and devotes himself to every task he undertakes.

I recommend him without hesitation.

Very truly yours,



J. Alan Johnson

JAJ/jh

DEPARTMENT OF POLICE

Isiah Leggett
County Executive

J. Thomas Manger
Chief of Police

January 14, 2014

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Senators Leahy and Grassley:

I am writing to support the nomination of Leon Rodriguez to become the Director of U.S. Citizen and Immigration Services (USCIS) at the U.S. Department of Homeland Security.

Mr. Rodriguez has extensive leadership experience at both the federal and local levels on issues in which USCIS plays a primary role. As Chief of Staff and Deputy Assistant Attorney General for the Civil Right Division, Mr. Rodriguez had a portfolio that included cases involving issues of national origin and immigration status. In addition, Mr. Rodriguez served as County Attorney for Montgomery County [Maryland], where his representation of County interests included the effect of immigration policies on local public safety and police departments. Having worked closely with him, I am confident that these experiences, as well as his roles as a federal and local prosecutor and the Director of the Office for Civil Rights at the Department of Health and Human Services, give Mr. Rodriguez a comprehensive understanding of how decisions made at USCIS will impact the cities and towns of this great nation.

American law enforcement has always looked to you for leadership and we in public safety again turn to you to move the nomination of Leon Rodriguez quickly through the confirmation process. Thanking you for your consideration, we look forward to continuing the partnership between USCIS, the Department of Homeland Security and the communities we are sworn to serve.

Sincerely,

J. Thomas Manger
Chief of Police

JTM:mam

Office of the Chief of Police

Public Safety Headquarters • 100 Edison Park Drive • Gaithersburg, Maryland 20878
www.montgomerycountymd.gov • www.mymcpnews.com • MCPDChief@montgomerycountymd.gov

DEPARTMENT OF POLICE

Isiah Leggett
County Executive

J. Thomas Manger
Chief of Police

January 14, 2014

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Senators Leahy and Grassley:

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American law enforcement has always looked to you for leadership and we in public safety again turn to you to move the nomination of Leon Rodriguez quickly through the confirmation process. Thanking you for your consideration, we look forward to continuing the partnership between USCIS, the Department of Homeland Security and the communities we are sworn to serve.

Sincerely,

J. Thomas Manger
Chief of Police

JTM:mam

Office of the Chief of Police

Public Safety Headquarters • 100 Edison Park Drive • Gaithersburg, Maryland 20878
www.montgomerycountymd.gov • www.mymcpnews.com • MCPDChief@montgomerycountymd.gov

RECEIVED JAN 27 2014

DEPARTMENT OF CORRECTION AND REHABILITATION

Isiah Leggett
County Executive

Arthur M. Wallenstein
Director

January 14, 2014

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Senators Leahy and Grassley,

I am writing to you in my personal and professional capacity as Director of the Montgomery County Department of Correction and Rehabilitation. I am writing to support the nomination of Leon Rodriguez to become the Director of U.S. Citizenship and Immigration Services (USCIS) at the U.S. Department of Homeland Security.

This letter is solely based on my professional evaluation of his capabilities at this capacity to serve as a senior government official in this critical area of national practice. It is both an honor and I believe my obligation to comment in a substantive manner on his nomination and I hope his confirmation to the position mentioned above.

Let me go directly to the heart of this matter. I worked with Leon Rodriguez in Montgomery County when he served as county attorney for this large metropolitan jurisdiction. While I am well aware of his exceptional work in the Civil Rights Division of the Justice Department, and the Department of Health and Human Services, my contribution is to the individual and our working relationship in Montgomery County, Maryland.

I have worked as a "served at the pleasure" Director of Correction for over 36 years in Bucks County, Pennsylvania, King County, Washington and for the last 14 years in Montgomery County, Maryland. All are large metropolitan jurisdiction and each as the rough and tumble of difficult working environments, yet each as a reputation for good government. Leon Rodriguez is the finest county attorney that I have ever worked with in my long career as a successful appointed Director of County Correction.

This is an exceptional individual who is tough as nails and knows how to carry out executive responsibilities in a no nonsense manner. He is a thoroughly trained public policy and public service attorney who will have a very short learning curve into the specific of his new executive assignment.

Montgomery County Correctional Facility
22880 Whelan Lane • Boyds, Maryland 20841 • 240-773-9700 (Voice or via MD Relay @ 711) • 240-773-9943 FAX
www.montgomerycountymd.gov

montgomerycountymd.gov/311 311 240-773-3556 TTY

His new area of practice also requires a well-defined level of sensitivity whether it is case management or the interpretation of existing federal policy guidelines. I have seen him walk that difficult line and I know his sense of personal ethics and legal judgment will always be defined by the rigor of extensive analysis and then direct action on the matters before him.

Leon brings enormous sensitivity to the public policy world of diversity, ethnicity and all elements that impact individuals who have sought out the United States as a place to live. I need to share one very tangible experience. Montgomery County developed an exemplary program to engage non-English speakers through the Limited English Proficiency (LEP) template. In our county, Leon and I were the only two department directors to serve on this committee. We both served as a matter of personal choice, recognizing the importance of governmental access for all individuals and in this case, individuals without English proficiency or even minimal English skill level. Leon never missed a meeting. He was an aggressive, sensitive advocate and made it clear to everyone on the Task Force that the county program must work in every office environment in Montgomery County. An exceptional policy was developed which later won the NACO Best Program, and I will suggest Leon Rodriguez played a driving role in the work that was completed. He walked the talk of serious management of administration and was absolutely clear where he was going.

Leon has strong criminal justice experience, deeply involved human services/accountability experience and he can lead a large staff both by personal example and by getting out and engaging his employees directly in the field. Leon Rodrigues has enormous potential and he has by definition accomplished a great deal up until the present. I do not know him outside of work, but individuals, whom I respect, hold him in the highest regard and I have never seen a single lapse or questionable issue regarding governmental or personal ethics. I would stake my reputation on the work of this individual. I strongly urge and support confirmation of Leon Rodriguez for the position of Director, U.S. Citizenship and Immigration Services, Department of Homeland Security.

Very truly yours,

Arthur Wallenstein

Arthur Wallenstein
Director
Montgomery County Maryland

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January 15, 2014

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Senator Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Office Building
Washington, DC 20510

Senator Charles Grassley
Ranking Member, Senate Judiciary Committee
224 Dirksen Office Building
Washington, DC 20510

Re: Nomination of Leon Rodriguez to Director of U.S. Citizenship and Immigration Services, Department of Homeland Security

Dear Senators Leahy and Grassley:

Kindly accept this letter in support of the nomination of Leon Rodriguez to the position of Director of U.S. Citizenship and Immigration Services, Department of Homeland Security.

I have known Mr. Rodriguez for nearly 30 years. We met in 1985 while students at Boston College Law School in Newton, Massachusetts. Mr. Rodriguez was a strong student, well-liked by his peers and known for his humor, honesty and integrity. I, along with many others, called him a friend.

Public service has defined Mr. Rodriguez's career path. Following graduation from law school, he took a job at the Kings County District Attorney's Office in Brooklyn, New York. While there, he was actively engaged in the prosecution of official corruption, organized crime and sex crimes offenses. I also took a job in that office after law school graduation and I worked

with Mr. Rodriguez for the entirety of his six year tenure as a New York City criminal prosecutor. He was admired and well-respected by his colleagues, adversaries and judges.

Having recently served in Governor Chris Christie's Cabinet and run New Jersey's Department of Community Affairs (then a department with 1,250 employees with an annual budget of ~$1.45 billion), I am acutely aware of the complications associated with running a large agency. I am confident Mr. Rodriguez is well-qualified for this position. I am convinced that he is unequivocally committed to justice and equity in the enforcement of laws. I know he is a person of fine moral character and unimpeachable ethics. He is indeed worthy of this Presidential nomination.

Respectfully submitted,

LORI GRIFA

LG/dmm

RECEIVED FEB 06 2014

370 First Avenue, Apt. 13 G
New York, NY 10010

January 27, 2014

Honorable Patrick Leahy
Chairman, Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I am writing this letter in support of the nomination of Leon Rodriguez for the position of Director of United States Citizenship and Immigration Services, Department of Homeland Security.

I am thoroughly familiar with Mr. Rodriguez's commitment to the rule of law, his integrity and his passion for justice as a prosecutor.

Mr. Rodriguez worked directly under my supervision as a Senior Assistant District Attorney in the Kings County District Attorney's Office from September 1991 through June 1994. First as Chief of the Organized Crime Bureau and later as Chief of the Corruption Investigation Division, I witnessed his dedication and devotion to the investigation and prosecution of members of organized crime and corrupt public officials and those who corrupted them.

His work in the Organized Crime Bureau was critical to our success in investigating and prosecuting some of the largest illegal sports gambling operations in the New York City region. I relied heavily on him to prepare, administer and monitor court-ordered wire taps which are essential in conducting successful investigations into illegal sports gambling operations. The investigative tools he acquired during these investigations enabled him to perform a leading role in the investigation and prosecution of the so-called Colombo Organized Crime Family "war" which raged on the streets of Brooklyn in the early 1990s. Our work, to which he contributed so significantly, saved lives by disrupting the murderous activities of the two factions at war within that crime family. As a result of his skills, he was cross-designated as Special Assistant United States Attorney for Eastern District of New York during the Colombo investigation.

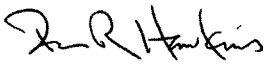
When I was asked by the Kings County District Attorney to establish a new unit – the Corruption Investigation Division in 1993 in the wake of serious police corruption scandals in New York City, Mr. Rodriguez was one member of a small group of Assistant District Attorneys I recruited

to tackle this difficult and complex task. His integrity and competence had been well demonstrated during the time I supervised him in the Organized Crime Bureau. Because our unit was small, the demands on his time were great and he always met the challenge.

In addition to his legal skills and his serious commitment to law enforcement, Mr. Rodriguez demonstrated outstanding judgment and maturity when dealing with complex and challenging issues.

I have no hesitation or reservation in supporting his nomination for the position of Director of United States Citizenship and Immigration Services, Department of Homeland Security, and believe that our nation and citizens will be well served with him in that position.

Yours truly,



Dennis R. Hawkins, Esq.

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Congress of the United States
House of Representatives

COMMITTEE ON APPROPRIATIONS
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SENIOR WHIP
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SUSTAINABLE ENERGY AND ENVIRONMENT COALITION, *VICE CHAIR*
LGBT EQUALITY CAUCUS, *VICE CHAIR*

February 14, 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 U.S. Representative for California's 17th congressional district, and Chair Emeritus of the Congressional Asian Pacific Caucus, I write to express my full support for the nomination of Leon Rodriguez to serve as the Director for U.S. Citizenship and Immigrations Services for the Department of Homeland Security. Mr. Rodriguez is a preeminent attorney with a wealth of leadership experience, equipping him with the managerial know-how, professionalism, and expertise needed to lead this agency.

Mr. Rodriguez's legal career reflects a lifelong commitment to public service and law enforcement. His first job out of law school was as an Assistant District Attorney in Brooklyn for six years. He was assigned to the Organized Crime Bureau and the Sex Crimes/Special Victims Bureau. Mr. Rodriguez later serve as Assistant U.S. Attorney in Pittsburgh, Pennsylvania assigned to the prosecution of health care fraud cases. As County Attorney for Montgomery County, he led a staff of 45 attorneys in providing legal advice and service to all county agencies. Moreover, during his tenure as County Attorney, his agency received the highest customer service rating of any internal county agency.

Mr. Rodriguez has also tirelessly worked to advance civil rights. While working as a trial attorney at the Criminal Section of the Civil Rights Division at the U.S. Department of Justice, he helped shape critical U.S. efforts in combating human trafficking after winning U.S. v.

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Miguel Flores, et al, a case involving the enslavement of Mexican and Guatemalan migrant agricultural workers in Florida and South Carolina. Mr. Rodriguez went on to serve as the Chief of Staff and Deputy Assistant Attorney General for the Department of Justice Civil Rights Division. Ilis leadership portfolio included discrimination based on national origin and immigration status, legislative affairs, and community outreach.

Currently, Mr. Rodriguez serves as the Director of the U.S. Department of Health and Human Services Office for Civil Rights. Under the leadership of Mr. Rodriguez, the HHS Office for Civil Rights has emerged as a proactive enforcement and compliance agency that emphasizes positive public impact and customer service. I have been particularly impressed with Mr. Rodriguez' work as Director in pioneering the Critical Access Hospital language access review, an affirmative model for ensuring that institutional health care providers are taking reasonable steps to ensure effective communication with patients who do not speak English well. His tenure has overseen the successful completion of compliance with civil rights laws that require such reasonable steps in order to ensure adequate communication with limited English proficient patients.

I believe that Mr. Rodriguez's breadth of experience with law enforcement and public service has prepared him to lead an agency. His record of leadership, and success, as well as his intellect, and integrity make him highly qualified to be the next Director for U.S. Citizenship and Immigrations Services for the Department of Homeland Security. I strongly support President Obama's nomination of Leon Rodriguez and encourage our colleagues in the Senate to confirm him for this position without delay.

Sincerely,

Michael M. Honda
Member of Congress

MAJOR CITIES CHIEFS ASSOCIATION

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January 14, 2014

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Senators Leahy and Grassley,

On behalf of the Major Cities Chiefs, representing the 66 largest jurisdictions across the Nation, I am writing to support the nomination of Leon Rodriguez to become the Director of U.S. Citizen and Immigration Services (USCIS) at the U.S. Department of Homeland Security.

Mr. Rodriguez has extensive leadership experience at both the federal and local levels on issues that USCIS plays a primary role in. As Chief of Staff and Deputy Assistant Attorney General for the Civil Right Division Mr. Rodriguez's portfolio included cases involving issues of national origin and immigration status. In addition, Mr. Rodriguez served as County Attorney for Montgomery County, Maryland where his representation of County interests included the effect of immigration policies on local public safety and police departments. We are confident that these experiences, as well as his roles as a federal and local prosecutor and the Director of the Office for Civil Rights at the Department of Health and Human Services, give Mr. Rodriguez a comprehensive understanding of how decisions made at USCIS will impact the cities and towns of this great Nation.

American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Leon Rodriguez quickly through the confirmation process. We look forward to continuing the partnership between USCIS, The Department of Homeland Security and the communities we are sworn to serve.

Sincerely,

Charles H. Ramsey, President
Commissioner,
Philadelphia Police Department

J. Thomas Manger, Legislative Chair
Chief,
Montgomery County, MD Police Dept.

Congresswoman Ileana Ros-Lehtinen
Wednesday, March 12th, 2014
Senate Committee on Judiciary
Nomination for Mr. Leon Rodriguez to be Director of USCIS

Chairman Leahy, I had the pleasure of sitting in front of the Senate Committee on Judiciary in 2005 to support a constituent and dear friend, Dr. Emilio Gonzalez, in his nomination to lead the U.S. Citizenship and Immigration Services.

This time, I am honored to again support the nomination of a longtime family friend, Mr. Leon Rodriguez, to the position of Director of the U.S Citizenship and Immigration Services at the Department of Homeland Security.

Leon is no stranger to the immigrant story. Much like my parents, Leon's parents emigrated from Cuba to this land of freedom, democracy, and opportunity.

Leon has vast experience as a prosecutor and law enforcement leader as well as an extended history of public service.

He currently serves as the Director of the Office for Civil Rights at the Department of Health and Human Services and was previously Chief of Staff and Deputy Assistant Attorney General for Civil Rights at the Justice Department.

In this capacity, Leon was involved in civil rights matters where he worked in cases that involved national origin and immigration status. During this time, Leon also worked to build relationships with the community and advance the legislative priorities of the Department.

Prior to that, Leon spent three years working as County Attorney for Montgomery County, Maryland, where he was able to provide his insight on the effect of immigration policies on public safety. In addition, he led the attorney legal staff in providing legal advice and service to all of Montgomery County agencies.

For thirteen years prior to entering private practice, Leon was a federal and state prosecutor in three different jurisdictions. After graduating Boston College Law School, Leon began to put his legal knowledge to work as he served as Assistant District Attorney in Brooklyn, NY for six years. Leon served as a trial attorney in the Criminal Section of the U.S. Department of Justice, Civil Rights Division where he gained valuable experience that would enable him to achieve much success.

In addition to his numerous career achievements and accolades, Leon held a key role as Board Member of Casa de Maryland, an advocacy and assistance organization for Latinos and immigrants.

The variety apparent in Leon's resume is illustrative of a multifaceted, strong ability to succeed in an array of fields. His achievements extend beyond his career and reveal a willingness to go above and beyond what is expected in his efforts to better our Nation.

It is because of his expertise and unique understanding of how decisions made at USCIS will impact our Nation, that I support his nomination. His character, dedication, and service make him an invaluable addition and a great candidate to this position.

His years of experience and personal commitment are both assets I am confident you will continue to find appealing.

If given the opportunity, I am certain that Leon will continue to face his responsibilities at USCIS with the same level of loyalty and integrity that he always demonstrated.

NOMINATIONS OF HON. BETH BLOOM, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA; PAUL G. BYRON, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA; HON. DARRIN P. GAYLES, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA; AND HON. CARLOS EDUARDO MENDOZA, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA

TUESDAY, APRIL 1, 2014

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

The Committee met, pursuant to notice, at 10:04 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Christopher Coons, presiding.

Present: Senators Coons and Grassley.

OPENING STATEMENT OF HON. CHRISTOPHER COONS, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator COONS. Good morning, everyone. I am pleased to call this nominations hearing of the Senate Committee on the Judiciary to order. I would like to welcome each of our four nominees, their families and friends, to the U.S. Senate and congratulate them on their nominations.

I would also like to welcome Senator Nelson, who is here to introduce the nominees, and we may well be joined by Senator Rubio.

Today there are 83 vacancies in our Federal judiciary. This is an unacceptably high number. Over 5 years into this administration, the Federal bench still sits nearly 10 percent vacant, a 70-percent increase in the number of vacancies since the President took office.

The result is that Americans are getting less justice and more slowly. In some districts, such as the Eastern District of North Carolina, a seat has been vacant for 3,000 days. In Texas, vacancies nearly 2,000 days old are leaving courts suffering under caseloads more than double that recommended by the Judicial Conference.

And yet the Senate delegations from those States have not agreed with the President on any nominees to fill those longstanding and now critical vacancies. The judicial selection and confirmation process, broadly speaking, is quite simply failing to achieve the results contemplated for it by our Founders under the Constitution. This hearing is an important step in addressing the judicial vacancy crisis.

There are five current vacancies on Florida's Federal trial courts, and today we will hear from nominees for four of those seats. I applaud Senators Nelson and Rubio for their progress and am grateful for their bipartisan cooperation and look forward to their introduction of today's four nominees.

First, though, I will offer the opportunity to our distinguished Ranking Member, Senator Grassley, to say a few words. Senator Grassley.

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

Senator GRASSLEY. First of all, congratulations to the nominees. I will take just a minute to talk about the productivity of the Committee, compare the term of President Obama with the term of President Bush.

After yesterday's confirmation votes, the Senate has confirmed 64 lower-court Article III judges during President Obama's second term. By comparison, up to this point in President Bush's second term, the Senate has confirmed only 27 lower-court Article III judges. So 64 confirmed so far in the second term of this administration, 27 in the previous Presidency. With respect to the entire 5 years and 3 months of a Presidency, we have approved 233 for President Obama, 229 for President Bush. So I am glad we are being so productive and doing what we have to do, and once again, thanks to the nominees.

Senator COONS. Thank you very much, Senator Grassley.

I would now like to yield to the distinguished Senators from the State of Florida to introduce our nominees. I know that both of my colleagues have pressing schedules, so please feel free to depart if you must after your introductions, and again, thank you for your collaboration in making sure that we have judicial nominees to fill these important vacancies.

Senator Nelson.

PRESENTATION OF HON. BETH BLOOM, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA; PAUL G. BYRON, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA; HON. DARRIN P. GAYLES, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA; AND HON. CARLOS EDUARDO MENDOZA, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA, BY HON. BILL NELSON, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator NELSON. Mr. Chairman, I am going to short-circuit my remarks, if I may, have my written testimony submitted in the record.

Senator COONS. Without objection.

Senator NELSON. Senator Rubio and I, as both of you have indicated, have a very good working relationship, and we try through the process of a committee—ours is called the "Judicial Nominating Commission"—to have the expertise of the legal community to do the applications screening and then interviewing and selecting three for each position that is vacant. And today we are coming forth with four nominees.

Our agreement with the White House is that the President will select from among the three that the two of us send to him. The two of us interview all of the applicants, and we let the White House know if we have an objection, and then the White House will so select. And as a result, it is a process that works. Partisanship does not get in the way. And as a result, as has been proven over time, because this system has been used by Florida Senators for a better part of three decades, the proof is in the pudding of the quality that we get on the bench.

And so of the four nominees today, Senator Rubio and I come to you with our endorsement, our encouragement that we speed the process. We have had emergency conditions in both the Southern District and the Middle District. And so today you will be hearing from Judge Darrin Gayles of the Southern District, Judge Beth Bloom of the Southern District, Judge Carlos Mendoza of the Middle District, and attorney Paul Byron of the Middle District. And since it is in my written testimony for the record, there are extraordinary qualifications, and as you can understand, in a highly charged political atmosphere like this, with a screening process that we have, what we present to you today are people that are definitely qualified for a lifetime appointment to serve in the Federal judiciary.

Thank you, Mr. Chairman.

[The prepared statements of Senator Nelson appear as submissions for the record.]

Senator COONS. Thank you, Senator Nelson.

Senator Rubio.

PRESENTATION OF HON. BETH BLOOM, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA; PAUL G. BYRON, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA; HON. DARRIN P. GAYLES, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA; AND HON. CARLOS EDUARDO MENDOZA, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA, BY HON. MARCO RUBIO, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator RUBIO. Thank you, Mr. Chairman, thank you to the Ranking Member for holding this hearing, and thanks to the nominees who are here with their families. I know it is an exciting day for them. As I joked as I walked in, it is not crowded up there, which is usually a pretty good sign. But we are proud of our nominees here, and I want to talk about each of them briefly, because they have an extraordinary amount of experience in different fields that I think would add a tremendous amount to their service on the Federal bench.

Judge Beth Bloom is, like me, a graduate of both the University of Florida and the University of Miami School of Law.

By the way, the University of Florida at this time next week should be the national champion in basketball.

[Laughter.]

Senator COONS. I was wondering how long it would take you to work that in this morning.

Senator RUBIO. Perhaps we should have waited a week for this hearing just so we could celebrate that as well.

But in any event, she actually went to the same two schools that I did, but has been much more successful since because she has worked in private practice before becoming a county court judge in Miami-Dade County in 1995. She became a circuit court judge in 2010 in the Eleventh Circuit where she currently continues to serve, and, of course, she has been active in the community in South Florida in a number of areas, including areas of a particular interest to me: reducing recidivism and supporting children who are in our foster system, which has been a challenge in Florida over the last few years. And her engagement in that has been fantastic and well appreciated.

Paul Byron earned his undergraduate degree with honors from the University of Michigan—which had a heart-breaking loss, you may have seen.

[Laughter.]

Senator RUBIO. But he also went to law school at LSU, Louisiana State University, and the school has had some success in football especially. I am sorry to color everything with sports, but that is how it—we have to have our priorities right around here.

He began active-duty service in the United States Army in the Judge Advocate General's Corps where he served first as a criminal defense attorney and then as a prosecutor. And after completing his duty in 1990, he became a Federal prosecutor in the Middle District where he focused on organized crime and on white-collar crime.

In 2001, he served as the senior trial counsel for the International Criminal Tribunal for the Former Yugoslavia, a pretty interesting background that he brings to this, and since 2001 he has worked primarily in private practice in Orlando, with the exception of 2 years of service with the Justice Department's International Division of Asset Forfeiture and Money Laundering.

Judge Darrin Gayles earned his undergraduate degree with honors from Howard University and his law degree from George Washington University right here in the District, and then he began his legal career and has really dedicated himself to public service throughout his legal career as an Assistant State Attorney in Miami-Dade County from 1993 to 1997. Then he moved to Federal practice in 1997 when he became an Assistant District Counsel at what was then Immigration and Naturalization Service. After 2 years with INS, Judge Gayles joined the U.S. Attorney's Office for the Southern District of Florida, where he served in the appellate and the major crimes and narcotics sections. And in 2004, he became a county judge and in 2010 was appointed to the circuit court for the Eleventh District, where he served in both the criminal and

civil divisions. So again, an extensive history of service to the community.

And, finally, Judge Carlos Mendoza is, like me, the son of immigrants, and he spent his career giving back to this country. He joined the United States Marine Corps Reserves in 1989 right out of high school—the same year I graduated, by the way, so the bench—I guess I am getting older is what is happening.

He had to delay his college education for a year when his unit was mobilized, and he was deployed to the Persian Gulf during the first Gulf War. And after a distinguished military service, he returned home and attended West Virginia University, earning his undergraduate degree magna cum laude in 1993 and then his law degree in 1997.

After law school, he continued his military service as a judge advocate with the United States Navy, a position that he held for 8 years. In 2005, he entered public service as a civilian, first serving as an Assistant State Attorney in the Seventh Judicial Circuit of Florida and then as a municipal attorney for the city of St. Augustine. And in 2011, Judge Mendoza was appointed to be a circuit court judge in Florida's Seventh Judicial Circuit, where he now presides over both civil and criminal cases.

Last, but not least, I want to welcome Chief Judge Anne Conway of the Middle District, who I believe is in the audience today. Okay? She did not make it? All right. Well, she was supposed to be here. She does a great job, so we just wanted to recognize her for that.

And I wanted to wish all of our nominees and their families the best throughout this process. I am certain this Committee will give these nominees a full and fair consideration, and I thank you for your attention today and for the opportunity to speak here alongside my colleague Senator Nelson.

Senator COONS. Thank you, Senator Rubio. Thank you, Senator Nelson. We are grateful for your collaboration and what Senator Nelson describes as a 30-year-old process to produce highly qualified nominees for the Federal bench from Florida. Thank you.

Senator COONS. At this point I would like to now invite our four nominees to come forward. It is the tradition of this Committee that each witness be sworn, so if you would, please, raise your right hand and repeat after me. Do you solemnly swear that the testimony you are about to give to this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge BLOOM. I do.

Mr. BYRON. I do.

Judge GAYLES. I do.

Judge MENDOZA. I do.

Senator COONS. Let the record reflect the nominees have answered in the affirmative. Please be seated.

I would now like to invite each of you in turn to offer your opening statement, and I welcome you to also recognize your loved ones and supporters if you so choose. I believe I am working from left to right. Judge Bloom.

STATEMENT OF HON. BETH BLOOM, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA

Judge BLOOM. Thank you, Senator Coons, and thank you, Senator Grassley, and the entire Judiciary Committee for convening this hearing this morning.

I want to thank Senator Nelson and Senator Rubio for the kind introduction and working together to getting each of us to this point.

I also want to thank the President for the honor of this nomination.

With me today is my family: my husband, Lyle Stern, of 21 years, and with our three children, who are constant pride and joy:

Our son Jacob Stern, who is a senior; he is 17. He is a nationally ranked debater, and he will be starting college in the fall at the University of Pennsylvania.

Our son Oliver Stern, who is a seventh grade honors student. He is 13. He is a member of the Junior Thespian, a member of his school's volleyball team, and he is involved in student government.

And our youngest, daughter Emily, who is 8 years old and in third grade, is a gifted piano player, singer, and dancer.

Also with us today is our friend Laurie Flink, who has been a lifetime friend.

Our children are not in school today, but they are certainly getting a wonderful civics lessons, and they have been gaining a civics lesson throughout the entire process.

My father, Dr. Henry Bloom, died some time ago, but he is always with me. And my mother, Phyllis Bloom, and my two brothers and sister are back in Florida watching via the Webcast.

I am also fortunate to have many friends and colleagues, my courthouse family in Miami, that are also viewing this on the Webcast.

I have an extended an extended family that is also as well viewing this on the Webcast, and it certainly is an honor and a privilege to be here, Senator, and I am looking forward to answering your questions.

Thank you.

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

Senator COONS. Thank you, Judge.

Mr. Byron.

STATEMENT OF PAUL G. BYRON, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA

Mr. BYRON. Thank you, sir. I would like to start by thanking Chairman Coons and Ranking Member Grassley for convening this hearing today. It is a very important process, and we are all very honored to be here before you.

I would also like to thank Senator Rubio and Senator Nelson, Senator Rubio for his kind remarks and Senator Nelson for his warm introduction, and for the cooperative manner in which they have worked together. It is really inspiring to watch them in action.

If I may, I would like to introduce my family. I will start with the most important person in my life, my wife of 30 years, Su-

zanne. Suzanne has always supported me in my desire to serve in the public, to serve this country, whether it is the Army, the Department of Justice, the United Nations, or in pursuing this particular position.

We are here also with our son, David, who is an Assistant State Attorney in Florida, and his fiance, Morgan Conn. And I am also proud to introduce my daughter Alexandra, who is preparing for her graduate studies; our daughter Taylor, who is in eighth grade. And I guess musicians run in this panel. She is an accomplished violinist.

And it is really truly a pleasure to be here, and I look forward to answering your questions. Thank you.

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

Senator COONS. Thank you. We are so far accumulating the most talented group of children to be present for a confirmation.

[Laughter.]

Senator COONS. So, if I might, Judge Gayles.

STATEMENT OF HON. DARRIN P. GAYLES, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA

Judge GAYLES. Thank you, Chairman Coons, Ranking Member Grassley. I would also like to thank Chairman Leahy for this opportunity to appear before you today.

I would like to thank both Senator Nelson and Senator Rubio for their support and their kind words this morning.

Of course, I would like to thank the President for his nomination to the U.S. District Court. It is an honor for which my family and I will be eternally grateful.

I have several family members here today that I would like to introduce brief: my life partner, Raymond Zayas; my mother, Janie Banks Gayles, who is seated directly behind me; as well as my very proud grandmother, Nettie Banks, who recently celebrated her 84th birthday.

I have my younger sister, Monica Drew, as well as two of her older sons, James and Ryan, my Uncle Terryl and my Aunt Bernice, as well as a whole host of friends that are present with me today, as well as watching us on the Webcast.

And I welcome any questions that you have for me today.

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

Senator COONS. Thank you very much, Judge Gayles.

Judge Mendoza.

STATEMENT OF HON. CARLOS EDUARDO MENDOZA, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA

Judge MENDOZA. Thank you, Chairman Coons, Ranking Member Grassley, for the privilege of being here today. I would like to start by thanking the President for this incredible honor to continue serving my country.

I would also like to thank Senators Nelson and Rubio for their kind words here this morning representing the State of Florida in this country.

Here with me today are three very important people in my life. They are the reason why I wake up ready to attack every day and why I come home every day from work with a smile on my face: my 14-year-old son, Jack, who is a freshman in St. Augustine High School, and my 13-year-old daughter, Maddy, who is an eighth grader at Marie Middle School. No matter what is going on in my life, to them I am Dad, and that is a very important part of my life. It keeps me grounded. Sitting directly behind me is my wife of over 22 years, an accomplished physician, a wonderful wife, a caring mother, and the glue that holds this family together, Dr. April Mendoza. And I am privileged to have them here during this journey.

I would also like to introduce two very close friends of mine that took time out of their busy schedules to be here today: from St. Augustine, attorney Matthew Cline, and from Washington, DC, Eric Call.

I would also like to let the people in Putnam County, Florida, know that I am thinking about them. Every person that makes that courthouse work, that has made my job pleasurable while I have been in that courthouse, I appreciate what you do for the State of Florida and what you do for that county.

And, finally, I want to thank two of the most important people in my lives, my mom and dad. They had the courage to immigrate to this country and leave everything they knew behind to look for a better life for their kids and for their family. I thank them for their encouragement. I thank them for never giving up on me, for always demanding the most from me. And on those times in my childhood when the scenery was not always pleasant, I thank them for letting me see my dreams through their words, always ensuring that I understood that if I worked hard and applied myself, there was no limit to what I could do. So I thank them. They are here with me in spirit.

And I thank you for this privilege of being here, and I certainly invite any questions you have this morning.

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

Senator COONS. Thank you, Judge Mendoza.

We are now going to do questions and rounds of, I believe, 5 minutes each. Yes, the Committee will proceed with 5-minute rounds of questioning. Some Committees do 7-minute rounds. Forgive me.

Senator GRASSLEY. Since there are only two of us here, why don't you just ask all your questions, and then I will ask all my questions. Is that okay?

Senator COONS. That makes perfectly good sense. Thank you to my senior Senator from Iowa, who is far more practical about the administration of these hearings than I am.

If I might, just each of you in turn, if you would, beginning with Judge Bloom, just briefly describe for us, if you would, your judicial philosophy and how you would approach your role as a Federal judge.

Judge BLOOM. Certainly. During the almost 20 years as a State trial judge, my judicial philosophy has been to approach each case and each issue with an unbiased and open mind; to understand the limitations on my power as a judge; to apply the law faithfully to

the facts as I deem them to be; and to ensure great respect and dignity to all that come before the court; to render my decisions promptly; and to always be thoroughly prepared when the issues are addressed before me.

Senator COONS. Thank you.

Mr. Byron.

Mr. BYRON. Yes, sir. Thank you. Let me start by saying I agree with Judge Bloom's position, as she stated it, in terms of the role of a judge, and I would echo that. I believe it is incredibly important for a judge to approach his or her duties with integrity, and by integrity I mean the ability to apply the law impartially in every case, regardless of the litigants, regardless of whether it is a criminal or a civil matter, and that requires strict adherence to stare decisis, to ensuring that the opinions held by the U.S. Supreme Court and the Eleventh Circuit are followed and abided by in the district courts.

Having been a litigator through most of my life, either as a prosecutor or in the private sector, having certainty and predictability in the legal system is fundamentally important. And as a judge, if I am fortunate enough to be confirmed, that is a goal that I will seek to enforce every single day.

Senator COONS. Thank you.

Judge Gayles.

Judge GAYLES. I agree with Judge Bloom and Mr. Byron. I have been a judge now for nearly 10 years. I decide each case on its own merits and make my decisions based on the facts and the applicable law. And if I am so honored to be confirmed, I will continue to do that in the Federal court.

Senator COONS. Thank you.

Judge Mendoza.

Judge MENDOZA. And I agree with my colleagues. I think the finality that people look for and closure that comes out of a courtroom is better preserved and respected when the variables that go into those decisions, such as respect for the parties in front of you, efficiency, adherence to the rule of law, are what we use in reaching those decisions. And if I am fortunate enough to be confirmed by this body, I would take that forward with me.

Senator COONS. Thank you.

Each of you have experience in the law in a range of different backgrounds, but if I might, Judge Bloom, you have a wealth of experience serving as a State judge—several of you do—and you have experience across this whole panel in civil and criminal and international contexts, but less so in Federal law.

If each of you would speak in turn to how you will prepare to administer Federal statutes and case law, if confirmed, I would appreciate it.

Judge BLOOM. Thank you, Senator, for the question. I have served in the State trial court in many different divisions. In each division I have handled different issues in different cases.

To prepare for my transition into each of the divisions, I have certainly used my work ethic in ensuring that I understand the substantive and procedural law and that I am able to apply that law. And I have done that in each of the divisions that I have

served. I have also handled constitutional issues and issues of statutory construction.

I believe that the work ethic that I have shown over the last almost 20 years as a State trial judge as well as my responsibility, which I take very seriously, to understand and be able to apply the law will serve me well if I am fortunate enough to be confirmed as a Federal judge.

Senator COONS. Thank you, Judge Bloom.

Mr. Byron, a different background, but I think the same question is relevant, about how you would be fully prepared to serve on the Federal bench.

Mr. BYRON. Yes, sir. I am very happy and proud of the fact that I had the formative years of my legal career as an Assistant United States Attorney, and in that capacity we applied Federal law on a daily basis. I have served in both the organized crime section, the white-collar section, and did a tour in the Civil Division representing the VA and other governmental entities that were being sued for various causes of action.

I have always come to the approach of applying the law by starting with the statute, looking at the clear language of the statute, and that is where my training began, and that is how I approach every case, even in my private practice responsibilities. I have tried a number of cases—the majority of my cases, actually—in Federal court.

So looking at cases from the Federal perspective is something that is inherently in my approach to the law. Even as a State court practitioner, I follow the same analysis: looking at the statute first, its clear language, then looking at applicable controlling decisions from higher courts and analyzing the cases in that regard.

To prepare myself more fully to be a district court judge, my focus will be turning toward the management of cases, which is different than being an advocate for a particular party, and I have started preparing for that by reading various manuals on management of complex litigation, how to deal with case management orders from the judge's perspective as opposed to the litigator's, and I continue to prepare myself as we move forward.

Senator COONS. That is terrific. Thank you, Mr. Byron.

Judge Gayles.

Judge GAYLES. I have spent my entire career upholding the law. I began my career as an Assistant State Attorney, and the balance of my experience as an attorney was spent in the Federal courts, both in the Federal immigration court as an Assistant District Counsel for the former Immigration and Naturalization Service, and later as an Assistant United States Attorney in the Southern District of Florida.

I have worked in both the appellate section, handling appeals before the United States Court of Appeals for the Eleventh Circuit, and the major crimes section, and later in the narcotics section. And I handled in those divisions the full breadth of cases one would handle, at least in the criminal realm, from court-approved wire surveillance, grand jury investigations, any number of pre- and post-trial matters that came up before the United States district judges as well as the Federal magistrate judges.

So I think I am very well versed in the Federal court and with Federal law, and I think that the 10 years I have now spent on the State court bench would only serve to assist me well if I am so honored to serve in the Federal court.

Senator COONS. Thank you.

Judge Mendoza, you also have experience with Federal law in your military capacity, but as a State court judge, help us with how you would prepare for service as a Federal judge.

Judge MENDOZA. And thank you for the question. My professional career has been a group of transitions from graduating law school to becoming a judge advocate in the United States Navy to then serving as a specially appointed Assistant U.S. Attorney for the Eastern District of Virginia to being an Assistant State Authority in St. Augustine, Assistant City Attorney in St. Augustine, now on the circuit bench. Every one of those transitions required a steep learning curve, and those sort of variables that I used in becoming proficient and efficient in those jobs are what I will take forward with me. And it is worth noting that if I am privileged enough to be confirmed, I am aware that I will be surrounded by a very capable set of accomplished colleagues in the Middle District, and I certainly will seek, unabashedly seek their advice and counsel if I am fortunate enough to be one of their colleagues.

Senator COONS. Thank you, Judge Mendoza.

My last question for the whole panel, if I might, is: Several of you have made reference in your opening comment to the importance of dignity, of how you treat all litigants equally, regardless of the matter that brings them before you or the circumstances that bring them before you. As a district court judge, how would you see your role in ensuring fair access to the American legal system? If you would, Judge Bloom.

Judge BLOOM. I believe that fair access means certainty of a decision and also the ability to know what is the decision. So in terms of my role, I certainly am going to ensure that case management is done effectively, that I will have an early scheduling order and a meeting early with the parties so that the parties know the time parameters and we can set reasonable parameters, depending upon the uniqueness of the case.

I also will ensure, as I have done for the past 20 years, that my rulings are clear and they are understandable and that the rulings are prompt and that I am prepared for the hearings and I have taken the time to review the submissions ahead of time so that I am able to rule, since decisiveness is one of the—certainly the most important responsibilities of a judge. I believe that temperament and the way that the litigants are handled in the courtroom in terms of the respect and dignity that they deserve and the ability to answer questions and to refer individuals, particularly pro se individuals, to, for example, the law library that serves as a unique resource for those who may not be familiar as one who might be represented by counsel.

So those are the services and the qualities that I bring to the bench in terms of access to the court.

Senator COONS. Thank you, Judge Bloom.

Mr. Byron.

Mr. BYRON. Yes, sir. I agree with Judge Bloom's observations that access to the court is a multipronged analysis. Part of it is the prompt administration of justice through scheduling orders that are consistent, they are complied with by the parties and by the court, and that when matters, including dispositive matters, are presented to the judge, that he or she rules on them promptly and does not let them languish. I think that does not help the litigants, and it certainly does not help the process in terms of access to the court, which includes not just the ability to file an action, whether it is a criminal case or civil case, but promptly moving it through to its conclusion.

In the Middle East District of Florida, there are also services provided to litigants who may not have counsel. There is the Federal public defender's office. There are a variety of other panels where individuals could obtain assistance. And the court has library facilities available to help those folks, recognizing, of course, once their matter is before the court, they are treated the same as any other litigant.

Senator COONS. Thank you, Mr. Byron.

Judge Gayles.

Judge GAYLES. I think the effective administration of justice is an important goal for any judge. I think that my time in the State court has well prepared me. I agree with the sentiments of both Judge Bloom and Mr. Byron. The work of a judge is very important as far as case management and moving cases along.

In Miami-Dade County, where I serve as a circuit judge, when I came into the Civil Division a couple of years ago, my caseload was approximately 4,700 cases. We are now down in my Division to about half of that. And case management, engaging the lawyers, holding status conferences, asking the lawyers what help they need to move their cases along I think are all very important because we have an important role not just to adjudicate matters but to make sure that it is done timely and effectively.

Senator COONS. Thank you, Judge.

Judge Mendoza.

Judge MENDOZA. And I would agree with my colleagues and add that, for example, in my judicial circuit in Florida, judges participate with bar associations to encourage and to promote the idea of pro bono representation and volunteerism. And to the extent that judges are possible, I think that is a very positive thing when judges are involved with bar associations to add prestige and encourage those attorneys practicing in front of them to engage in some level of pro bono work, and certainly to the extent that I am able, that would be an important part of my process.

Senator COONS. Thank you for that valuable addition. Thank you very much to our four nominees.

I will turn now to Senator Grassley for his questions.

Senator GRASSLEY. I generally ask different questions of different nominees, so do not feel bad if I do not ask you all the same questions.

I am going to start with Mr. Mendoza, and the Chairman already asked the first question I was going to ask you, so I only have one question of you. Oftentimes when judges are here, I quote various Supreme Court Justices and ask for a comment, agree or disagree.

I do not always put it in a context, so you may not know the context. This time I am going to quote Justice Scalia's speech in 2005. "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"—I suppose that means the Constitution. "If that is what it says, that is what it says."

So two questions. Probably the second part is more important than the first part, but whether or not you agree with Justice Scalia. And second, do you believe a judge should consider his or her own value or policy preferences in determining what the law means? If so, under what circumstances?

Judge MENDOZA. I would start by answering the first part of your question and indicating that as a district court judge, if I were fortunate enough to serve in that capacity, I would be bound by all opinions written by the Eleventh Circuit Court of Appeal and the U.S. Supreme Court. So as far as I am concerned, all of our Supreme Court Justices are always right. And I would follow their opinions without any hesitation.

My personal views do not enter into the decisionmaking process. People have to have an understanding and a belief that what comes out of court is fairly and objectively concluded. So my personal opinion does not nor will it ever enter into my decisionmaking process. I will make decisions, if I am fortunate enough to serve in this capacity, based on the facts of the case and the applicable authority that is applicable to those facts.

Senator GRASSLEY. Okay. Mr. Gayles, I have got, I guess, maybe two questions or a question with two parts. Getting to a view of constitutional interpretation, there are a number of different theories explaining how judges should interpret the Constitution. Some theories emphasize original understanding. Some emphasize literal meaning. And some analyze general principles underlying the Constitution and then apply a contemporary meaning to those principles.

While all nominees who appear before this Committee repeat the mantra that you just heard from Mr. Mendoza—and I do not say that in a derogatory way—that they apply the law to the facts, I am looking for an answer with a bit more thought behind it. What interpretive model would guide you when you are faced with constitutional questions?

Judge GAYLES. As with a statute, when the Constitution is clear on an issue—I do not mean to be—I am not trying to be glib by saying this, Senator, but the meaning is clear, and then my job is relatively easy. As a judge, we are faced with a number of issues—constitutional issues, statutory construction issues—pretty regularly. I think in my career—well, I know in my career I have followed the law and have done it faithfully. I have never interjected my own personal beliefs as far as the law and how it should be interpreted in over 10 years. I mean, I have been reviewed by the Third District Court of Appeal. I do not think I have ever been reversed—well, I have been rarely reversed, but when I have been, it has never been because I made a decision that was far outside the dictates of the law. I respect the law. I am sworn to uphold the

law. And I will follow Supreme Court precedent as well as Eleventh Circuit precedent if I am so fortunate to be confirmed.

And the specific question that you asked me as far as how I will consider Supreme Court—I am sorry, constitutional language, I do not believe that I have an overarching philosophy regarding the issue, but I will faithfully uphold the law.

Senator GRASSLEY. I am going to quote for you from Justice Breyer, and then I have got a couple questions that follow on this. Justice Breyer has described the law as "a conversation among judges, among professors, among law students, and among members of the bar." He provided this description in the context of his argument that it is sometimes appropriate for judges to look to sources other than the Constitution or Federal statutes when reaching a decision about what the law means.

The first question, and then I will let you answer that, and then the second one.

First, do you share Justice Breyer's views that judges should occasionally look for guidance from sources like law review articles or other scholarly comments, commentaries?

Judge GAYLES. I respect the Justice's statement and opinion regarding that issue. I think our Constitution has served us well for over 200 years. Consistency I think is important.

I think certainly revealing a treatise or law review article, it might be nice to maybe get an understanding, but that should certainly not be the guiding force as far as how you interpret the Constitution. So I respect the Justice's statement, but I do not completely agree with it.

Senator GRASSLEY. Okay. And, second, do you believe that it is appropriate to rely on legislative history—I also have down here "floor statements made by Members of Congress," but I think that is all part of legislative history, as well as Committee reports—when deciding what a law means?

Judge GAYLES. That may be a factor after you have considered other factors in interpreting a statute. When I was an undergraduate at Howard University, I had the good fortune of interning on the Hill for the House of Representatives Standing Committee for the District of Columbia. I know a bit about how the legislative history comes about. I know that it is not inherently reliable. There may be problems with relying on that.

So it would not and it has never been a cornerstone of how I interpret a statute. It is an available tool, but it is not something that I rely upon.

Senator GRASSLEY. Just as an aside, Justice Scalia would like to hear what you said, because I asked him that question when he was up for confirmation almost 30 years ago, and he said, "I never rely on it at all. You cannot rely on it."

[Laughter.]

Senator GRASSLEY. Or something to that effect.

I am going to go to Mr. Byron. In 2004, you gave a presentation on combating terrorist financing through charitable organizations. I realize that the purpose of your presentation was to help attendees recognize that there are fake charities set up for purposes of financing terror. In one slide you discussed "barriers in the fight to stop terrorists." One of these barriers is the fact that reli-

gious organizations and churches are not required to file Form 990 and the facts that the IRS cannot routinely examine churches.

Could you discuss in more detail the problems that you were referring to?

Mr. BYRON. Yes, sir. I was focusing not on the Establishment Clause or the free exercise of religion aspects. Certainly that was not part of my focus. My focus was more from a procedural or a tactical approach of transparency, and I do not believe that those comments were intended to include, for lack of a better term, mainstream religious organizations. I was really talking about fronts that at that time had been identified as being front organizations that were hiding behind the cloak of being a religious organization, in part to avoid transparency and the movement of money. And that failure to have transparency in those organizations frustrated the ability of law enforcement to track the flow of money and allowed for individual donations to be collected and moved overseas for terrorist financing proposes. There had been an investigation actually in Alexandria, I think, at that time of just such an organization. I was really referring to that, and not mainstream religious organizations or the fact that our Constitution provides certain protections and rights to religious *organizations, which I fully support and agree with.

Senator GRASSLEY. Okay. And my last question to you, when is it appropriate for the Federal Government to preempt State law? If confirmed, what sources and approaches would you utilize to assess whether Congress or the executive branch, in fact, intended to preempt State law and acted within the scope of their authority to do so?

Mr. BYRON. Yes, sir. Thank you, sir. I think we have to start with the Tenth Amendment, which sets forth exactly the division of power between the Federal Government and the States. And I think Justice Roberts spoke about that in the *National Federation of Businesses v. Health and Human Services*, which we are all familiar with. He gave a very detailed explanation of the division of powers between the Federal Government and the State authorities and when preemption is not appropriate, such as commandeering the activities of what are typically purely State functions. So there is this interplay between the Necessary and Proper Clause, the Commerce Clause, and the taxation authorities, for example, of the United States, and the line is drawn between the authority of the Federal Government and the States, depending on the issue, whether it is a Commerce Clause issue or some other issue.

So my approach, sir, would be to look at the particular activity that is being preempted or governed, and then go back to the Constitution to determine, first off, is it a Federal or a State right that we are dealing with. And if so, is the particular statute that is being applied one that fits within the authority of the Federal Government to regulate that behavior, looking at controlling case law to guide me along the way, sir.

Senator GRASSLEY. Thank you.

And, Ms. Bloom, I have two questions for you. I believe, looking at your record, that you have not had much, if any, Federal law experience either as a practicing attorney or a judge. If I am wrong on that, you can correct me. So, question: Are you comfortable with

the Federal rules and procedures? And since being nominated, have you taken any steps to familiarize yourself with them?

Judge BLOOM. Thank you for the question, Senator Grassley. The answer to both is yes, and in terms of my feeling comfortable, certainly I have handled constitutional questions as a State trial court judge as well as statutory construction. So I certainly believe that my skill set in the State trial court will serve me well, and certainly my work ethic, in taking the opportunity to understand the substantive and procedural law. And in terms of my preparation, I have certainly taken the time to observe many of our Federal judges in the Southern District. I now have the Federal Judicial Center's Manual that I have started to review. I have read the Federal Rules of Civil Procedure and am now reacquainted with the Federal Rules of Evidence that I remember from my days in law school. And certainly I have had experience with the Sentencing Guidelines since I have served for many years in the Criminal Division. So I certainly have had that experience.

So in answer to your question, Senator Grassley, I believe that I am well prepared if I am fortunate enough to be confirmed.

Senator GRASSLEY. Okay. And my last question has two parts. You have been reversed by the appellate court on a couple of occasions. I would like to ask you about a case where you did not grant a recusal motion.

First, what factors do you consider when reviewing a recusal motion? And I might as well ask the second part of that. Can you explain the situation in *Miami Elevator v. Marbrad*, a case where you did not recuse? And how did you reach your decision?

Judge BLOOM. Thank you, Senator, for the case. The first case in which I was reversed for my failure to recuse myself was, in looking at the factors, the motion itself was legally insufficient. It was not signed by the moving party, the client. It was only signed by the attorney. And there were no facts that were attested to. So certainly from the case law in the Third District it was found to be legally insufficient. In the *Miami Elevator* case, I do not particularly remember what were the facts that led to my recusal, but certainly it was grounded on a legally sufficient motion to recuse.

Senator GRASSLEY. Congratulations, all of you, and thank you.

Judge BLOOM. Thank you, Senator.

Mr. BYRON. Thank you, Senator.

Judge GAYLES. Thank you.

Judge MENDOZA. Thank you.

Senator COONS. Thank you, Senator Grassley.

At this point, there being no other questions, I will simply suggest that Members of the Committee who were not able to be with us today but want to submit questions for the record may do so for 7 days, and this hearing is hereby adjourned.

[Whereupon, at 10:49 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, April 1, 2014
Dirksen Senate Office Building, Room 226
10:00 a.m.

Beth Bloom, to be a United States District Judge for the Southern District of Florida

Paul G. Byron, to be a United States District Judge for the Middle District of Florida

Darrin P. Gayles, to be a United States District Judge for the Southern District of Florida

Carlos Eduardo Mendoza, to be a United States District Judge for the Middle District of Florida

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Beth Francine Bloom
   Beth Stern (Stern is my husband's name)

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

   United States District Judge for the Southern District of Florida

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

   Office: Dade County Courthouse
   73 West Flagler Street, Room 412
   Miami, Florida 33130

   Residence: Miami Beach, Florida

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

   1962; Bronx, 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.

   1985 — 1988, University of Miami School of Law; J.D. (*cum laude*), 1988

   1982 — 1984, University of Florida; B.S., 1984

   1980 — 1982, Broward Community College; A.A., 1982

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

2010 — present
State of Florida, Eleventh Judicial Circuit
Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130
Circuit Court Judge, Civil Division (2013 — present)
Circuit Court Judge, Criminal Division (2010 — 2013)

1995 — 2010
Miami-Dade County Court
Richard E. Gerstein Justice Building
1351 Northwest 12th Street
Miami, Florida 33125
County Court Judge (1995 — 2010)
Associate Administrative Judge, Criminal Division (January — October 2010)

1987 — 1994
Floyd Pearson Richman Greer Weil
Brumbaugh & Russomanno, P.A.
175 Northwest First Avenue, 25th Floor
Miami, Florida 33130
Attorney (1988 — 1994)
Law Clerk (1987 — 1988)

1992 — 1993
Eleventh Judicial Circuit
Richard E. Gerstein Justice Building
1351 Northwest 12th Street
Miami, Florida 33125
Traffic Magistrate

February — June 1987
Colson Hicks & Eidson
255 Alhambra Circle, Penthouse
Coral Gables, Florida 33134
Law Clerk

September 1986 — February 1987
William P. Cagney, III, P.A. (retired)
Village of Golf, Florida
Law Clerk

Summer 1986
Department of Health & Human Services, Region 4
Sam Nunn Atlanta Federal Center

61 Forsyth Street Southwest, Suite 5M60
Atlanta, Georgia 30303
Summer Legal Intern

1984 — 1985
Scarlett O'Hara's
Oakland Park Blvd
Fort Lauderdale, Florida 33401
Waitress

1984 — 1985
Bennigan's Restaurant
665 West Cypress Creek Road
Fort Lauderdale, Florida 33309
Waitress

Summer 1985
Pinecrest Day Camp
1501 Northeast 62 Street
Fort Lauderdale, Florida 33334
Summer Camp Counselor

Other affiliations (uncompensated):

1988 — present
University of Miami Law Alumni Association
1311 Miller Road
Coral Gables, Florida 33146
Board of Directors (1988 — present)
Judicial Director (1995 — present)
Vice-President, Class Agents (1993 — 1994)
Treasurer (1992 — 1993)

2007 — present
Eleventh Judicial Circuit Historical Society
History Miami Museum
101 West Flagler Street
Miami, Florida 33130
Executive Committee Member

2002 — present
Children's Craniofacial Association
Miami Children's Hospital Foundation
3100 Southwest 62 Avenue
Miami, Florida 33162
Secretary

2011 — 2013
Florida Conference of Circuit Court Judges
Office of the State Courts Administrator, Judicial Education
500 South Duval Street
Tallahassee, Florida 32399
Third District Representative (2011 — 2013)
Executive Board Member (2011 — 2013)

1997 — 2010
Florida Conference of County Court Judges
Office of the State Courts Administrator, Judicial Education
500 South Duval Street
Tallahassee, Florida 32399
Board of Directors (1997 — 2010)
Past President (2003 — 2004)
President (2002 — 2003)
President-elect (2000 — 2002)
Third District Vice President (1998 — 2000)

1998 — 1999
South Florida Inner City Games
1205 Lincoln Road, Suite 220
Miami Beach, Florida 33139
Board Member

1998
Miami Beach Bar Association
Miami Beach, Florida
Board of Directors

1995 — 1998
Temple Emanu-el
1701 Washington Avenue
Miami Beach, Florida 33139
Board of Directors, Sisterhood

1993 — 1995
Central Agency for Jewish Education
4200 Biscayne Boulevard
Miami, Florida 33136
Board of Directors

1993 — 1995
Dade County Citizens Safety Council
13800 Southwest 84th Street

Miami, Florida 33158
Board of Directors

1992 — 1995
Greater Miami Jewish Federation
4200 Biscayne Boulevard
Miami, Florida 33136
Board of Directors, Young Leadership Council

1993 — 1994
American Jewish Committee
9200 South Dadeland Boulevard
Miami, Florida 33156
Board of Directors

1991 — 1994
American Bar Association/Young Lawyers Division
321 North Clark Street
Chicago, Illinois 60654
House of Delegates '

1991 — 1994
Academy of Florida Trial Lawyers
(now Florida Justice Association)
218 South Monroe Street
Tallahassee, Florida 32301
Board of Directors, Young Lawyers Section

1990 — 1994
Dade County Bar Association
123 Northwest First Avenue
Miami, Florida 33128
Board of Directors, Young Lawyers Section

1989 — 1994
Dade County Trial Lawyers Association
(now Miami-Dade Justice Association)
Miami, Florida
Board of Directors

1989 — 1993
Amaretto Homeowners Association
Miami, Florida
President (1991 — 1993)
Board of Directors (1989 — 1993)

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.

   Rodef Shalom Pursuer of Peace Award, Jewish Legal Society (2013)
   Judicial Distinction Award, University of Miami School of Law (2011)
   Silverman Award, Eleventh Judicial Circuit Historical Society (2010)
   Our Kids Leadership Award, Our Kids of Miami-Dade and Monroe Counties (2008)
   Champion for Children Award, Miami Bridge Youth and Family Services (2007)
   Community Service Award, Mellon Bank (2006)
   Child's Heart Award, Juvenile Judges of the Eleventh Judicial Circuit (2006)
   Congressional Recognition Award, United States Congresswoman Debbie Wasserman-Schultz (2005)
   Presidential Recognition Award, Dade County Bar Association (2005)
   Harvey Ford Leadership Award, Florida Conference of County Court Judges (2004)
   Trailblazer Award, Florida Conference of County Court Judges (2003)
   Special Recognition Award, Florida Conference of County Court Judges (2001)
   MADD Award of Distinction, Mothers Against Drunk Driving (2001)
   Special Projects Award, Florida Conference of County Court Judges (2001)
   Woman of Power, Editorial Board of the *Sunpost Newspaper* (2001)
   Women Worth Knowing, Miami Beach Commission on the Status of Women (1998)
   Proclamation as "*Honorable Beth Bloom Day*," Miami- Dade County Board of County Commissioners (January 24, 1997)
   Proclamation as Honorary Deputy Clerk, Miami-Dade Clerk of Courts Harvey Ruvin (1997)
   Certificate of Commendation, Miami-Dade County Commission (1996)
   Citizen of the Year Award, Fraternal Order of Police, William Nichols Lodge (1995)
   FEMA Meritorious Service Award, Federal Emergency Management Agency (1994)
   Pro Bono Service Award, Dade County Bar Association's *Put Something Back* (1994)
   Honor Role Model Award, American Association of University Women (1994)
   Florida Bar President's Award of Merit, The Florida Bar (1993)
   ABA Presidential Recognition Award, American Bar Association (1992)
   Certificate of Merit/Recognition for Service to the Bar, Bench and the Public, as Hurricane Andrew Coordinator – Disaster Volunteer Lawyers, Dade County Bar Association (1992)
   Thomas Davison, III Service Award, University of Miami Law Alumni Association (1992)
   Dade County Trial Lawyers President's Award, Dade County Trial Lawyers Association (1992)

Who's Who in American Law (1990)
Outstanding Young Women of America (1987)
Roger Sorino Award, as the Outstanding Law School Graduate, University of Miami School of Law (1988)
Moot Court Board Hall of Fame, University of Miami School of Law (1988)
Who's Who in American Law Schools (1988)
Iron Arrow, University of Miami's Leadership Honorary (1987)
Society of Bar & Gavel, University of Miami's Leadership Honorary (1987)
Omicron Delta Kappa, National Leadership Honorary (1987)
American Jurisprudence Award for Appellate Practice & Procedure, University of Miami School of Law (1987)
Outstanding Female Leader of Graduating Class, University of Florida: (1984)
Florida Blue Key, University of Florida's Leadership Honorary (1984)
Caucus of Women Leaders, University of Florida: (1984)
Savant U.F., University of Florida's Leadership Honorary (1984)
Who's Who in American Colleges & Universities (1984)

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.

Academy of Florida Trial Lawyers (now Florida Justice Association)
Environmental Law Section (1991 — 1994)
Secretary
Board of Directors, Young Lawyers Section (1991 — 1994)
Trial Notebook Seminar (1992 — 1994)
Program Co-Chair

American Bar Association/Young Lawyers Division
House of Delegates (1991 — 1994)
Disaster Legal Assistance Committee (1993 — 1994)
National Chair
State of Florida, Disaster Legal Assistance Program (1992 — 1994)
Chair
Communications Committee (1993 — 1994)
Vice-Chair
Publications Committee (1992 — 1993)
Vice-Chair
Awards of Achievement Competition (1992 — 1993)
Judge
Pretrial Practice and Discovery Committee (1992 — 1994)

Cuban American Bar Association (2008 — present)

Dade County Bar Association
Coordinator, "Perspectives on Professionalism from Retired County Court

Judges of the Eleventh Judicial Circuit" (2005 — 2006)
County Court Committee Bench-Bar Group (1996)
Co-Chair
Board of Directors, Young Lawyers Section (1990 — 1994)
Subcommittee on Pre-Suit and Post-Trial Mediation (1992 — 1993)
Chair
Law Week (1991)
Co-Chair
Partnership for Black Professional Opportunity Committee, Co-Chair (1991 — 1994)
High School Mock Trial Competition (1991— 1993)
Co-Chair
Mediation Committee (1993 — 1994)
Vice-Chair
Mediation Committee (1991 — 1994)
Judicial Evaluation Committee (1991 — 1994)
Schools Committee (1991— 1994)
Civil Litigation Committee (1992 — 1994)

Dade County Trial Lawyers Association ("DCTLA")
(now Miami-Dade Justice Association)
Board of Directors (1989 — 1994)
Safety Award Committee (1993 — 1994)
Presidential Gala Committee (1991 — 1994)
DCTLA Liaison, Miami Project to Cure Paralysis (1991 — 1992)
DCTLA Liaison, Dade County Medical Association (1993 — 1994)

Eleventh Judicial Circuit Historical Society
Executive Committee (2007 — present)
Committee of 100, Eleventh Judicial Circuit Centennial Celebration (2009 — 2012)
Schools Committee, Eleventh Judicial Circuit Centennial Celebration (2009 — 2012)
Chair

Miami Beach Bar Association
Board of Directors (1998)

Florida Association of Women Lawyers, Miami-Dade Chapter (1992 — present)

Florida Bar
Code & Rules of Evidence Committee (1992 — 1995)

Florida Conference of County Court Judges
Past President (2003 — 2004)
President (2002 — 2003)

President-elect (2000 — 2002)
Florida Bar Liaison Committee (2005 — 2010)
Chair
Parity in Pay Committee (2004 — 2005)
Chair
Public Education of the Court Teams (2000 — 2002)
Chair
Board of Directors (1997 — 2010)
Third District Vice President (1998 — 2000)
Eleventh Circuit Representative (1997 — 1998)
Education Committee (1998 — 2000)
Chair
Education Committee (1995 — 2010)
Standards for Educational Materials (1996 — 1997)
Chair
Criminal Bench Book Committee (1998 — 2001)
Legislative Committee (1997 — 2005)
Criminal Rules Committee (1997 — 2010)
Professional Relations Committee (1997 — 2010)
Traffic Adjudication Committee (1995 — 2010)
Civil Rules Committee (1995 — 1997)

Florida Conference of Circuit Court Judges
Third District Representative (2011 — 2013)
Executive Board (2011 — 2013)
Education Committee (2012 — present)

Miami-Dade County Misdemeanor Services Selection Committee, 2006

Miami Law Women, University of Miami School of Law (2004 — present)
Article V Communications Advisory Group (2003 — 2004)
Florida Court Education Council (2001 — 2003)
Eleventh Judicial Circuit Committee on Professionalism (2010)

University of Miami Law Alumni Association
Judicial Director (1995 — present)
Vice-President, Class Agents (1993 — 1994)
Treasurer (1992 — 1993)
Board of Directors (1988 — present)
Class Agent (1988 — 1999)
Class of 1988 Homecoming Committee, Fifth, Tenth, Twentieth and Twenty-fifth Reunion Years (1993 — 2003)
Chair

Through this nomination process, I have discovered that I am listed as a member of the State Federal Judicial Council for Florida, but I do not recall participating in this organization.

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, 1988

There has been no lapse in membership.

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

United States District Court for the Southern District of Florida, 1989

I have allowed my membership in this court to lapse since becoming a state court judge.

11. **Memberships**:

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

Amaretto Homeowners Association (1989 — 1993)
President (1991 — 1993)
Board of Directors (1989 — 1993)

American Association for Justice (formerly the Association of Trial Lawyers of America) (1991 – 1995)

American Israel Public Affairs Committee (1993 — 1994)

American Jewish Committee (1993 — 1994)
Board of Directors

American Judicature Society (1992 — 1999)

Central Agency for Jewish Education
Board of Directors (1993 — 1995)

Children's Craniofacial Association, Miami Children's Hospital (2002 — present)
Co-Founder and Secretary

Dade County Citizens Safety Council (1993 — 1995)
Board of Directors

Dade County Community Relations Board (1996)
First National Conference on Community Relations Steering Committee
Committee on the Impact of Law Enforcement and the Judicial System on Community Relations
Chair

Girl Scout Council of Tropical Florida (1991 – 1994)
Troop Leader

Greater Miami Jewish Federation (1992 — 1995)
Board of Directors, Young Leadership Council (1992 — 1995)
Program & Education Committee (1993 — 1995)
Vice- Chair
Leadership Development Group (1993)
Co-Chair
Sandra C. Goldstein Lecture Series (1993)
Forum Chair
Zikaron L'atid Mission to Poland and Israel (1993)

GWEN's List (1992 – 1994)

Jewish Women's Circle, Chabad of the Venetian Islands (2005 — present)
Founding Member

Joseph Caleb Community Center 20th Anniversary Celebration
Friends of Caleb Anniversary Planning Committee (1995 — 1996)
Chair

Lawyers Join Hands for Students (2013 — present)
Co-Founder

Leadership Miami, Class of 1988

Listen UP! Program (2010 — present)
Co-Founder and Co-Presenter

Miami Beach Public Library (2003)

Grand Opening Host Committee for Friends of the Miami-Dade Public Library
Co-Chair

Oliver's Fund (2005 — present)
Co-Founder

South Florida Inner-City Games
Board of Directors (1998 – 1999)

Temple Emanu-el, Miami Beach, Florida (1995 — 1998)
Sisterhood Group
Board Member
Rabbi Search Committee
Secretary

Through this nomination process, I have discovered that I am listed as a member of the Advisory Board for Dress for Success Miami, but I do not recall participating in this organization.

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 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.

I have maintained a website since 2013, which is available at www.JudgeBethBloom.info.

I have been responsible for maintaining a website for the Listen UP! Program since 2012, which is available at www.ListenUPProgram.org.

"Criminal Bench Book for County Court Judges," produced by the Education Committee of the Florida Conference of County Court Judges, 2003. Copy supplied.

"President's Page," the *County Court Courier* editions of the Florida Conference of County Court Judges' newsletter, 2002 — 2003. Copies supplied where available.

"Conference Forms Legislative Resource Committee," the *County Court Courier* edition of the Florida Conference of County Court Judges' newsletter, Spring 2001. Copy supplied.

"Public Education of the Court Teams," the *County Court Courier* edition of the Florida Conference of County Court Judges' newsletter, January 2001. Copy supplied.

"Dignity in Law," The Florida Bar News, July 1, 2002. Copy supplied.

"What's Doin' in Dade," the *County Court Court Courier* edition of the Florida Conference of County Court Judges' newsletter, March 1999. Copy supplied.

"Education Committee Report," the *County Court Courier* edition of the Florida Conference of County Court Judges' newsletter, March 1999. Copy supplied.

"After Hurricane Andrew: Lawyers Shine in the Middle of Devastation," The Florida Bar Journal, January 1993. Copy supplied.

"Volunteers Shine Through the Storm," DCBA Bulletin, December 1992. 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.

Florida Conference of County Court Judges: A Progress Report, prepared as President of the Florida Conference of County Court Judges to Florida Chief Justice Harry Lee Anstead to assist in the annual "State of the Judiciary" address at the Florida Bar Conference, dated May 14, 2003. Copy supplied.

Resolution on behalf of the Florida Conference of County Court Judges in Support of the Judicial Ethics Advisory Committee's Recommendation of

Aspirational *Pro Bono* Service by Judges to the Supreme Court of Florida, July 12, 2002. Copy supplied.

Resolution on behalf of the Florida Conference of County Court Judges recognizing Calvin Allen, Esquire, dated April 24, 2002. 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 November 7, 2002, as Conference President, I presented the Florida Conference of County Court Judges' position regarding the proposed rule change requiring pro bono service reporting by judges before the Supreme Court of Florida. Video recording supplied.

October 1999: In my capacity as the Third District Vice-President, I appeared at an executive meeting for the Florida Conference of County Court Judges. Although I do not have personal copies of any minutes and the meetings were not public, in searching the Internet, I have recently discovered that the meeting minutes from the October 1999 meeting were posted, which I have supplied.

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

I have been extensively involved in teaching judicial and legal education courses. This list represents the speeches and lectures I have been able to identify through searches of my files, computers and Internet databases. I have tried my best to list all such events, although there may be some that I have not been able to identify or locate.

October 2010 — present: Since October 2010, I have co-presented the "Listen UP! Program" to high school and middle school students in Miami-Dade County, Florida. Representative outline supplied.

January 2002 – present: Each year in January, I co-present a four-hour course, "Building Judicial Style," to newly elected and appointed judges at the Florida Judicial College, Orlando, Florida. Representative outline supplied.

November 15, 2013: I was a panelist on the topic of "Ethics," sponsored by the Hoeveler- Spellman Inns of Court and the University of Miami Partnership for Professionalism, Miami, Florida. The panel discussion focused on challenging ethical issues for attorneys. I have no notes, transcript or recording. The address for the University of Miami School of Law Partnership for Professionalism is 1411 Miller Drive, Coral Gables, Florida 33146.

November 5, 2013: I was one of three invited judges at a program entitled "Meet the Civil Judges," sponsored by the Dade County Bar Association's Young Lawyer's Section, Miami, Florida. The presentation was a question and answer session from young attorneys about the civil division and the job of a judge. I have no notes, transcript or recording. The address for the Dade County Bar Association is 123 Northwest First Avenue, Suite 214, Miami, Florida 33128.

July 17, 2013: I was the graduation speaker at the "I'm Ready" Program for Sentenced Youth, sponsored by the Miami-Dade County Department of Corrections and Rehabilitation, Miami, Florida. Speech supplied.

July 10, 2013: I co-presented the program, "Institutional Justice," at the Florida Conference of County Court Judges' Annual Education Conference, Naples, Florida. Outline supplied.

May 15, 2013: I was a panelist on the topic "Professionalism/Civility," sponsored by the Dade County Bar Association and the Cuban American Bar Association, Miami, Florida. Outline supplied.

March 19, 2013: I was a panelist on the topic, "Thoughts on Leadership," sponsored by the Ransom Everglades High School's Women Empowered, Coconut Grove, Florida. Notes supplied.

March 12, 2013: I gave remarks at the Jewish Legal Society when presented with the Rodef Shalom Award in Miami, Florida. Notes supplied.

December 17, 2012: I was the graduation speaker at the "I'm Ready" Program for Sentenced Youth, sponsored by the Miami-Dade County Department of Corrections and Rehabilitation, Miami, Florida. I have no notes, transcript or recording. The address for the Miami-Dade County Department of Corrections and Rehabilitation is 6950 N.W. 41st Street, Miami, Florida 33166.

December 3, 2012: I was a panelist on the topic, "Ethics," at the Hoeveler-Spellman Inns of Court and the University of Miami School of Law's Partnership for Professionalism, Ethics Forum, Miami, Florida. This was a panel discussion and question and answer session on certain ethical situations faced by lawyers. I have no notes, transcript or recording. The address for University of Miami School of Law's Partnership for Professionalism is 1411 Miller Drive, Coral Gables, Florida 33146.

June 18, 2012: I was the luncheon speaker on the topic, "Youth in Criminal Court," sponsored by the Miami Beach Bar Association, Miami Beach, Florida. Notes supplied.

March 2, 2011: I was a panelist on the topic, "The Search for Qualified Candidates for the Miami-Dade Judiciary," sponsored by the Dade County Bar Association, Miami, Florida. Outline supplied.

October 28, 2010: I gave remarks at my swearing in as a Circuit Court Judge, Miami, Florida. Video recording supplied.

July 2010: I presented the program, "Criminal Law 101: Discovery" at the Florida Conference of County Court Judges' Annual Education Conference, Marco Island, Florida. Slide presentation supplied.

April 2010: I was the speaker on the topic, "The Young Jewish Leader," sponsored by the CHABAD Young Leadership's Young Jewish Professionals, Miami, Florida. Speech supplied.

November 2009: I was the speaker on the topic, "My Jewish Life," sponsored by CHABAD, Miami, Florida. Speech supplied.

March 2008, March 2007, March 2006, March 2005, March 2004, March 2003, March 2002, March 2006: Each year since March 2001, I have co-presented a four-hour course, "DUI Law," to newly elected and appointed county court judges at the Florida Judicial College, Orlando, Florida. Representative slide presentation supplied.

January 25, 2007: I was a panelist on the topic, "A View from the Bench," sponsored by the Florida Bar CLE Seminar on Basic Criminal Law Practice, Miami, Florida. Notes supplied.

March 2006: I was the speaker during "Woman's History Month," sponsored by the Women's Chamber of Commerce, Miami, Florida. The topic of the presentation was the importance of women leaders in our community. I have no notes, transcript or recording, but press coverage is supplied. The address for the Women's Chamber of Commerce of Miami-Dade County is Post Office Box 566164, Miami, Florida 33256.

June 9, 2004: I was the presenter on the topic, "Ethics In and Out of the Courtroom," as part of the Miami-Dade County Hearing Officer Training Program, Miami, Florida. Slide presentation supplied.

March 19, 2003: I was the presenter of the "Spirit of Life" Award at the Miami Children's Hospital's Children's Craniofacial Association luncheon, Miami,

Florida. I have no notes, transcript or recording. The address of Miami Children's Hospital's Craniofacial Association is 3100 S.W. 62 Avenue, Miami, Florida 33162.

January 23, 2003: I was a speaker at the Miami-Dade State Attorney's Police-Prosecutor Coordinating Committee, Miami, Florida. The topic covered possession of tobacco product civil citations and the anti-tobacco program in use in Broward County, Florida. I have no notes, transcript or recording. The address for the Miami-Dade State Attorney's Office is 1350 Northwest 12th Avenue, Miami, Florida 33136.

March 2000, March 1999: I co-presented the course "Residential Landlord/Tenant Law" to newly elected and appointed county court judges at the Florida Judicial College, Tallahassee, Florida. Representative outline supplied.

March 1999: I presented the program, "Commercial Motor Vehicle Law," at the National Judicial College, Reno, Nevada. The topic covered the types of commercial motor vehicles, license requirements and the National Highway Traffic Safety Administration's statistics about commercial motor vehicles. I have no notes, transcript or recording. The address of the National Judicial College is College Drive, MS 358, Reno, Nevada 89557.

November 1998, November 1997, November 1996: I presented the course, "Commercial Drivers' License Law" at the DUI Adjudication Lab, Tampa, Florida, sponsored by the Florida Conference of County Court Judges. I have no notes, transcript or recording. The address for the of the DIU Adjudication Lab is the Office of State Courts Administrator, Judicial Education, 500 South Duval Street, Tallahassee, Florida 32399.

November 1998, November 1997, November 1996: I presented the course, "Traffic Infractions," at the DUI Adjudication Lab, Tampa, Florida, sponsored by the Florida Conference of County Court Judges. The topic covered the substantive aspects of the most common moving violation infractions. I have no notes, transcript or recording. The address for the of the DIU Adjudication Lab is the Office of State Courts Administrator, Judicial Education, 500 South Duval Street, Tallahassee, Florida 32399.

May 1998: I swore in the officers and directors during the South Florida Hispanic Chamber of Commerce installation dinner, Miami Beach, Florida. I have no notes, transcript or recording. The address of the South Florida Hispanic Chamber of Commerce is 333 Arthur Godfrey Road, Miami Beach, Florida 33140.

April 1998: I was the speaker on the topic, "Domestic Violence and the Courts," as part of the Miami Beach Police Department's Purple Ribbon Ceremony, Miami Beach, Florida. The presentation discussed the handling of domestic violence cases by the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. I

have no notes, transcript or recording. The address for the Miami Beach Police Department is 1200 Washington Avenue, Miami Beach, Florida 33139.

March 1998: I was the speaker on the topic, "The Court System," to the Miami Beach Senior High School's Legal Club at the Miami Beach Courthouse, Miami Beach, Florida. The presentation discussed the role of a judge and cases handled in our county court. I have no notes, transcript or recording but press coverage is supplied in 12e. The address for the Miami Beach Senior High School is 2231 Prairie Avenue, Miami Beach, Florida 33139.

March 1998: I presented the course, "Judicial Management Techniques," to newly elected and appointed county court judges at the Florida Judicial College, Tallahassee, Florida. The topic covered effective case management techniques in small claims and high volume calendars. I have no notes, transcript or recording. The address of the Florida Judicial College is the Office of the State Courts Administrator, Judicial Education, 500 South Duval Street, Tallahassee, Florida 32399.

October 1997: I was the moderator of the program, "Hope for Generations: Ending the Cycle of Violence," sponsored by the Miami Beach Commission on the Status of Women, Miami Beach, Florida. I have no notes, transcript or recording. The address for the Miami Beach Commission on the Status of Women is 1700 Convention Center Drive, Miami Beach, Florida 33139.

October 1997: I was a panelist on the topic, "Dialogue with a Judge," sponsored by the Justice Teaching Institute Workshop, Ruben Dario Middle School, Miami, Florida. The panel discussed the role of a judge. I have no notes, transcript or recording. The address for Ruben Dario Middle School is 350 Northwest 97 Avenue, Miami, Florida 33272.

May 1997; May 1996: I taught the course, "Florida Criminal Procedure," to law students preparing for the Florida Bar exam, sponsored by West Bar Review, Miami, Florida. Video recording supplied.

April 1997: I presented the program, "Residential Landlord/Tenant Law," at the Florida College of Advanced Judicial Studies, Orlando, Florida. Outline supplied.

March 1997: I was the mistress of ceremonies at the luncheon celebrating the 33rd Anniversary of the Miami-Dade County's Community Relations Board, Miami, Florida. Notes supplied.

March 1997: I moderated a panel on the topic, "The Impact of Law Enforcement and the Judicial System on Community Relations," National Conference on Community Relations, Miami, Florida. The panel discussed certain high profile cases in the Miami-Dade County court system and the speakers discussed their roles. I have no notes, transcript or recording. The address for the Miami-Dade

Community Relations Board is the Stephen Clark Government Center, 111 Northwest First Street, Miami, Florida 33130.

July 1996: I presented the topic, "Florida Residential Landlord/Tenant Law," at the Florida Conference of County Court Judges' Annual Education Conference, Key Largo, Florida. I used the same outline as the one supplied for the April 1997 event.

June 1996: I was the speaker on the topic, "Domestic Violence," at the meeting of Hadassah, Miami, Florida. I have no notes, transcript or recording. The address for Hadassah Miami is 4200 Biscayne Boulevard, Miami, Florida 33136.

May 1996: I was the speaker on the topic, "The Court's Role in Domestic Violence Cases," at the annual meeting of Hadassah, Miami, Florida. The presentation discussed the handling of domestic violence cases in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. I have no notes, transcript or recording. The address for Hadassah Miami is 4200 Biscayne Boulevard, Miami, Florida 33137.

May 1996: I presented the topic, "Arraignments and Pleas," at the National Judicial College, Reno, Nevada. Video recording supplied.

May 1996: I was the speaker on the topic, "What You Don't Know About the Bench," sponsored by Concerned Citizens of Northeast Dade, Aventura, Florida. This presentation discussed the programs and services available in the county court in Miami-Dade County, Florida. I have no notes, transcript or recording. Concerned Citizens of Northeast Dade no longer exists.

April 1996: I was the speaker on the topic, "The County Court: Programs and Services," sponsored by the North Miami Kiwanis, North Miami, Florida. I have no notes, transcript or recording. The address of the North Miami Kiwanis is Milton Fisher, President, 21230 Northeast 19th Avenue, Miami, Florida 33179.

February 1996: I presented a course, "Pre-Trial Diversion in Driving While License Suspended Cases," at the National Judicial College, Reno, Nevada. Video supplied.

January 19, 1996: I was the speaker on the topic, "Joseph Caleb and his Legacy" at the gala dinner for the Joseph Caleb Center's 20th Anniversary Celebration, sponsored by The Friends of the Joseph Caleb Center, Liberty City, Florida. I have no notes, transcript or recording. The address for the Joseph Caleb Center is 5400 Northwest 22 Avenue, Miami, Florida 33154.

January 1996: I was the speaker on the topic, "From Tuition Checks to Paychecks," sponsored by the Greater Miami Jewish Federation, Miami, Florida. This presentation discussed the transition from student to professional. I have no

notes, transcript or recording. The address for the Greater Miami Jewish Federation is 4200 Biscayne Boulevard, Miami, Florida 33137.

November 1995: I was a panelist on the topic, "Leadership Role Models," at the Student Gender Equity Conference sponsored by the Miami-Dade County Public Schools, Miami, Florida. This presentation discussed the importance of a role model in your life. I have no notes, transcript or recording. The address for the Miami-Dade County Public Schools is 1450 Northeast Second Avenue, Room 500, Miami, Florida 33132.

March 1995: I was the speaker on the topic, "Women Judicial Leaders," sponsored by the Miami-Dade Women's Association, Miami, Florida. This presentation discussed local women judges and each woman's contributions to our community. I have no notes, transcript or recording. The address for the Miami-Dade County Commission for Women is 111 Northwest First Street, Suite 6 Miami, Florida 33128.

January 20, 1995, I spoke at my investiture as a Miami-Dade County Court Judge in Miami, Florida. Video recording supplied.

October 26, 1994: I was the speaker on the topic, "Doctors and Lawyers Join Hands to Combat Family Violence Program" at the Dade County Medical Association, Miami, Florida. This presentation discussed domestic violence and the logistics of the program that day. I have no notes, transcript or recording but press coverage is supplied. The address for the Dade County Medical Association is 1501 NW North River Drive, Miami, Florida 33125.

July 24, 1994: I was a speaker on the topic, "Tenants' Rights," at Temple Emanu-el. The program covered issues facing tenants following Hurricane Andrew and the rights and responsibilities of landlords and tenants in Florida. I have no notes, transcript or recording. The address of Temple Emanu-el is 1701 Washington Avenue, Miami Beach, Florida 33139.

November 1993: I was the speaker on the topic, "State Substantive Law Needed in Training Volunteer Lawyers," at the 1993 ABA Midyear Meeting of ABA/YLD District Representatives, New York, New York. The presentation discussed the unique legal services provided to Florida victims of Hurricane Andrew and the need for training volunteer lawyers on unique substantive law. I have no notes, transcript or recording. The address for the American Bar Association is 32 North Clark Street, Chicago, Illinois 60654.

October 1993: I was the speaker on the topic, "Florida Lawyers' Response to Hurricane Andrew," sponsored by the National Conference of Bar Presidents, Boston, Massachusetts, 1993 NCBP Midyear Meeting. The presentation discussed the services provided by Florida lawyers following Hurricane Andrew.

I have no notes, transcript or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

May 1993: I was the speaker on the topic, "The Bill of Rights," sponsored by the Miami Beach Senior High School, Miami Beach, Florida. This presentation discussed the importance of our Constitution's Bill of Rights. I have no notes, transcript or recording. The address for Miami Beach Senior High School is 2231 Prairie Avenue, Miami Beach, Florida 33139.

May 1992: I was the speaker on the topic, "Maximizing Damages: Obtaining Optimal Recovery from Small to Substantial Cases," presented to the Rural Legal Services' Attorneys, Miami, Florida. This presentation discussed the importance of demonstrative aids before the jury. I have no notes, transcript or recording. The address for Rural Legal Services is 510 South U.S. Highway 1, Suite 1, Post Office Box 4333, Fort Pierce, Florida 34948.

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

Michael Finch II, "Miami-Dade Court Program Helps Young Inmates Change Their Lives," The Miami Herald, December 17, 2012. Copy supplied.

Lauren Delgado, "Judge Hatcher Formally Announces his Retirement," The Jackson County Floridian, March 22, 2012. Copy supplied.

Debra Leibowitz, "Miami Children's Hospital Diamond Ball," The Miami Herald, October 10, 2010. Copy supplied.

David Ovalle, "Miami Court System Prepares to Celebrate 100 Years," The Miami Herald, September 20, 2010. Copy supplied.

Erik Bojnansky, "Power Women," The Sun Post, October 11, 2007. Copy supplied.

Jennifer Liberto, "Jones' Charisma Draws Admirers on Campaign," The Saint Petersburg Times, November 3, 2006. Copy supplied.

Michelle Hammontree-Garcia, "Moving on Their Own: Teens in the State's Foster System Learned Valuable Skills, Preparing Them to Make it on Their Own," The Miami Herald, August 10, 2006. Copy supplied.

Cindy Krischer Goodman, "Bored? Take Action!; The Biggest Mistake Employers Make is Assuming a Rut will Disappear," The Miami Herald, March 22, 2006. Copy supplied.

Brett Graff, "Charitable Giving in the U.S.," Nightly Business Report, October 19, 2005. Copy supplied.

"SPIRIT Paperless System," Miami-Dade Access TV, March 2005. Video recording supplied.

"It's Your Life Skills Program for Foster Youth," Miami-Dade Access TV. February 2005. Video recording supplied.

Robert Fiore, "DCBA Partners with Judge Beth Bloom, Children's Groups, to Benefit Foster Kids," DCBA Bulletin, November 2004. Copy supplied.

Melinda Melendez, "Attorneys Participate in Clinic for South Florida Teens," The Miami Herald, November 1, 2004. Copy supplied.

Linda Rodriguez Bernfeld, "Paperless Traffic Court Eases Path to Paying Tickets," Community Newspaper, May 3, 2004. Copy supplied.

"Paperless Traffic Court," Channel 10 News, April 15, 2004. Video recording supplied.

"Smoking Tobacco Offender Program," Miami-Dade Television NOW, November 14, 2003. Video recording supplied.

Marilyn Mitzel, "About Face," Channel 7 News, February 2003. Video recording supplied.

"Conference of County Court Judges Celebrates 30th Year," The Florida Bar News, July 1, 2003. Copy supplied.

Debra Leibowitz, "Fundraiser Sure to Bring Out Smiles," The Miami Herald, March 13, 2003. Copy supplied.

CCFA (Children's Craniofacial Association) Brochure, Miami Children's Hospital, Miami, Florida, March 2003. Copy supplied.

Mark Killian, "County Judges Join Education Efforts," The Florida Bar News, August 15, 2002. Copy supplied.

Debra Leibowitz, "Fishing Tourney is Fun – And for a Good Cause," The Miami Herald, July 25, 2002. Copy supplied.

"DUI In-Jail Treatment Program," Miami-Dade Television NOW, August 1, 2001. Video recording supplied.

Amy Brown. "County Judges Work to Coordinate Education Efforts," The Florida Bar News, April 1, 2001. Copy supplied.

Eleanor Ann Miller, "Recapturing Lives of Teens in Trouble," The Miami Herald, August 13, 1998. Copy supplied.

Eleanor Ann Miller, "Troubles Teens Get Help With Tuition, Job Training: The Miami Herald, August 9, 1998. Copy supplied.

Debra Franco, "Grin It, Bear It: Gold E. Locks Guilty," The Miami Herald, March 5, 1998.

Debra Franco, "Old City Hall Repairs Take Longer Than Expected," The Miami Herald, November 16, 1997. Copy supplied.

Morgan Winsor, "Help Agency Needs Help to Survive Domestic Violence Funding May be Cut," The Miami Herald Neighbors Section, October 23, 1997. Copy supplied.

"County Court Bench-Bar Group Formed," Miami Daily Business Review, August 7, 1997. Copy supplied.

"Introducing Judge Beth Bloom," Open to the Public TV Program, November 1996. Video recording supplied.

Jacqueline Charles, "At 20, Caleb Center is Alive and Striving," The Miami Herald January 14, 1996. Copy supplied.

"Doctors and Lawyers Join Hands," Channel 4 News, October 26, 1994. Video recording previously supplied in response to 12d.

Joan Fleischman, "Marlins' GM, TV's Karie Ross Share Romance," The Miami Herald, October 3, 1994. Copy supplied.

Bea Moss, "End Abuse of Elderly, Leader Says," The Miami Herald, March 27, 1994. Copy supplied.

"Beth Bloom Seeks County Court Seat," The Florida Newspaper, February 11, 1994. Copy supplied.

Mark Killian, "Dade Young Lawyers Join with Habitat for Humanity," The Florida Bar News, January 15, 1994. Copy supplied.

David Abels, "After Andrew," ABA/YLD Barrister, Winter 1993. Copy supplied.

"Bloom Donates Magistrate Monies to Establish Floyd Pearson, et al. Fellowship Fund," DCBA Bulletin December 1993. Copy supplied.

Marsha Fischer, "Miami Lawyer Gets Her Feet Wet with Disaster Assistance," Miami Jewish Tribune, October 22, 1993. Copy supplied.

"Bloom Working on Flood Relief," The Florida Bar News, August 15, 1993. Copy supplied.

Tom Saylor, "ABA/YLD Spells Relief," ABA Journal, December 1992. Copy supplied.

Dimitra Kessenides, "Setting Up Legal Help for Hurricane Victims," The American Lawyer, November 1992. Copy supplied.

Kevin Spear, "Fatal Crash Offers Chance for Change; Activists Hope a Trial that Stems From the Deaths of Four Farm Workers Will Stop the Abuse of Migrants, November 26, 1992. Copy supplied.

Don Knudsen, "ABA/YLD-FEMA Partnership to Provide Disaster Legal Services," The Affiliate, October 1992. Copy supplied.

Mark Killian, "Lawyers Manning Hotlines, Relief Centers, After Andrew," The Florida Bar News, October 1, 1992. Copy supplied.

Henry Reske, "Lawyers in the Storm," ABA Journal, September 1992. Copy supplied.

Rosalind Resnick, "Coopers & Lybrand Beefs Up Client Services," The Miami Herald, September 21, 1992. Copy supplied.

"Lawyers Lead Recovery From Andrew's Fury," The Florida Bar News, September 15, 1992. Copy supplied.

"Bloom Named State Chair of the Disaster Assistance Panel," The Florida Bar News, January 15, 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 served in a quasi-judicial capacity as a Traffic Magistrate from December 1992 to December 1993. I was appointed by the Chief Judge of the Eleventh Judicial Circuit in and for Miami-Dade County to preside over all civil traffic infraction cases and accidents where no bodily injury resulted.

In 1994, I was elected as a Miami-Dade County Court Judge without opposition, and I was re-elected without opposition in 1998, 2004 and 2010. The County Court is the second-tier trial court in Florida and is divided into two separate divisions, Criminal and Civil. The Civil Division has jurisdiction over all small claims cases and civil disputes where the amount in controversy is less than $15,000 and all landlord tenant and personal injury protection cases. In the Criminal Division, the County Court has jurisdiction over all first and second degree misdemeanors and traffic offenses.

I served in the Criminal Division from 1995 to 2010. I presided over all first and second degree misdemeanors and traffic cases. While presiding at the Caleb Center branch court (1995 – 1997) and the Miami Beach branch court (1997 – 1999), I also handled all civil cases where the amount in controversy was less than $15,000, and all civil domestic violence injunctions. I was appointed by our Chief Judge to serve as an acting circuit court judge when counterclaims were filed in the branch courthouses and the amount in controversy exceeded $15,000. In 2000, I transferred to our main criminal courthouse and heard all misdemeanor cases. From January until October 2010, I served as the Associate Administrative Judge overseeing the Traffic Hearing Officers and all traffic cases.

In October 2010, I was appointed as a Circuit Court Judge of the Eleventh Judicial Circuit of Florida by Governor Crist. I was retained without opposition in April 2012 for a six-year term. The Circuit Court is the highest level trial court in Florida and has jurisdiction over all juvenile, family and probate proceedings as well as felony criminal cases and civil cases involving disputes where the amount in controversy exceeds $15,000, foreclosure and equitable proceedings. The Circuit Court also has jurisdiction over appeals from County Court as well as certiorari review of administrative decisions.

I served in the Criminal Division from October 2010 to January 2013, where I handled all first, second and third degree felonies and capital cases. In an appellate capacity, I was invited to serve as an Associate Judge on the Fourth District Court of Appeal in June 2009. I also serve routinely as an appellate judge for county court and administrative decisions. As such, I sit as a member of a three-judge panel approximately four times per year. I have served in the Civil Division since January 2013. I handle a wide variety of cases including foreclosure, personal injury, commercial disputes, medical malpractice and wrongful death cases.

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

   I have presided over approximately 800 cases that have gone to verdict or judgment. I have also presided over and decided more than 1,500 civil and criminal traffic cases while serving in County Court and as a Traffic Magistrate.

i. Of these, approximately what percent were:

jury trials:	40%
bench trials:	60%
civil proceedings:	30 %
criminal proceedings:	70 %

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

As an Associate Judge on Florida's Fourth District Court of Appeal, I authored the following opinions:

Lenhart v. Basora, 100 So. 3d 1177 (Fla. 4th DCA 2012)

Trafalgar at Greenacres, Ltd. v. Zurich American Insurance Company, 100 So. 3d 1155 (Fla. 4th DCA 2012)

As a member of a Circuit Court appellate panel handling appeals from County Court and administrative hearings, I have authored or participated in authoring the following opinions:

U.S. Security Insurance Co. v. Progressive Rehabilitation & Orthopedic Services a/a/o Stephanie Urban, 20 Fla. L. Weekly Supp. 369a (Fla. 11th Cir. Ct. 2013)

State of Florida v. Mitchell, Case No. 10-417 AP (Fla. 11th Cir. Ct. 2012)

United Automobile Insurance Company v. Interscan, Inc. A/A/O Alexis Jaime, Case No. 10-120 AP (Fla. 11th Cir. Ct. 2011)

Rivero v. State of Florida, Case No. 09-527 AC (Fla. 11th Cir. Ct. 2011)

Edelstein v. State of Florida DHSMV, 17 Fla. L. Weekly Supp. 978b (Fla. 11th Cir. Ct. 2010)

As a Circuit Court Judge of the Eleventh Judicial Circuit of Florida, I have authored the below-listed unpublished opinions which are filed in the court file by the Miami-Dade County Clerk of Courts:

Gravante v. TRG-Brickell Point NE, Ltd, Case No. 08-66274 CA 04

State of Florida v. Garcia, Case No. F11-2441

State of Florida v. Carballo, Case No. F10-35759

State v. Dumornay, Case No. F10-34843

State of Florida v. Lee, Case No. F07-30744

State of Florida v. Sosa-Palma, Case No. F10-15257

State of Florida v. Pennyman, Case No. F10-6382

State of Florida v. Diaz, Case No. F10-1294

State of Florida v. Padron, Case No. F08-047434

State of Florida v. Barbosa, Case No. F09-39043A

As a Miami-Dade County Court Judge, I have authored the below-listed published opinions:

State of Florida v. Bastos, 13 Fla. L. Weekly Supp. 1003a (Fla. Miami-Dade Cty. Ct. 2006)

State of Florida v. Reus, 8 Fla. L. Weekly Supp. 792a (Fla. Miami-Dade Cty. Ct.. 2001)

State of Florida v. Luis, 8 Fla. L. Weekly Supp. 791a (Fla. Miami-Dade Cty. Ct. 2001)

State of Florida v. Bishop, 7 Fla. L. Weekly Supp. 213a (Fla. Miami-Dade Cty. Ct. 1999)

Faunce v. Rodriguez and Blaha, 6 Fla. L. Weekly Supp. 31a (Fla. 11th Cir. Ct. 1998)

J.S.M. Construction Corp. v. Bloomfield, 6 Fla. L. Weekly Supp. 617a (Fla. Miami-Dade Cty. Ct. 1999)

State of Florida v. Benedetti, 7 Fla. L. Weekly Supp. 130b (Fla. Miami-Dade Cty. Ct. 1999)

Metropolitan Dade County v. Lloyd, 3 Fla. L. Weekly Supp. 127a (Fla. Miami-Dade Cty. Ct. 1995)

Metropolitan Dade County v. Lloyd, 3 Fla. L. Weekly Supp. 34a (Fla. Miami-Dade Cty. Ct. 1995)

As a Miami-Dade County Court Judge, I have authored the below-listed unpublished opinions which are filed in the court file by the Miami-Dade County Clerk of Courts:

State of Florida v. Taylor, Case No. M-0011929

State of Florida v. Reus, Case No. 454719W

Stat of Florida v. Luis, Case No. 260617W and 7004AWV

State of Florida v. Hanks, Case No. 1641 DED 4

State of Florida v. McAdam, Case No. 6079BYV

State of Florida v. Mahomond, Case No. 377151-W

State of Florida v. Agreda, Case No. 403494-X

State of Florida v. Hernandez-Castellon, Case No. 377161W

State of Florida v. Floril, Case No. 530522W

State of Florida v. Carrero, Case No. 403494X

State of Florida v. Manning, Case No. 2498-CQT

S.F. Properties v. Pierre, Case No. 95-528 CC20

Blue v. Wright, Case No. 93-96-CC 20

As a Florida Bar Referee, designated by the Florida Supreme Court while I was serving as a Miami-Dade County Court Judge, I authored the following Reports of Referee:

The Florida Bar v. Guariglia, Supreme Court Case No. SC07-786

The Florida Bar v. Morales, Supreme Court Case Nos. SC05-2121 and SC06-527

The Florida Bar v. Evans, Supreme Court Case No. SC04-1334

The Florida Bar v. Burke, Supreme Court Case No. SC00-827

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 of Florida v. Juarez*, Case No. F10-27158c, *affirmed*, Case No. 3D12-1271 (Fla. 3rd DCA 2013).

Defendant Juarez was charged with sexual battery by multiple perpetrators and unlawful sexual activity with a minor. The defendant invited two friends and the 17-year-old victim to his apartment. Following a night of excess drinking, the victim claimed she was drugged and raped by multiple men, including the defendant. The three defendants' trials were severed. The victim's testimony was corroborated by the DNA test results and, following a four-day jury trial, the defendant was found guilty of both counts. I handled all pre-trial motions, the trial, post-trial motions and sentencing.

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Attorney for the Defendant:
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2. *Gillings v. Publix Super Markets, Inc.*, Case No. 10-14103 CA 04.

Plaintiff Gillings was injured after a slip and fall on a polished floor plate. Her injuries were extensive, requiring five separate surgeries and significant therapy. The liability was contested and the case proceeded to jury trial. I presided over the discovery motions, motions in limine and the trial. Many expert witnesses presented in the areas of biomechanics, floor polishing and various medical specialties were presented over the course of a two-week trial. Before the jury returned, the parties resolved the case using a high-low agreement that determined the least and most amount the defendant was responsible for the plaintiff's claims. The jury returned a verdict for the defendant finding no liability.

Attorney for Gillings:
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9410 Southwest 77th Avenue
Miami, Florida 33156
305-274-7533

Attorney for Publix:
Gregory Palmer

Rumberger, Kirk & Caldwell
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3. *State of Florida v. Padron*, Case No. F08-47434, *affirmed,* Case No. 3D11-2718 (Fla. 3rd DCA 2013). Opinion supplied.

Defendant Padron was charged with three felonies: armed burglary with an assault, kidnapping and attempted felony murder with a deadly weapon. The defendant forcibly entered a home and terrorized a husband and wife, holding the wife at gunpoint. The wife was able to escape and the defendant gave chase, grabbing the victim and ordering her back into her home. The husband had retrieved his gun and shots were exchanged. The defendant was shot and attempted to flee. The husband tried to restrain the defendant who then pulled a knife from his pocket and stabbed the husband several times. The wife was able to escape and the defendant was ultimately arrested. The jury returned a verdict of guilty on each count. I presided over all pretrial motions, including the motions to suppress the defendant's statements, the search of his person and vehicle, the trial, and sentencing.

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Attorney for the Defendant:
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4. *CMGINTDG, Inc., d/b/a CMG International Design Group, Carlos H. Gutierrez, Milda Gutierrez v. Tatiana Ryback, Arguelles, M.D., P.C., Florida Storm Properties, LLC, Rybak's Café, LLC, Vincent Medical Services, P.C. and Anti-Aging Aesthetic and Laser Center, Inc.,* Case No. 09-53480 CA 04.

This was a commercial case involving the design and construction of a restaurant and the interior design of an apartment. Multiple claims and counterclaims were litigated for breach of separate contracts, unlicensed contracting and architectural work, worthless checks, unjust enrichment, fraud, and violations of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). After a seven-day trial, the jury returned a verdict in favor of the plaintiffs on the claims of breach of contract, worthless checks and in favor of the defendants on the unlicensed

contractor and the FDUTPA claims. I presided over the litigation, all pre-trial motions, the trial, and all post-trial issues.

Attorney for the Plaintiffs:
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305-443-2043

Attorney for the Defendants:
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Aventura, Florida 33180
305-937-0300

5. *State of Florida v. Chaddock, Case No. B07-002219, et al; State of Florida v. Betancourt*, Case No. B07-2220. Opinion supplied.

These criminal cases were part of a consolidated challenge to the constitutionality of Section 21-281(a) of the Miami-Dade County Code. Each of the judges who had similar motions pending in his or her respective division sat in an en masse evidentiary hearing May 3-6, 2007. The Miami-Dade County ordinance at issue made it unlawful for the defendant who has been previously convicted of certain specified sexual offender and sexual predator offenses from residing within 2,500 feet of a school. My decision was that the Miami-Dade County ordinance was constitutional as applied to each of the challenging defendants as reflected in *State of Florida v. Carrero*, Case No. 403494X.

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Attorney for Miami-Dade County:
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Attorneys for Defendants:
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Tristia Bauman
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6. *State of Florida v. Bastos, Case # 413969X and State of Florida v. Vlad,* Case #7875-DOH. Opinion supplied.

Theses DUI cases were consolidated with 95 other cases in my division that were heard in an en masse proceeding before the Miami-Dade County Court Judges. An evidentiary hearing was held on the defendants' motion to compel the source code of the intoxilyzer 5000. The source code is the human readable form of the software used by the breath-testing instrument that allows the instrument to function. This hearing brought experts from around the country challenging the integrity of the intoxilyzer 5000. This instrument was manufactured the year prior and in use by police departments throughout Florida to measure a suspected DUI defendant's breath-alcohol content. The significance of these cases was that our rulings affected many individuals in addition to defendants Bastos and Vlad. Jurisdictions throughout the State of Florida were monitoring the outcome of this extensive evidentiary hearing since our findings of fact affected how cases would be prosecuted in other counties. My decision was that the defendants had failed to meet their requisite burdens and I entered an order denying the defendants' Motion to Compel Source Code and Motion for Certification.

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Attorneys for Defendants Vlad:
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7. *Key Biscayne Claims Adjusters Corp. v. Precision Paint & Body Shop. Inc.*, Case No. 11-34318 CA 04.

This was a breach of contract action for a provision of public adjusting services following the refusal of a party to pay a share of settlement proceeds. This case was litigated for two years and the jury trial lasted four days in September 2013. The trial involved defenses of unclean hands, impossibility of performance and fraud. The jury returned a verdict in favor of the plaintiff for the full amount claimed and rejected each of the affirmative defenses presented. I presided over the litigation, all pre-trial motions, the trial and all post-trial issues.

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Attorney for the Defendant:
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8. *Crown Linen, LLC v. Angel Pis-Dudot, Hotelier Consulting Services LLC d/b/a Hotelier Linen Services*, Case No. 09-82761 CA 04.

This was a commercial dispute between a former employee and employer that was litigated for over three years. The trial was bifurcated and the liability portion of the trial lasted five days. The case involved a former employee who used his position as a sales consultant with the plaintiff's company to persuade other hotels to switch to a company the defendant secretly opened. The case involved separate claims of deceptive and unfair trade practices, misappropriation of trade secrets and tortious interference with business relationships. The jury returned verdicts in the plaintiff's favor on the issue of liability and the case was settled on the eve

of the trial on damages. I presided over the litigation, all pre-trial motions, the trial and all post-trial issues relating to liability.

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9. *Kinchen v. CSX Transportation, Inc.*, Case No. 10-57997 CA04

The plaintiff was injured while working as a locomotive engineer and brought an action against his employer under the Federal Employer's Liability Act, claiming that his employer failed to provide a safe place to work. The plaintiff's damages were extensive, requiring multiple surgeries and extensive treatment. The jury trial lasted seven days and involved many exhibits and testimony from medical and other technical experts. The jury issued a verdict in favor of the plaintiff for $1.2 million. I presided over the litigation, all pre-trial motions, the trial and all post-trial issues.

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10. *State of Florida v. Gonzalez*, Case No. F10-14585, *affirmed,* Case No. 3D12-1022 (Fla. 3rd DCA 2013). Opinion supplied.

The defendant landlord was charged with premeditated first degree murder after he killed his tenant. Angered by the victim's refusal to pay rent, the defendant drove to the victim's house to collect the rent in person. The victim had stopped paying rent on his home after being advised by the bank that the home was going into foreclosure. Upon arrival, the defendant confronted the tenant and demanded the rent. An argument ensued after which the defendant walked away. He soon returned with a gun, firing five shots into the victim, killing him in front of his pregnant wife and son. After the five-day jury trial, the defendant was convicted of the lesser included offense of second degree murder. I presided over all pre-trial proceedings, motions in limine, the trial and sentencing.

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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. *Lenhart v. Basora*, 100 So. 3d 1177 (Fla. 4th DCA 2012). Opinion supplied.

Attorneys who played a significant role:

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2. *Trafalgar at Greenacres, Ltd. v. Zurich American Insurance Company*, 100 So. 3d 1155 (Fla. 4th DCA 2012). Opinion supplied.

Attorneys who played a significant role:

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Attorney for Appellee:
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3. *State of Florida v. Diaz*, Case No. F10-1294. Opinion supplied.

Attorneys who played a significant role:

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Attorney for the Defendant:
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786-346-8668

4. *State of Florida v. Luis,* 8 Fla.L.Weekly Supp 791a (Fla. Cty Ct 2001). Opinion supplied.

Attorneys who played a significant role:

Attorney for the State:
Elijah A. Levitt
U.S. Attorney's Office
99 Northeast Fourth Street
Miami, Florida 33132
305-961-9001

Attorney for the Defendant:
Pelayo Duran
The Law Office of Pelayo Duran
4640 Northwest 7th Street
Miami, Florida 33129
305-266-9780

5. *State of Florida v. Dumornay*, Case No. F10-34843. Opinion supplied.

Attorneys who played a significant role:

Attorney for the State:
Loressa Felix
Felix & Brown, PLLC
9100 South Dadeland Boulevard, Suite 1500
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800-689-0998

Attorney for the Defendant:
Jeff James
1450 N.E. Second Avenue, Suite 430
Miami, Florida 33132
305-995-1304

6. *State of Florida v. Padron*, Case No. F08-047434, *affirmed,* Case No. 3D 11-2718 (Fla. 3rd DCA 2013). Opinion supplied in response to Question 13(c).

Attorneys who played a significant role:

Attorney for the State:
Jennie T. Conklin

Assistant State Attorney
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954-224-3126

Attorney for the Defendant:
Bruce Lehr
1401 Brickell Avenue, Suite 901
Miami, Florida 33131
305-377-1777

7. *Edelstein v. State of Florida DHSMV,* 17 Fla. L. Weekly Supp. 978b (Fla. 11th Cir. Ct. 2010). Opinion supplied.

Attorneys who played a significant role:

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305-638-6229

Attorney for DHSMV:
Jason Helfant
DHSMV Legal Office
Post Office Box 540609
Lake Worth, Florida 33454
561-357-4165

8. *State of Florida v. Bastos*, 13 Fla. L. Weekly Supp. 1003a (Fla. Miami-Dade Cty. Ct. 2006). Opinion supplied in response to Question 13(c).

Attorneys who played a significant role:

Attorney for the State:
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Attorneys for the Defendants:
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Miami, Florida 33125

305-325-9818

Maggie Arias
Maggie Arias, P.A.
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Miami, Florida 33133
305-934-9024

Richard Hersch
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3300 Northwest 27th Avenue
Miami, Florida 33142
305-638-6229

9. *Faunce v. Rodriguez and Blaha*, 6 Fla. L. Weekly Supp. 31a (Fla. 11th Cir. Ct. 1998), *affirmed*, 738 So. 2d 487 (Fla. 3rd DCA 1999). Opinion supplied.

Attorneys who played a significant role:

Attorney for the Plaintiff:
Jerry Kahn
Post Office Box 414213
Miami Beach, Florida 33141
305-861-3606

Attorney for the Defendant:
John Lipinski
Post Office Box 848068
Pembroke Pines, Florida 33084
954-966-9477

10. *State of Florida v. Agreda*, Case No. 403494-X, *affirmed,* 15 Fla. L. Weekly Supp. 121c (Fla. 11th Cir. Ct. 2007). Opinions supplied.

Attorneys who played a significant role:

Attorney for the State:
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United States Attorneys' Office
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305-961-9001

Attorney for the Defendant:
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The Brickell Bay Club

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305-854-5511

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 case.

To the best of my knowledge, the following includes all of the opinions where my decision has been reversed. Conservatively, I have handled approximately 800 cases in the County and Circuit Court that have gone to verdict or judgment. Every decision is capable of review by an appellate court and the list below represents approximately 3% of those cases.

Castle Key Insurance Company v. Benitez, 38 Fla. L. Weekly D2226a (Fla. 3rd DCA 2013). I granted a motion to compel and ordered production of an insurer's claim file. The court reversed an order to produce the claim file within the context of a breach of an insurance contract since the issue of whether coverage existed had not been resolved.

Aleman v. U.S. Bank, N.A., etc., No. 3D13-1258 (Fla. 3rd DCA 2013). Based upon the State's confession of error, the court quashed my order denying a motion to stay the proceedings pending payment of costs.

Lawton v. State of Florida, 109 So.3d 825 (Fla. 3rd DCA 2013*)*. This was a post-conviction appeal challenging a sentence of life imprisonment without parole for a non-homicide committed by a juvenile in light of *Graham v. Florida*, 130 S. Ct. 2011 (2010). The sentence had been imposed in 1988. The court reversed and ordered a new sentencing hearing on the life without parole sentence imposed on the attempted first degree murder in the non-homicide case.

Barron v. State of Florida, 37 Fla. L. Weekly D2554c (Fla. 3rd DCA 2012). This was a post-conviction appeal challenging a sentence. Since the record on appeal did not conclusively establish that the defendant was not entitled to relief, the case was remanded for an evidentiary hearing.

Gilchrist v. State of Florida, Case No. 3D11-432 (Fla. 3rd DCA 2012). Upon the State's confession of error, the case was reversed to enter an amended sentencing order awarding the claimed credit for time served.

Carter v. State of Florida, 104 So. 3d 381 (Fla. 3rd DCA 2012). This was a post-conviction appeal challenging a sentence ordering drug offender probation. The court reversed, finding that the record excerpts failed to show there was an agreement to drug offender probation.

Yves Jacques v. State of Florida, 95 So. 3d 419 (Fla. 3rd DCA 2012). This was a post-conviction challenge alleging the court failed to continue the defendant's youthful offender status when he was resentenced following a violation of probation. Since the Court could not discern from the sentencing order that the defendant's youthful offender status was continued as required, the court reversed and remanded so that the sentencing order could be corrected.

Jackson v. State of Florida, 83 So.3d 955 (Fla. 3rd DCA 2012). This was a post-conviction challenge. Since the record on appeal did not conclusively establish that the defendant was not entitled to relief, the case was remanded for an evidentiary hearing.

Ramos-Perez v. State of Florida, Case No. 3D11-1406 (Fla. 3rd DCA 2011). The court reversed the summary denial of the defendant's claim to gain time and remanded the case for a resentencing.

Estrada v. State of Florida, 18 Fla. L. Weekly Supp. 579a (Fla. Cir. Ct. 2011). The appellate court reversed the denial of a motion to suppress a DUI defendant's refusal to submit to a urine test. The Court held that the facts fell short of the probable cause necessary to believe the defendant was under the influence of drugs.

Vargas v. State of Florida, 16 Fla. L. Weekly Supp.1035a (Fla. 11th Cir. Ct. 2009). The appellate court reversed a conviction finding that the officer's testimony during direct examination was a comment on the defendant's exercise of his right to remain silent.

State of Florida v. Ortiz-Rotger, 15 Fla. L. Weekly Supp. 314a (Fla. 11th Cir. Ct. 2008). The appellate court reversed an order suppressing the breath test in this DUI case, finding that there was substantial compliance with the statutory regulations regarding the administration of the test by a public service aide.

Mercado v. State of Florida, 15 Fla. L. Weekly Supp.125a (Fla. 11th Cir. Ct. 2007). The appellate court reversed a DUI conviction, finding that the officer should not have been allowed to testify at trial that certain field sobriety exercises were scientific as it violated a pre-trial ruling precluding such testimony.

State of Florida v. Gilbert, 14 Fla. L. Weekly Supp. 14a (Fla. 11th Cir. Ct. 2005). The appellate court reversed the grant of a motion to suppress holding that the defendant voluntarily gave consent to the administration of the field sobriety exercises.

McKnight v. State of Florida, 13 Fla. L. Weekly Supp. 683a(Fla. 11th Cir. Ct. 2004). The appellate court held that the defendant's motion to vacate his plea should not have been summarily denied where the claim was not refuted by the record.

State of Florida v. Perez, 12 Fla. L. Weekly Supp. 35a (Fla. 11th Cir. Ct. 2004). The appellate court reversed my order granting the defendant's motion to suppress and distinguished the decision of *Danielowitz v. State*, 730 So. 2d 363 (Fla. 2 DCA 1999) on which I had relied. The Court believed that, under the facts of the case, the officer's actions fell within the emergency aid exception and his arrest was lawful.

Acosta v. State of Florida, 11 Fla. L. Weekly Supp. 620c (Fla. 11th Cir. Ct. 2003). The appellate court reversed based upon the State's confession of error. The prosecutor's cross-examination of the defendant elicited her opinion regarding the veracity of two other witnesses who testified. The appellate court concluded that the defendant's testimony concerned a material element in dispute and the jurors may have been prejudiced beyond a reasonable doubt.

Rodriguez v. State of Florida, 9 Fla. L. Weekly Supp. 276a (Fla. Cir. Ct. 2002). The appellate court reversed a conviction and ordered a new trial holding that the refusal to strike a juror for cause was error where there was reasonable doubt as to whether the juror could be impartial.

Bond v. State of Florida, 8 Fla. L. Weekly Supp. 759b (Fla. 11th Cir. Ct. 2001). The appellate court concluded that the defendant's plea was rendered involuntary after the court erroneously advised that if the defendant went to trial, the court could impose restitution. As such, the appellate court found that defendant was unable to weigh the options of a trial or a plea.

Contreras v. State of Florida, 8 Fla. L. Weekly Supp. 754a (Fla. 11th Cir. Ct. 2001). The appellate court ruled that a juror should have been removed for cause during jury selection because the juror expressed a need to hear the defendant's testimony.

State of Florida v. Jones, 9 Fla. L. Weekly Supp. 82b (Fla. 11th Cir. Ct. 2001). The appellate court reversed an order granting a motion to suppress holding that there was substantial compliance with the administrative regulation requiring a 20-minute observation before the administration of a breath alcohol test.

Gerente v. Chirileanu, 6 Fla. L. Weekly Supp. 620a (Fla. 11th Cir. Ct. 1999). Following the entry of an agreed order dismissing one of the defendants, the plaintiff moved to set aside the order based on a mistaken belief that the defendant did not own certain property. The appellate court held that I erred in vacating the

agreed order where a mistake of law (ownership of property) was not a basis for relief from judgment under Fla. R. Civ. P. 1.540.

J.S.M. Construction Corp. v Bloomfield, 6 Fla. L. Weekly Supp. 617a (Fla. 11th Cir. Ct. 1999). The appellate court reversed the order granting default judgment on a recently amended complaint that had not been served on the defendant.

Wayne v. Krassner, 6 Fla. L. Weekly Supp. 534c (Fla. 11th Cir. Ct. 1999). The appellate court reversed an award of attorney's fees in excess of the hourly rate negotiated in the fee agreement even where expert testimony established that the higher rate would be reasonable.

Allstate Insurance Company v. Cofino, 6 Fla. L. Weekly Supp. 470a (Fla. 11th Cir. Ct. 1999). The appellate court held that the language of Florida Statutes, Section 627.736, should not be read to require that personal injury protection benefits be paid once overdue.

Miami Elevator Company v. Marbrad, Inc., 6 Fla. L. Weekly Supp. 401a (Fla. 11th Cir. Ct. 1999). Before trial, I disclosed to the parties that one of the witnesses was a friend of my husband and mine. I invited the parties to file a recusal motion. Because the motion was not verified and no affidavit was attached, I found the motion to be legally insufficient. The defendant appealed and the appellate court ruled that regardless of the technical deficiencies, I was bound to grant the motion to recuse. On remand, I recused myself from the case.

Fortune Insurance Company v. Practice Management Services, 6 Fla. L. Weekly Supp. 398b, *rehearing denied* 6 Fla. L. Supp. 480d (Fla. 11th Cir. Ct. 1999). The court reversed the grant of an award of attorneys' fees and held that no fee for the expert witness was warranted.

Duque v. Saidel, 5 Fla. L. Weekly Supp. 736c (Fla. 11th Cir. Ct. 1998). The appellate court reversed the award damages in excess of the fair market value of a totaled vehicle.

Metropolitan Dade County v. Barnes, 5 Fla. L. Weekly Supp. 52a (Fla. 11th Cir. Ct. 1997). The appellate court reversed an order setting aside the final judgment, concluding that the stipulation which formed the basis of the underlying final judgment was not unconscionable.

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 trial court judge in county court and circuit court, 99% of the decisions I issue result in an unpublished opinion. Those opinions which I have personally written are stored in my computer in a directory of the type of case (criminal or

civil) and the name of the party or defendant. The opinions that were not written by me but were submitted by the parties for my review and execution are filed in the court file which is maintained by the Miami-Dade Clerk of Courts.

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 Florida v. Hanks, Case No. 1641 DED 4. Copy supplied.

State of Florida v. Diaz, Case No. F10-1294; F07-27130. Copy supplied in response to Question 13(c).

S.F. Properties c/o Judy Clark v. Pierre, Case No. 95-528 CC 20. Copy supplied.

State of Florida v. Padron, Case No. F08-047434. Copy supplied in response to Question 13(c).

State of Florida v. Agreda, Case No. 403494-X. Copy supplied in response to Question 13(c).

State of Florida v. Pennyman, Case No. F10-6382. Copy 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.

Our jurisdiction does not have an automatic recusal system. Florida Rule of Judicial Administration 20160(e) provides that the motion to recuse must be filed within a reasonable time not to exceed ten days after the discovery of the facts that would require disqualification. The motion must be served upon the judge and the judge must rule within 30 days of service. If the judge does not rule within 30 days, the motion is automatically granted. A judge may not dispute the allegations in a motion to recuse, but must accept the allegations in a motion to recuse as true and then determine whether those acts, if true, would warrant recusal.

I have been able to locate the following cases in which motions to recuse or disqualify me were filed:

Southern Wine & Spirits of America v. Liquid International Premium Spirits, Case No. 13-13112 CA 04. I disclosed on the record that the law firm's partner that represented the plaintiff owned property with my husband. Following a request by the defendant's attorney, I recused myself and the case was reassigned to another division.

City of Miami Beach v. the Miami Beach Fraternal Order of Police Lodge, Case No. 12-32304 CA 04. I disclosed on the record that my husband served as President of the Auxiliary of the Fraternal Order of Police several years ago. Based on this disclosure, the plaintiff filed a motion to disqualify me that I granted, and the case was reassigned to another division.

Gables on the Green v. Walbridge Aldinger Company, Case No. 10-30855 CA 04. During the first hearing I conducted on this case, I became aware and disclosed that the defendant's law firm was the same law firm where my brother-in-law is a partner. Based on this disclosure, the plaintiff filed a motion to recuse me that I granted, and the case was reassigned to another division.

Ampuero-Martinez v. Legaspi, Case No. 09-30018. This recusal was requested by motion due to the long-standing personal relationship I have with the plaintiff's attorney of record (my husband and I are the godparents to his daughters). I granted the motion, and the case was reassigned to another division.

Chase Home Finance v. Firtel, Case No. 10-20555 CA 04. I *sua sponte* recused myself as this mortgage foreclosure action was filed against a judicial colleague who is also a friend of mine.

Salazar and Midtown Towing of Miami, Inc. v. Lichtman, Case No. 12-26198 CA-01 (25). I was the successor judge after another judge had recused himself. The case came before me on an emergency motion to enforce a stipulation of

settlement. I scheduled the motion for an evidentiary hearing and declined to delay the hearing to allow the taking of the defendant's deposition. The plaintiff's motion to disqualify was based on my ruling. The motion was denied as legally insufficient.

Genova v. Lagos, Moris, Moris, P.A. and Garcia, Case No. 12-15539 CA04. Plaintiff's motion for disqualification was based on my denial of the plaintiff's emergency motion for protective order as to the taking of the plaintiff's deposition and requiring said deposition to take place before the deposition of a non-party. I denied the motion for disqualification as legally insufficient.

Falls Properties LLC v. Cabrera, Case No. 11-10899 CA04. The attorney for the plaintiff filed his motion to disqualify attaching an email from the attorney for the defendant advising the attorney that I was an associate with him in the law firm of Floyd Pearson et al. in the late 1980s for two years. His email also stated that he was not acquainted with me other than on a professional basis for a brief period of time and we have had no contact with each other for over 20 years. I denied the motion for disqualification as legally insufficient.

U.S. Bank National Association v. Doce, Case No. 10-03146 CA04. The defendant filed a verified motion for recusal stating that the defendant's attorney has a personal relationship with me. Since the attorney is a personal friend of our family and I am the godmother to his daughters, I agreed that my recusal was proper and granted the request.

Miami Elevator Company v. Marbrad, Inc., 6 Fla. L. Weekly Supp. 401a (Fla. 11th Cir. Ct. 1999). Before trial, I disclosed to the parties that one of the witnesses was a friend of my husband and mine. I invited the parties to file a recusal motion. Because the motion was not verified and no affidavit was attached, I found the motion to be legally insufficient. The defendant appealed and the appellate court ruled that regardless of the technical deficiencies, I was bound to grant the motion to recuse. On remand, I recused myself from the case.

State v. Alexandre, Case No. F08-042059. The defendant's motion was based on rulings I made that he believed were unfair. His motion to recuse me was denied as legally insufficient.

State v. Blanco, Citation No. 0080530-I. I conducted a trial on a civil infraction and entered a disposition. The defendant did not appear and the witness was present. I had received a note from my judicial assistant that the attorney for the defendant asked that the case be passed until the end of the calendar. I passed the case until the end of the calendar The defendant and his attorney failed to appear yet the witness and the officer were present. The hearing was held at the end of the calendar consistent with the attorney's request. This hearing was in accordance with the Florida Rules of Traffic Court, Later that week, I received a copy of a complaint filed by the attorney to the Judicial Qualifications

Commission complaining of my conduct in holding the hearing without the defendant or his attorney present. That complaint was dismissed as being without merit. When a motion for rehearing was scheduled in that case, I continued the hearing to allow the attorney to file a motion to recuse, which he did. I recused myself and the motion was heard by another judge.

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 sought public office other than my 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.

In addition to participating in my own elections, in November 1989, I was appointed as a delegate to the Florida Democratic Party's 1989 State Conference in Hollywood, Florida. In October 1988, I volunteered for presidential candidate Michael Dukakis at his Florida headquarters in Hollywood, Florida; I made calls to prospective voters and assisted with mailings. From July to November 1984, I served as a volunteer Congressional Campaign Supervisor to U.S. Representative Dan Mica's re-election campaign in Broward County, Florida; I assisted with mailings and calling prospective voters. In 1982, I assisted State Representative Jack Tobin and State Representative John Cosgrove in each of their re-election campaigns by serving as a volunteer staff person; I assisted with mailings and calling prospective voters.

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

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

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

I have never served as a clerk 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.

1988 — 1994
Floyd Pearson Richman Greer Weil Brumbaugh & Russomanno
(now named Richman Greer)
396 Alhambra Circle, 14th Floor
Miami, Florida 33134
Attorney

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

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

Upon graduation from law school, my practice began at Floyd Pearson Richman Greer Weil Brumbaugh & Russomanno as an associate assisting the partners who handled commercial litigation cases. I had the opportunity to handle several cases in the areas of matrimonial, real estate and contract law. After my second year at the firm, I worked primarily in medical malpractice, wrongful death, personal injury and product and premises liability cases.

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

My clients were companies engaged in commercial litigation cases and individuals pursuing claims in wrongful death, medical malpractice and product and premises liability cases.

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

i. Indicate the percentage of your practice in:
   1. federal courts: 0%
   2. state courts of record: 100%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 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 ten cases to verdict. In each case, I was the associate counsel.

i. What percentage of these trials were:
   1. jury: 100%
   2. non-jury: 0%

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

I have never practiced before the Supreme Court of the United States.

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

a. the date of representation;

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

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

1. *Modern Health Care Services v. Republic Health Corporation,* Case No. 86-36132 CA 25

   I served as co-counsel for Republic Health Corporation, which had purchased North Miami General Hospital from Modern Health Care Services. Following the sale, $850,000 of Medicare payments and receivables were claimed to be owed and Republic Health was then sued for civil theft and conversion. The case was litigated for two years in the Eleventh Judicial Circuit in and for Miami-Dade County. The length of the trial was five days before the Honorable Philip Bloom. This case resulted in a verdict against Republic Health Corporation. My participation included handling most depositions, drafting and responding to discovery, preparing and arguing pre-trial motions, and witness and trial preparation. I shared equally in presenting the case to the jury and prepared all post-trial motions.

   Co-counsel:
   Herman Russomanno
   Russomanno & Borrello
   150 West Flagler Street, Suite 2800
   Miami, Florida 33130
   305-373-2101

   Opposing counsel:
   Ervin Gonzalez
   Colson Hicks Eidson
   255 Alhambra Circle, Penthouse
   Coral Gables, Florida 33134
   305-476-7400

2. *M. Barwick and J. Barwick, her husband v. Humana Hospital Corporation, Inc., et al.,* Case No. 89-0793 CA 01

   I served as co-counsel for Ms. Barwick in this medical malpractice action. Ms. Barwick was admitted to the hospital for a cerebral angiogram to diagnose the cause of her persistent headaches. During the procedure and while a catheter was in her main blood vessel, the hospital's machine suffered a power disruption and the doctors performing the procedure were unable to visualize the catheter's location. Ms. Barwick, thereafter, developed a blood clot that traveled to her brain resulting in a stroke, right sided-paralysis and blindness. Records reflected that the defendant doctor failed to heparinize the catheter line. Discovery also revealed that the machine had prior electrical problems that were known to the hospital. The case was litigated in the Nineteenth Judicial Circuit in and for Indian River County for three years before the Honorable Charles Smith. The case settled immediately before trial for $4.2 million. My participation included handling most depositions, drafting and responding to discovery, preparing pre-trial motions, and witness and trial preparation.

Co-counsel:
Herman Russomanno
Russomanno & Borrello
150 West Flagler Street, Suite 2800
Miami, Florida 33130
305-373-2101

Opposing counsel:
A. Russel Bobo (deceased)

3. *N. Curry, as Personal Representative of the Estate of I. Curry, deceased v. Humhosco, Inc., dba Humana Hospital Brandon, et al.,* Case No. 91-CA-006596

I served as co-counsel for Ms. Curry, whose child died following routine surgery. Her child was a star football player at the University of Florida and the case garnered much media attention. This was a complex medical malpractice/ wrongful death action following the doctors' failure to diagnose and treat a sub-acute bacterial endocarditis. The jury returned a verdict for the defendants. This case was litigated over a three-year period in the Sixth Judicial Circuit in and for Pinellas County. The length of the trial was seven days before the Honorable Herbert Baumann. My participation included taking most of the depositions, drafting and responding to discovery, preparing pre-trial motions, and witness and trial preparation. I shared in presenting the case to the jury.

Co-counsel:
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Jacksonville, Florida 32202
904-482-4071

Opposing counsel:
Kenneth Deacon
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St. Petersburg, Florida 33701
727-551-0000

4. *M. Tortora, as Personal Representative of the Estate of Dr. F. Tortora v. James E. Holmes Regional Medical Cente*r, Case No. 90-1771-CA-J

I served as co-counsel for Ms. Tortora in a wrongful death/medical malpractice action following the death of her husband. Dr. Tortora, a retired dentist, entered Holmes Regional Medical Center for a routine procedure to help his sleep apnea. Following the procedure and while in intensive care, Dr. Tortora went into cardiac arrest. Although the nurses knew that he had a surgically-implanted pacemaker, the hospital failed to properly monitor his recovery. While Dr. Tortora went into cardiac arrest, the heart monitor continued to show a normal sinus rhythm because of the pacemaker.

The case was litigated over a two-year period in the Eighteenth Judicial Circuit in and for Brevard County, Florida. The case was tried in February 1991 before the Honorable Lawrence V. Johnston. The case settled during trial for an amount that remains confidential. My participation included handling most depositions, drafting and responding to discovery, preparing pre-trial motions, and witness and trial preparation.

Co-counsel:
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305-373-2101

Opposing Counsel:
Harry Anderson
930 Versailles Circle
Maitland, Florida 32801
407-645-4373

5. *B. Preissner, individually, and as Personal Representative of the Estate of W. Preissner, deceased, and of the Estate of L. Roach, deceased v. Freddie, Inc., et al,* Case No. 92-887

This was a wrongful death action arising out of an automobile crash that killed four people and injured two others. I served as co-counsel to Ms. Preissner, who was a passenger. The crash killed her husband, who was the driver, and her mother, who was also a passenger. The crash occurred as the other driver was travelling in the opposite direction and fell asleep, crossing the median and striking the Preissner vehicle. The case was litigated for two years in the Eleventh Judicial Circuit in and for Miami-Dade County. The case was tried over a five-day period before the Honorable Peter Capua. The case settled during trial. My participation included taking most depositions, drafting and responding to discovery, preparing and arguing pre-trial motions, and witness and trial preparation.

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Opposing counsel:
C. Daniel Petrie, Jr. (deceased)

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Coral Gables, Florida 33134
305-662-1133

6. *D. Fagelson v. Jazzercise, Inc.,* Case No. CACE 90031413

This was a personal injury action. I served as co-counsel to Ms. Fagelson who suffered a multiple wrist fracture and permanent nerve damage following a fall in a Jazzercise class. The Jazzercise class in which Ms. Fagelson was participating was extremely crowded and unsafe, leading to her fall. The case was litigated for two years. The trial lasted four days in February 1992 in the Seventeenth Judicial Circuit in and for Broward County before the Honorable George Brescher. The plaintiff prevailed at trial. My participation included taking most depositions, drafting and responding to discovery, writing and arguing pre-trial motions, and witness and trial preparation. I shared equally in presenting the case to the jury.

Co-counsel:
Scott J. Feder
4649 Ponce de Leon Boulevard, Suite 402
Coral Gables, Florida 33146
305-669-0060

Opposing counsel:
Peter Abraham
19 West Flagler Street, Suite 905
Miami, Florida 33130
305-374-0042

7. *S. Phillips and D. Phillips v. L. Ficarra, Case* No. CACE 90038662

I served as co-counsel for Ms. Phillips, who was injured following an automobile crash. Although liability was admitted, there was a dispute as to the extent of Ms. Phillips's injuries to her back and neck. The case was litigated for two years and went to trial over four days in January 1992 in the Seventeenth Judicial Circuit in and for Broward County before the Honorable Herbert Moriarty. Although Ms. Phillips received treatment for many months from an orthopedist, the trial court did not permit the admission of those medical records at trial due to the doctor's untimely death before trial. The trial court also refused to allow the MRI scans to go back to the jury during deliberations. The jury found in favor of the defendant. The case was appealed and reversed for a new trial in April 1993. The case settled before the second trial. My participation included taking most depositions, preparing and responding to discovery, writing and arguing pre-trial motions, and witness and trial preparation. I shared equally in presenting the case to the jury in the first trial, but I did not participate in

the appeal. The opinion referenced is *Phillips v. Ficarra*, 618 So. 2d 312 (Fla. 4th DCA 1993).

Co-counsel:
Scott J. Feder
4649 Ponce de Leon Boulevard, Suite 402
Coral Gables, Florida 33146
305-669-0060

Opposing counsel:
Michael Robb
7501 Wiles Road, Suite 207
Coral Springs, Florida 33068
954-753-3902

8. *M. Katos v. R. Cushing, D.D.S. et al,* Case No. 90-45250

This was a dental malpractice/failure to diagnose case. I served as co-counsel to Mr. Katos, who developed a stage four squamous cell cancer of his tongue that was not diagnosed by his treating dentist. The case was tried over five days in April 1991 in the Eleventh Judicial Circuit in and for Miami-Dade County before the Honorable Ronald Friedman. The jury returned a defense verdict and we appealed based on the admission of certain expert medical testimony. The Third District Court of Appeal affirmed the judgment, holding that the rulings did not affect the outcome so as to warrant a new trial. My participation included taking most depositions, drafting and responding to discovery, writing and arguing pre-trial motions, and witness and trial preparation. I shared equally in presenting the case to the jury, but I did not participate in the appeal. The opinion referenced is *Katos v. Cushing*, D.D.S., 601 So. 2d 612 (Fla. 3rd DCA 1992).

Co-counsel:
Herman Russomanno
Russomanno & Borrello
150 West Flagler Street, Suite 2800
Miami, Florida 33130
305-373-2101

Opposing counsel:
Miles McGrane, III
9011 South Dadeland Boulevard, Suite 1500
Miami, Florida 33156
305-374-0003

9. *B. Olson v. Aventura Mall Venture, et al,* Case No. 89-1126

I served as co-counsel to Ms. Olson. This was a premises liability action following Ms. Olson's fall at the Aventura Mall, causing a hip fracture and permanent injury. The dangerous condition was a sidewalk curb and crown left unpainted, concealing the existence of a step-down. The case was tried over three days in January 1989 in the Eleventh Judicial Circuit in and for Miami-Dade County before the Honorable Rosemary Usher Jones. Following a jury verdict in Ms. Olson's favor, the case was appealed, reversed and a directed verdict was thereafter entered in favor of the defendant. The Third District's decision created new law in our district that drop offs from sidewalks to streets, regardless of the surrounding conditions, were insufficient to transform a normally non-negligent condition into a negligent one. My participation included taking most depositions, preparing and responding to discovery, writing and arguing pre-trial motions, and witness and trial preparation. I shared equally in presenting the case to the jury, but I did not participate in the appeal. The opinion referenced is *Aventura Mall Venture v. Olson*, 561 So. 2d 319 (Fla. 3rd DCA 1990).

Co-counsel:
Herman Russomanno
Russomanno & Borrello
150 West Flagler Street, Suite 2800
Miami, Florida 33130
305-373-2101

Opposing counsel:
Steven P. Befera
Cole, Scott & Kissane
9150 South Dadeland Boulevard, Suite1400
Miami, Florida 33156
786-268-6768

10. *L. Brant, as Personal Representative of the Estate of S. Brant v. L. Zedeck, et al,* Case No. 87-25838 CA 22

I served as co-counsel for Mr. Brant. This was a wrongful death/negligent security action following the murder of Mr. Brant's wife by an intruder while his wife was working in her real estate office. The office building was located in a high-crime area, there were prior incidents in the surrounding area, and the building owners were aware of the need to maintain the security system that was not in use on the day of the incident. The case was tried over four days in December 1990 in the Eleventh Judicial Circuit in and for Miami-Dade County before Judge Robert Kaye. This case resulted in a settlement following closing arguments. My participation included taking most depositions, preparing and responding to discovery, writing and arguing pre-trial motions, and witness and trial preparation. I shared equally in presenting the case to the jury.

Co-counsel:
Herman Russomanno
Russomanno & Borrello
150 West Flagler Street, Suite 2800
Miami, Florida 33130
305-373-2101

Opposing counsel:
Richard H. Bergman
2001 Hollywood Boulevard, Suite 200
Hollywood, Florida 33020
954-923-3533

Steven P. Befera
Cole, Scott & Kissane
9150 South Dadeland Boulevard, Suite 1400
Miami, Florida 33156
786-268-6768

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.)

Teaching Judges, Lawyers and Students

On a national, state and local level, I have been active teaching other judges. For each of the past 16 years, I have taught our circuit and judges statewide as a faculty member of the Florida Judicial College. I have served on the faculty of the National Judicial College, the College of Advanced Judicial Studies, the Florida Conference of County Court Judges and the DUI Adjudication Lab

Together with the Dade County Bar Association's County Court Committee, I created the Bench-Bar Group. Comprised of civil county court judges and attorneys, the group provided a regular forum to discuss ideas and to disseminate information.

For the past 15 years, I have been the coordinator of the University of Miami School of Law's Judicial Internship Program which matches second and third year law students with a state court judge each semester. I also founded the Justice Building and County Court Lunch & Learn Programs to provide a forum to educate lawyers and judges. During this time, I have also served as an adjunct faculty member in the Litigation Skills Program for students at the University of Miami School of Law. I

have served as a faculty member with West Bar Review teaching Florida Criminal Law.

While presiding at the Miami Beach Courthouse, I worked with the Miami Beach Senior High School and the Miami Beach Bar Association to establish the Miami Beach Legal Club, where high school students interested in law had the opportunity to work with local attorneys and have a first-hand look at our court system. As part of the Eleventh Judicial Circuit Centennial Celebration, I have also organized the Romero Britto Artist in Residence Program with the Visual and Performing Arts Academies throughout Miami-Dade County. I implemented a county-wide poster contest with the elementary schools, a speech contest with the middle schools and an essay contest with the high schools. We also developed a curriculum that was taught to each seventh grade civics class during the Centennial Celebration.

Court Programs

In an effort to make the court system more responsive to the community's needs, I created the following programs:

In 2012, I founded the "I'm Ready" Program for youth sentenced as adults in Miami-Dade County and ineligible for Boot Camp due to a medical or psychological issue. Now a permanent part of the Miami-Dade County Department of Corrections and Rehabilitation's Boot Camp Program, this program is aimed at correcting criminal behavior by providing education, training and treatment – services geared to successful re-entry into the community.

In 2007, I founded the Smoking Tobacco Offender Program (S.T.O.P.) to educate teenagers about the health risks of smoking. This was the first school-approved and court sanctioned tobacco education program in Miami-Dade County.

In 2004, I started the "It's Your Life" Skills Program for Foster Youth aging out of the foster care system. This day-long, hands-on, life skills training program educated foster children in the areas of money management, education, employment, consumer issues and housing.

In 2002, I founded the DUI In Jail Treatment Program to reduce recidivism and require treatment for DUI defendants sentenced in misdemeanor cases. Each defendant in custody receives daily substance abuse treatment consisting of individual and group counseling sessions.

In 1996, partnering with the Dade County Bar Association's County Court Committee, I scripted and produced a 12-part television program entitled "Using Your County Court" that aired on WLRN over several months.

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.

Litigation Skills Program, University of Miami School of Law, Miami, Florida, 1997 – present (alternate faculty since 2005). This is a trial skills program in which the students perform different parts of a trial and are critiqued by adjunct professors. There is no lecturing by the adjunct professors. There is no syllabus for this course.

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

    I have a vested deferred compensation fund with the State of Florida based on my contributions each month since 1995. I also am vested with the State of Florida's pension plan (Florida's Retirement System).

    I receive copyright income from the "Rube Bloom Music Co." every four months.

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.

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, Lyle Stern, is a partner in the real estate company, The Koniver Stern Group. I would recuse myself from any potential litigation involving my husband, his partners or his firm. I also would recuse myself if family members were to appear in a case filed in my division. I am not aware of any other situation that is likely to present potential conflicts of interest when I first assume the bench.

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 follow all applicable provisions of the Canons of Judicial Ethics and existing case law and if there is a conflict of interest or appearance of a conflict of interest, I will recuse myself from the 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.

As a sitting circuit (and former county) court judge, I am precluded from the practice of law and ethically unable to personally accept any pro bono assignments. However, I stay active in charitable and community concerns. These activities include:

Charitable Foundations

I am the co-founder and presently serve as the secretary of the Children's Craniofacial Association at Miami Children's Hospital. This followed the birth of our second son, who was born with a cleft lip and palate and was born deaf. This organization provides support, resources, hosts an annual picnic and an annual summer "Camp Superstar" for children with craniofacial anomalies and their families.

I am the co-founder of "Oliver's Fund" at the University of Miami Mailman School's Debbie School for the Deaf and Hard of Hearing. This fund allows the school to purchase and maintain loaner hearing aids, FM systems and state of the art technology, improving the students' access to sound and to learning both in and out of the classroom.

Youth Programs

I have volunteered my time serving as the presiding judge in our Teen Court Program. This is an alternative sanctioning program for first-time youthful offenders who agree to allow their peers to determine sentencing instead of the juvenile justice system

I am a co-presenter of the Listen UP! Program to educate high school students through the topic of "teen mistakes that may place you in adult criminal court." The program addresses the topics of cyberbullying, sexting, possession of marijuana, synthetic cannabis, open house parties, underage drinking, possession of tobacco, DUI, driving-related offenses and fake identification cards

I created and oversee the program, "Lawyers Join Hands for Students" with two local bar associations. We collect unwanted binders, notebooks and supplies and donate on a continual basis to the Miami-Dade County school system's Homeless Assistance Program and the Education Fund.

Other Pro Bono Work

I have also been involved in substantial pro bono work in other areas. Following Hurricane Andrew, I led the effort to recruit, train and mobilize volunteer lawyers statewide that provided free legal advice to victims. I also created the program, "Halloween for Hurricane Kids," providing costumes and treats for children in the hurricane-ravaged areas.

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 16, 2013, I submitted my application to the Florida Federal Judicial Nominating Commission that was convened by Senators Nelson and Rubio and was interviewed by the Commission in Miami, Florida on September 17, 2013. I was advised that evening by the Chair of the Commission that my name was forwarded to both Senators for consideration. On November 7, 2013, I interviewed with both Senators in Washington, D.C. On November 19, 2013, I was advised by Senator Nelson's staff that my name was forwarded to the White House for consideration. Since November 20, 2013, I have been in contact with

officials from the Office of Legal Policy at the Department of Justice. On January 22, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 6, 2014, 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
Bloom, Beth F.	United States District Court, Southern District of Florida	02/06/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) United States District Court Judge, active status	5a. Report Type (check appropriate type) ☑ Nomination Date 02/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2013 to 02/04/2014
7. Chambers or Office Address Dade County Courthouse 73 West Flagler Street, Room 412 Miami, Florida 33130		

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.	Secretary	Children's Craniofacial Association, Miami Children's Hospital
2.		
3.		
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	01/20/1995	State of Florida, Division of Retirement Pension Plan, payable upon retirement
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Bloom, Beth F.	Date of Report 02/06/2014

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	State of Florida, Salary	$142,178.00
2. 2013	State of Florida, Salary	$142,178.00
3. 2014	State of Florida, Salary	$8,766.00
4. 2012	ASCAP, Music Royalties	$2,307.00
5. 2013	ASCAP, Music Royalties	$2,240.00
6. 2014	ASCAP, Music Royalties	$0.00

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	Distribution from Koniver Stern Group
2. 2014	Distribution from Koniver Stern Group
3. 2013	Distribution from the Stern Organization
4. 2014	Distribution from the Stern Organizarion

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 Bloom, Beth F.	Date of Report 02/06/2014

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.	Bank United	Mortgage, Investment Property #1, Miami Beach, Florida (Part VII, Line 1)	M
2.	Bank United	Mortgage, Investment Property #2, Miami Beach, Florida (Part VII, Line 2)	N
3.	City National Bank	Mortgage, Investment Property #3, Miami Beach, Florida (Part VII, Line 3)	P1
4.	City National Bank	Mortgage, Investment Property #5, Miami Beach, Florida (Part VII, Line 5)	P1
5.	City National Bank	Mortgage, Investment Property #6, Miami Beach, Florida (Part VII, Line 6)	N
6.	Sabadell United Bank	Mortgage, Investment Property #7, Miami Beach, Florida (Part VII, Line 7)	P1
7.	Sabadell United Bank	Mortgage, Investment Property #8, Miami Beach, Florida (Part VII, Line 8)	M
8.	City National Bank	Mortgage, Investment Property #9, Miami Beach, Florida (part VII, Line 9)	O

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Bloom, Beth F.	02/06/2014

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. Investment Property #1, Miami Beach, Florida		None	O	W					
2. Investment Property #2, Miami Beach, Florida		None	O	W					
3. Investment Property #3, Miami Beach, Florida	G	Distribution	P2	W					
4. Investment Property #4, Miami, Florida		None	N	W					
5. Investment Property #5, Miami Beach, Florida		None	O	W					
6. Investment Property #6, Miami Beach, Florida	G	Distribution	O	W					
7. Investment Property #7, Miami Beach, Florida	F	Distribution	P1	W					
8. Investment Property #8, Miami Beach, Florida	F	Distribution	N	W					
9. Investment Property #9, Miami Beach, Florida	D	Distribution	O	W					
10. Miami Beach LLC		None	O	W					
11. Palm Beach LLC		None	N	W					
12. American Funds Europacific Growth Fund		None	K	T					
13. Invesco Mid Cap Growth Fund		None	K	T					
14. MFS Mass Investors Growth Stock Fund		None	K	T					
15. Vanguard Total Stock Market Fund		None	L	T					
16. Wells Fargo Adv. Opportunity Fund		None	J	T					
17. Citibank, Cash Accounts	A	Int./Div.	L	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Bloom, Beth F.	02/06/2014

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)
18. Coconut Grove Bank, Cash Accounts	A	Int./Div.	K	T					
19. Gibralter Bank, Cash Accounts	A	Int./Div.	N	T					
20. JGB Bank, Cash Accounts	B	Int./Div.	O	T					
21. Marquis Bank, Cash Accounts	B	Int./Div.	O	T					
22. Professional Bank, Cash Accounts	C	Int./Div.	P1	T					
23. Wells Fargo Bank, Cash Accounts	A	Int./Div.	M	T					
24. Bank United, Cash Accounts	A	Int./Div.	N	T					
25. Sabadell Bank, Cash Accounts	B	Int./Div.	O	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		

Name of Person Reporting	Date of Report
Bloom, Beth F.	02/06/2014

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Bloom, Beth F.	Date of Report 02/06/2014

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/ Beth F. Bloom

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	4	659	743	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		186	381	Notes payable to relatives			
Unlisted securities – see schedule	1	125	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	5	803	312
Real estate owned – see schedule	21	196	185	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:							
Florida Retirement System Pension Plan		90	369				
				Total liabilities	5	803	312
				Net Worth	21	554	366
Total Assets	27	357	678	Total liabilities and net worth	27	357	678
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds EuroPacific Growth Fund	$ 24,929
Invesco Mid Cap Growth Fund	22,552
MFS Massachusetts Investors Growth Stock Fund	41,454
Vanguard Total Stock Market Fund	92,768
Wells Fargo Advantage Opportunity Fund	4,678
Total Listed Securities	$ 186,381

Unlisted Securities	
Stern Lincoln Theatre LLC	$ 700,000
NDL Palm Beach Property LLC	425,000
Total Unlisted Securities	$ 1,125,000

Real Estate Owned	
Personal residence	$ 4,000,000
Investment property #1 (16.66%)	683,060
Investment property #2 (25%)	750,000
Investment property #3 (50%)	10,000,000
Investment property #4 (21.25%)	265,625
Investment property #5 (25%)	562,500
Investment property #6 (33.25%)	997,500
Investment property #7 (25%)	2,500,000
Investment property #8 (25%)	500,000
Investment property #9 (12.5%)	937,500
Total Real Estate Owned	$ 21,196,185

Real Estate Mortgages Payable	
Investment property #1 (16.66%)	$ 238,373
Investment property #2 (25%)	467,015
Investment property #3 (50%)	1,540,251
Investment property #5 (25%)	1,000,000
Investment property #6 (33.25%)	496,199
Investment property #7 (25%)	1,329,842
Investment property #8 (25%)	226,320
Investment property #9 (12.5%)	505,312
Total Real Estate Mortgages Payable	$ 5,803,312

AFFIDAVIT

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

02/06/2014
(DATE)

(NAME)

(NOTARY)

ELIZABETH GARIAZZO
MY COMMISSION # FF 033980
EXPIRES: November 8, 2017
Bonded Thru Budget Notary Services

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Paul Gregory Byron

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

   United States District Judge for the Middle District of Florida

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

   Overchuck & Byron, P.A.
   20 North Orange Avenue, Suite 810
   Orlando, Florida 32801

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

   1959; Queens, 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.

   1983 – 1986, Louisiana State University, Paul M. Hebert Law Center; J.D., 1986

   1981 – 1983, The University of Michigan; A.B. (with honors & distinction), 1983

   1979 – 1981, Miami Dade College; A.A., 1981

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
   Overchuck & Byron, P.A.
   20 North Orange Avenue, Suite 810

Orlando, Florida 32801
Partner

2004 – 2005
United States Department of Justice
Criminal Division
Asset Forfeiture and Money Laundering International Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Trial Attorney

2003 – 2004
NeJame, LaFay, Barker, Byron, P.A.
189 South Orange Avenue, Suite 1800
Orlando, Florida 32801
Partner

2001 – 2003
United Nations
International Criminal Tribunal for the Former Yugoslavia
Churchillplein 1, 2517 JW
The Hague, Netherlands
Senior Trial Attorney, Office of the Prosecutor

1991 – 2001
United States Attorney's Office for the Middle District of Florida
Orlando Division
400 West Washington Street, Suite 300
Orlando, Florida 32801
Assistant United States Attorney

1990 – 1991
Maguire, Voorhis & Wells, P.A.
20 South Orange Avenue
Orlando, Florida 32801
Associate

1986 – 1990
United States Department of Defense, United States Army
Fort Gordon, Georgia
Captain, Judge Advocate General's Corps

1984 – 1986
Office of the Public Defender
300 Louisiana Avenue

Baton Rouge, Louisiana 70802
Law Clerk

Other affiliations (uncompensated)

1995 – 2001
Hunter's Creek Charter School
3924 Ocita Drive
Orlando, Florida 32837
Hunter's Creek Charter School Exploratory Board (2000 – 2001)
School Advisory Council for the Hunter's Creek Elementary School (1995 – 2001)
Past President (1999 – 2000)

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

   1983 – 1994 (Active duty from 1986 – 1990)
   United States Army
   Rank: Captain, Judge Advocate General's Corps
   Honorable Discharge
   Serial number: 261-67-7454

   I was commissioned as a Second Lieutenant in 1983 and granted a deferral to attend law school. After serving on active duty from 1986 to 1990 in the Judge Advocate General's Corps, I served the remainder of my duty on reserve status from 1990 to 1994 before being honorably discharged.

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

   AV rating as an attorney, Martindale Hubbell (1991 – present)
   Federal Bureau of Investigation Award for Superior Performance (1999)
   The Chief Postal Inspector's Special Award (1999)
   United States Department of Justice Director's Award for Superior Performance (1997)
   International Narcotic Enforcement Officers Association, Special Award of Honor (1997)
   Governing Board Award, Metropolitan Bureau of Investigation (1996)
   Federal Bureau of Investigation Award for Superior Performance (1996)
   Internal Revenue Service Criminal Investigation Division Commendation (1996)
   Bureau of Alcohol, Tobacco and Firearms Commendation (1994)
   Metropolitan Bureau of Investigation Commendation (1991)
   United States Army, Judge Advocate General's Corps Award for Outstanding Performance as Defense Counsel and Prosecuting Attorney (1990)
   United States Army Achievement Medal (1989)

United States Army Commendation Medal (1988)
Louisiana State University, Paul M. Hebert Law Center, Moot Court Board (1985)
University of Michigan, Dean's List (1982, 1983)
United States Airborne designation (1982)
Army ROTC Scabbard and Blade Honors Society (1982)
Army ROTC scholarship (1981)
Miami Dade College, Dean's List (1979, 1981)
Miami Dade College Outstanding Student Award (English Department) (1981)
Miami Dade College, President of Honor's Society (1981)
Miami Dade College, Degree conferred with Honors and Distinction (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.

American Bar Association
Florida Bar Association
Florida Justice Association
Louisiana Bar Association
Orange County Bar Association

10. **Bar and Court Admission**:

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

Louisiana Bar Association, 1986 (inactive)
Florida Bar Association, 1989

There have been no lapses, although as indicated, my membership in Louisiana is inactive.

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

United States Court of Appeals for the Eleventh Circuit, 1990
United States District Court for the Middle District of Florida, 1990
United States District Court for the Northern District of Florida, 2007
United States District Court for the Southern District of Florida, 2012
International Criminal Tribunal for the Former Yugoslavia, 2001

There have been no lapses in membership, except for a recent lapse in membership in the United States District Court for the Middle District of Florida which occurred when the renewal notice was sent via electronic mail and was

overlooked. As soon as the omission was identified, I paid the membership dues and was sworn in as a renewing member of the Middle District.

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.

Assistant United States Attorney Representation Committee (1995 – 1996)
Orange County Pop Warner Football (1999)
Assistant Coach
Orange County Soccer Club (1996 – 2001)
Head coach for U-8 to U13 Club
Orange County Youth Basketball (1997 – 1999)
Assistant Coach
Orlando Citrus Club (2011 – present)
Orlando University Club (2010 – 2011)
Hunter's Creek Charter School (1995 – 2001)
Exploratory Board (2000 – 2001)
School Advisory Council for the Hunter's Creek Elementary School (1995 – 2001)
Past President (1999 – 2000)

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.

Years before I became a member, the Orlando University Club restricted membership to male members. To the best of my knowledge none of the other clubs listed in response to 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

Multi-District Investigation and Prosecution of Medicare Fraud: The Benefits of Taking the Team Approach, USA Bulletin, Executive Office for the United States Attorneys, April 1997. Copy supplied.

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

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.

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.

My firm website has several short video presentations in which I discuss a variety of legal issues. My firm website may be accessed at the following Internet address: www.productslaw.net. The following video presentations may be accessed at the following hyperlinks:

December 8, 2011: Video on "Carbon Monoxide: What to Do if You've Been Exposed." Available at http://www.youtube.com/watch?v =smbG6laN1dY&feature=c4-overview&list=UUr7xzq7eYnBJF3Igv2 W6cpg.

December 8, 2011: Video on "Carbon Monoxide Effects and Symptoms." Available at http://www.youtube.com/watch?v=RHYYyni1o3I&list =UUr7xzq7eYnBJF3Igv2W6cpg&feature=c4-overview.

October 19, 2011: Video on "Carbon Monoxide: What Is It? Where Does It Come From?" Available at http://www.youtube.com/watch?v= 9edPwAu6jFo&list=UUr7xzq7eYnBJF3Igv2W6cpg&feature=c4-overview.

September 23, 2010: Video on the "Importance of Trial Experience in a Personal Injury Attorney." Available at http://www.youtube.com/watch? v=Zz1sswbksrU&list=UUr7xzq7eYnBJF3Igv2W6cpg&feature=c4-overview.

September 23, 2010: Video on "Qui Tam Cases." Available at http://www.youtube.com/watch?v=jpJteAZpy3A.

September 23, 2010: Video on "Dangers of Aging Tires." Available at http://www.youtube.com/watch?v=1O0qnkOiypE&list=UUr7xzq7eYnBJ F3Igv2W6cpg.

September 23, 2010: Video on "Traumatic Brain Injury (TBI) Cases." Available at http://www.youtube.com/watch?v=iHAhj-2ttas&list=UUr7xzq7eYnBJF3Igv2W6cpg.

September 23, 2010: "The Risk of Buying After Market Wheels." Available at http://www.youtube.com/watch?v=JR_FQ5aSU54&list =UUr7xzq7eYnBJF3Igv2W6cpg.

September 2008: Speaker, Attorney Information Exchange Group. I gave a lecture to attorneys on the forensic investigation of an inadvertent airbag deployment in a J-Car. I have no notes, transcript, or recording. The sponsor of the event was the Attorney Information Exchange Group, 520 Office Park Drive, Suite 205, Birmingham, Alabama 35223.

The following speeches and panel discussions involve money laundering, asset forfeiture and related banking supervision and regulation topics. After searching my records, I have identified several PowerPoint presentations that I used in the course of these conferences. All of the PowerPoint presentations that I have been able to locate after diligent search of my files are supplied.

February 2005: Speaker and panel member, Caribbean Financial Action Task Force Second Annual Conference on Compliance, Caribbean Financial Action Task Force Secretariat and United States Department of Justice Asset Forfeiture and Money Laundering Section. The conference was held in Port of Spain, Trinidad. PowerPoint presentation supplied.

December 2004: Speaker and panel member, Protecting Charities from Abuse by Terrorist Financing. The sponsor of the event was the Overseas Prosecutorial Development Assistance and Training (OPDAT). The conference was held in Bangkok, Thailand. PowerPoint presentations supplied.

December 2004: Speaker, Money Laundering Trends for Prosecutors and Investigators. The sponsor of the event was OPDAT. The presentation was given in Bangkok, Thailand. I used one of the same PowerPoint presentations that was provided for the conference also conducted in Bangkok in December 2004

November 2004: Speaker and panel member, Anti-Money Laundering Typologies and International Best Practices. The sponsor of the event was OPDAT in conjunction with the Council of Europe. The conference was held in Pristina, Kosovo. PowerPoint presentations supplied.

November 2004: Speaker and panel member, Conference on Money Laundering Trends, Antigua. To the best of my memory, the sponsor of the event was OPDAT. I used the same PowerPoint presentations that were provided for the conference conducted in Kosovo in November 2004.

October 2004: Speaker and panel member, The Role of the Compliance Office in Money Laundering Investigations. The sponsor of the event was the Caribbean Financial Action Task Force (CFATF). The conference was held in Port of Spain, Trinidad. I used two of the same PowerPoint presentations that were provided for the conference conducted in Kosovo in November 2004, as well as an additional PowerPoint presentation, which is supplied.

October 2004: Speaker, International Money Laundering and Asset Restraint and Confiscation Conference. The sponsor of the event was the Federal Law Enforcement Training Center (FLETC). The presentation was given in Washington, D.C. I used one of the same PowerPoint presentations that were provided for the conference conducted in Kosovo in November 2004.

April 2004: Speaker and panel member, Symposium on Money Laundering and Compliance (PATRIOT ACT) for South and Central Africa. The sponsor of the event was OPDAT. The conference was held in Botswana, Africa. I used two of the same PowerPoint presentations that were provided for the conference conducted in Kosovo in November 2004, as well as an additional PowerPoint presentation, which is supplied.

February 2004: Speaker and panel member, The Role of Money Laundering Legislation in Public Corruption. The sponsor of the conference was OPDAT. The conference was held in Baku, Azerbaijan. PowerPoint presentation supplied.

February 9, 2004: Speaker, Bush Auditorium at Rollins College, the Islamic Society of Central Florida and the Jewish Federation of Greater Orlando, Orlando, Florida. I gave a speech in conjunction with Seeds for Peace on my work at the International Criminal Tribunal for the Former Yugoslavia. I have no notes, transcript or recording, but press coverage is supplied. The address of the Islamic Society of Central Florida is 545 West Central Boulevard, Orlando, Florida 32801.

November 2002: Speaker, Trial Advocacy Clinic, International Criminal Tribunal for the Former Yugoslavia, The Hague, Netherlands. I gave a lecture to attorneys in the Office of the Prosecutor on effective cross-examination techniques. I have no notes, transcript or recording. The sponsor of the event was the International Criminal Tribunal for the Former Yugoslavia, which has no physical address.

July 2001: Speaker and panel member, Money Laundering, Asset Forfeiture and Banking Regulation Conference. The sponsor of the conference was FLETC. The conference was held in Vilnius, Lithuania. I used the same PowerPoint presentations that were provided for the conference conducted in Kosovo in November 2004, as well as an additional PowerPoint presentation, which is supplied.

May 2001: Speaker and panel member, Regional Symposium on Transnational Money Laundering. The sponsor of the event was OPDAT and FLETC. The conference was held in Budapest, Hungary. I used three of the same PowerPoint presentations that were used for the conference conducted in Lithuania in July 2001.

March 2001: Speaker and panel member, Money Laundering and Asset Forfeiture training program. The sponsor of the event was FLETC. The conference was held in Glynco, Georgia. I used one of the same PowerPoint presentations that were provided for the conference conducted in Kosovo in November 2004.

October 2000: Speaker and panel member, Money Laundering Conference. The sponsor of the event was OPDAT and FLETC. The conference was held in St. Petersburg, Russia. I used three of the same PowerPoint presentations that were used for the conference conducted in Lithuania in July 2001.

May 2000: Speaker and panel member, International Banking and Money Laundering Conference. The sponsor of the event was OPDAT and FLETC. The

conference was held in Volgograd, Russia. I used two of the same PowerPoint presentations that were used for the conference conducted in Lithuania in July 2001.

1999: I appeared as a guest lecturer on three occasions in a criminal justice course given at the University of Central Florida in Orlando, Florida. I have no notes, transcript, or recording of my class discussion. The address for the University of Central Florida is 4000 Central Florida Boulevard, Orlando, Florida 32816.

1999: Speaker, Basic and Advance Trial Advocacy course. The sponsor of the course was the National Advocacy Center. I have no notes, transcript, or recording. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

May and June 1999: Speaker and panel member, Money Laundering, Formal and Informal International Assistance Agreements, International Banking and Asset Forfeiture Conference. The sponsor of the event was OPDAT. The conference was held in Ekaterinburg and Tyumen, Russia. I used two of the same PowerPoint presentations that were used for the conference conducted in Lithuania in July 2001.

1998: Speaker, National Advocacy Center, Health Care Fraud Investigative Techniques. The sponsor of the presentation was the National Advocacy Center. I have no notes, transcript, or recording. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

1997: Speaker, Florida Arson College, Forensic Investigation of Arson, providing a case study of *United States v. Forrest Jimmy Utter*, 97 F.3d 509 (11th Cir. 1996). The sponsor of the event was the Florida State Fire Marshall. The conference was held in Ocala, Florida. I have no notes, transcript, or recording. The address for the Florida State Fire Marshall is 200 East Gaines Street, Tallahassee, Florida 32399.

1996: Speaker, Planning and Executing Multi-Jurisdictional Search and Seizure Warrants. The sponsor of the presentation was the Financial Crimes Enforcement Network. The presentation was given in Orlando, Florida. I have no notes, transcript, or recording. The address for the Financial Crimes Enforcement Network is 2070 Chain Bridge Road, Vienna, Virginia 22183.

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.

Ryan Smith, *$2 Million Award in Burn Case*, News Leader, November 25, 2013. Copy supplied.

Anna Oakes, *How Will NC Fight a "Silent Killer?,"* WataugaDemocrat.com, June 27, 2013. Copy supplied.

In 2009, I was interviewed by a local Orlando television station regarding the dangers presented by debris located on the highway, including debris from work trucks. I have no notes, transcription or recording of my interview, and I cannot recall which television station conducted this interview.

In 2008, I was interviewed by a local Orlando television station regarding the renewed recall of Firestone ATX tires, which had been the subject of a worldwide recall in 2004. I have no notes, transcription or recording of my interview. I cannot recall which television station conducted this interview.

Rene Stutzman, *Tragedy Was Waiting, But No One Noticed*, Orlando Sentinel, November 24, 2008. Copy supplied.

Jim Leusner, *Slew of I-4 Pileup Suits to Cover Range of Blame*, Orlando Sentinel, January 13, 2008. Copy supplied.

Rene Stutzman, *Chemical Makers Blamed for Pollution The Mess in Lake Mary Stems from Instruction on How to Discard TCE, a Suit Alleges*, Orlando Sentinel, September 23, 2006. Copy supplied.

US: Recalled Firestone Tyres 'Still Claiming Lives', June 22, 2006, Just-Auto Global News. Copy supplied.

Rene Stutzman, *Ex-Workers: Tainted Water Led to Illnesses*, Orlando Sentinel, April 9, 2006. Copy supplied.

Melissa Harris, *Local Lawyer Describes Ethnic-Cleansing Horrors*, Orlando Sentinel, February 9, 2004. Copy supplied.

Jim Leusner, *Compelled by History, Orlando Prosecutor Ascends to World Stage*, November 1, 2001. Copy supplied.

Susan Clary, *Brother Helps Nab Meth Drug Maker*, Orlando Sentinel, June 1, 2001. Copy supplied.

January 14, 2001, I was interviewed on the news program Dateline. Video recording supplied.

In 2000, I was interviewed by a local Orlando television station regarding the re-trial and conviction of Forrest Jimmy Utter for arson, resulting in the death of two firefighters, and mail fraud. The United States Attorney authorized this interview which was subsequently aired on local and national television. I have no notes,

transcription or recording of my interview, and I cannot recall which television station conducted this interview.

Susan Clary, *Company to Pay Fine in Medicare-fraud Case*, November 7, 1998. Copy supplied.

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

I have never served as a judge.

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

i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

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

I have never 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 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;

I have never 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.

1986 – 1990
United States Department of Defense, United States Army
Fort Gordon, Georgia
Captain, Judge Advocate General's Corps

1990 – 1991
Maguire, Voorhis & Wells, P.A.
20 South Orange Avenue
Orlando, Florida 32801
Associate

1991 – 2001
United States Attorney's Office for the Middle District of Florida
Orlando Division
400 West Washington Street, Suite 300
Orlando, Florida 32801
Assistant United States Attorney

2001– 2003
United Nations
International Criminal Tribunal for the Former Yugoslavia
Churchillplein 1, 2517 JW
The Hague, Netherlands
Senior Trial Attorney
Office of the Prosecutor

2003 – 2004
NeJame, LaFay, Barker, Byron, P.A.
189 South Orange Avenue, Suite 1800
Orlando, Florida 32801
Partner

2004 – 2005
United States Department of Justice
Criminal Division
Asset Forfeiture and Money Laundering, International Division
950 Pennsylvania Avenue, Northwest
Washington, D.C. 20530
Trial Attorney

2005 – present
Overchuck & Byron, P.A.
20 North Orange Avenue, Suite 810
Orlando, Florida 32801
Partner

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

I have not served as a mediator or 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 approximately two-thirds of my career practicing law in either the Army, Department of Justice or with the United Nations. Until 2004, my career was focused almost exclusively on criminal law in the public sector with some time spent in civil litigation in the private sector. Between 1986 and 1988, I served as criminal defense counsel in the U.S. Army Judge Advocate General's Corps, representing soldiers charged

with crimes ranging from misdemeanors to sexual assault, kidnapping and attempted murder. From 1988 to 1990, during the latter half of my Army J.A.G. career, I was a Trial Counsel, responsible for prosecuting first degree murder, drug offenses and various violent crimes. I also served as a Special Assistant U.S. Attorney, prosecuting civilians in federal court for offenses committed on post.

After spending a year as an associate with Maguire, Voorhis and Wells, in 1990, practicing in construction litigation, I had the opportunity to return to serving as a prosecutor and began working as an Assistant U.S. Attorney for the Middle District of Florida, Orlando Division. I served as an Assistant U.S. Attorney in the Orlando office from 1991 through 2001. I was responsible for prosecuting organized crime and served as a member of the Organized Crime Drug Enforcement Task Force. Furthermore, I prosecuted healthcare fraud, telemarketing fraud, money laundering and white collar crime. During the first six years with the office, all trial attorneys were tasked with preparing answer briefs to appeals filed by defendants and contesting procedural and substantive rulings by the trial court. I personally wrote in excess of 30 answer briefs filed with the Eleventh Circuit Court of Appeals and argued 16 cases before the Eleventh Circuit.

By the mid-1990s, I had begun prosecuting international crime and had developed experience working with foreign governments by providing anti-money laundering training to law enforcement officials within the former Soviet Union. As a result, in the summer of 2001, I was selected to serve at the International Criminal Tribunal for the Former Yugoslavia (ICTY). I served with the ICTY from 2001 through 2003 and was in charge of a team of investigators and attorneys focusing upon war crimes committed in Central and Southern Bosnia. I went on 18 fact finding missions to Bosnia, and I interacted with senior political leadership in Croatia in order to obtain access to military archival evidence. Our trial team indicted and ultimately convicted six senior political and military officials from the former Republic of Herceg-Bosnia.

From mid-2003 to mid-2004, after returning from the ICTY, I joined NeJame, LaFay, Barker, Byron, P.A. My practice focused on white collar criminal defense and representing business owners in litigation involving employment law and contract disputes. During this period, I also argued one case before the Eleventh Circuit Court of Appeals involving criminal law.

I concluded the portion of my career which has focused upon criminal law and, in particular, international law, in the International Section of the Asset Forfeiture and Money Laundering Section (AFMLS) of the Department of Justice, from 2004 to 2005. My work at AFMLS focused

more upon legislative initiatives and the promotion of governmental policies to combat terrorist financing and money laundering. I served as the DOJ representative to the Caribbean Financial Action Task Force, the Financial Action Task Force committee on non-cooperating countries and territories, the G8 working group on high-risk remittance houses, and the United States – Mexico money laundering working group. My responsibilities included assisting countries in drafting anti-money laundering and terrorist financing legislation and ensuring that central banks and law enforcement agencies in foreign countries were compliant with the Patriot Act.

Since March 2005, my practice has focused exclusively upon civil litigation. My practice is limited to product liability, environmental tort, and catastrophic personal injury cases. I have litigated a variety of product liability cases, including cases involving exposure to toxic chemicals, vehicle handling and stability claims, defective tire claims, the catastrophic failure of a 230/69kV autotransformer, the failure of a HDPE liner on a 430 acre phosphogypsum stack system, and a significant number of cases involving carbon monoxide exposure. I have appeared in State and federal court in Florida and in several other states, and I have also argued appeals before the Fifth and First District Courts of Appeal of Florida.

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

As an officer in the United States Army Judge Advocate General Corps, I represented soldiers charged with violations of the Uniform Code of Military Justice, and, in the latter two years of my active duty service, I served as a prosecutor, and my client was the Department of Defense. I specialized in criminal law.

At Maguire, Voorhis & Wells, my clients were general contractors, sub-contractors and business owners. I specialized in construction litigation.

As an Assistant United States Attorney, my client was the United States. I specialized in prosecuting organized crime, money laundering and complex economic crime.

As a prosecutor with the International Criminal Tribunal for the Former Yugoslavia, my client was the United Nations. I specialized in the investigation and prosecution of crimes against humanity and war crimes.

At Nejame, NeJame, LaFay, Barker, Byron, P.A, my clients were business owners. I specialized in commercial litigation and criminal defense.

As a Trial Attorney with the Department of Justice, Asset Forfeiture and Money Laundering, my client was the United States. I specialized in counter-terrorist financing and anti-money laundering.

At Overchuck & Byron, P.A., my clients consist of individuals and occasionally corporations. I specialize in product liability and environmental law.

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

Overall, my practice has been approximately 98% litigation. Between 1986 and 1990, as a Judge Advocate General, 100% of my practice was in courts martial. From 1991 to 2001, during which time I was an Assistant United States Attorney, 100% of my practice involved federal litigation. From 2001 to 2003, my practice was 100% international litigation. From 2003 to 2004, my practice was 80% state court and 20% federal court. From 2004 to 2005, my practice involved providing advice and training to the governments and the international banking sector on anti-money laundering, asset forfeiture and terrorist financing. From 2005 to the present, my practice has been 90% state court and 10% federal court.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 30%
   3. other courts: 20%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 30%
   2. criminal proceedings: 70%

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

I have tried approximately 85 cases as sole counsel, one case as associate counsel, and seven cases as co-lead counsel to judgment, verdict or final decision.

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 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. Jenkins v. Key Buick, Co., 90 so.3d 278 (Fla. 1st DCA 2012) (Fourth Judicial Circuit, Duval County, Florida); Judge Brian J. Davis.

   I was co-lead counsel representing Mr. Jenkins, the Plaintiff in this case. This case involves an electrical fire which began inside the passenger door of a Nissan 350Z and progressed to the center console of the dashboard, resulting in significant burn injuries to Plaintiff Jenkins. I presented opening and closing statements with the direct-examination of Plaintiff's expert witnesses and cross-examination of defense expert witnesses being divided with my co-counsel. This litigation involved extensive expert testimony, substantial pre-trial motion practice and appellate review including oral argument. After six trial days, the jury returned a verdict in favor of the Plaintiff. Subsequent to the entry of final judgment by Judge Davis, the Defendant pursued appellate review before the First District Court of Appeal. I reviewed the reply brief and argued the case before the appellate court. Two days after oral argument, the court affirmed the judgment and thereafter denied Defendant's Motion for Rehearing.

   Co-counsel for Plaintiff

   John R. Overchuck, Overchuck & Byron, P.A.
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   Orlando, Florida 32801
   (407) 872-6222

Plaintiff's appellate counsel
Nicholas Shannin
214 East Lucerne Circle
Suite 200
Orlando, Florida 32801
(407) 985-2222

Defendant Key Buick

Marianne Lloyd Aho, Marks Gray, P.A.,
P.O. Box 447
Jacksonville, Florida 32201
(904) 807-3555

Richard A. Sherman
1777 South Andrews Avenue
Suite 302
Fort Lauderdale, Florida 33316
(954) 525-5885

2. Hibbeln v. General Motors Corporation, Case Number CI099-1206-32 (Ninth Judicial Circuit, Orange County, Florida); Judge Richard Conrad.

I was co-lead trial counsel representing Mr. and Mrs. Hibbeln, appearing on behalf of the estate, as the Plaintiff in this case. Their son was killed when the driver's side air bag in his vehicle inadvertently deployed while he was driving on the highway, causing his vehicle, to travel across Interstate 4 and collide with oncoming traffic. After an eight-day trial, the jury hung, with five jurors voting to render a verdict for the Plaintiff and one juror voting to render a finding for the Defendant. This case involved complex testimony regarding the design of the sensing and diagnostic module that resulted in the inadvertent deployment of the airbag, detailed testimony concerning accident reconstruction, and medical testimony to corroborate that the airbag had deployed before the collision as opposed to following the impact. I acted as co-lead trial counsel with John Overchuck, and I gave opening and closing statements and cross-examined General Motors' lead expert on the design of the sensing and diagnostic module (SDM) in this vehicle platform. I also presented the forensic medical testimony and conducted direct-examination of the decedent's mother. I also argued all pre-trial and post-trial motions. The case settled a few months after trial.

Co-counsel for Plaintiff

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20 North Orange Avenue
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Orlando, Florida 32801
(407) 872-6222

Steven Van Gaasbeck
5511 I.H. 10 West
Suite 4
San Antonio, Texas 78201
(210) 924-9294

Defendant General Motors

Ernest H. Eubanks and Michael Begey
300 South Orange Avenue
Suite 1400
Orlando, Florida 32802
(407) 872-7300

Franklin P. Brannen, Jr.
1180 Peachtree Street
Atlanta, Georgia 30309
(404) 572-4600

3. Dixon v. M.R. Pride Electric Co., Case No. 04CA-2275 (Ninth Judicial Circuit, Orange County, Florida); Judge Thomas Mihok.

I was lead trial counsel representing Mr. Dixon, as the executor of his father's estate, the Plaintiff in this case. Mr. Dixon's father was electrocuted while installing low voltage computer cable in a building on Orange Avenue in Orlando, Florida. The building was in the process of being renovated, and several contractors were working on the premises, including Defendant M.R. Pride Electric Company. Prior to trial, Defendant Worldwide Automation Resources, Inc., the owner of the building, settled with the Plaintiff. The case proceeded to trial against M.R. Pride Electric. The case involved expert testimony from an electrical engineer and medical testimony. After a five-day trial, the jury deliberated for less than three hours before returning a verdict for the Plaintiff. The defense did not pursue appellate review.

Co-Counsel for Plaintiff

Joseph Taraska, Morgan & Morgan, P.A.
20 North Orange Avenue
Orlando, Florida 32801
(407) 420-1414

Defendant M.R. Pride Electric Co.

Dennis O'Connor
840 South Denning Drive
Suite 200
Winter Park, Florida 32789
(407) 843-2100

4. United States v. McCorkle, et al., 6:98-cr-52-Orl-19JGG (United States District Court, Middle District of Florida, Orlando Division), Judge Patricia C. Fawsett. The appellate history is found at 296 F.3d 1284 (11th Cir. 2002) and 2005 U.S. LEXIS 15163 (11th Cir. Fla. 2005).

I represented the United States as lead trial counsel in this complex white collar criminal case. Over a seven-year period, Mr. McCorkle and Mrs. McCorkle orchestrated a complex scheme to defraud consumers though an infomercial and a nationwide telemarketing enterprise that promised to teach consumers how to purchase distressed real estate, using Mr. McCorkle's money, called the "Cashflow system." To increase sales of the Cashflow system, Mr. McCorkle hired former employees of the Charles Givens Organization to implement a telemarketing department and a seminar department. In an attempt to conceal the proceeds of the crime, Mr. McCorkle sheltered money in numerous banks, including the Royal Bank of Canada in Grand Cayman.

Working with the Cayman authorities, AUSA Marie Demarco and I filed the first case under the then recently enacted Cayman Proceeds of Criminal Conduct Law, which allowed for the seizure of funds representing the proceeds of money laundering. After a week-long hearing in Grand Cayman, the authorities restrained the Royal Bank of Canada funds pending the outcome of the criminal prosecution and related forfeiture action.

The case was then tried before Judge Fawsett from September 1, 1998 through November 6, 1998, and the defendants were convicted. Pursuant to the United States Sentencing Guidelines, defendants Mr. McCorkle and Mrs. McCorkle were each sentenced to 24 years imprisonment. Two co-conspirators were convicted and sentenced to five years imprisonment, and one defendant was acquitted. The corporations named in the indictment were also convicted. At the conclusion of the case, the defendants paid the United States in excess of $10 million in forfeiture. On appeal, the convictions were affirmed, but the case was twice remanded for resentencing.

Defendant W. McCorkle

F. Lee Bailey
823 North Olive Avenue

West Palm Beach, Florida 33401
(561) 655-4406

Defendant C. McCorkle

Mark Horwitz
17 East Pine Street
Orlando, Florida 32801
(407) 843-7733

Defendant Higgins

Larry Colleton
P.O. Box 677459
Orlando, Florida 32867
(407) 440-8020

Defendant Herman Venske

Ann Marie Giordano Gilden
P.O. Box 940610
Maitland, Florida 32794
(407) 599-1170

Defendant Smith

Lee Fugate
101 East Kennedy Boulevard
Suite 1200
Tampa, Florida 33602
(813) 221-1010

Defendants American Empire Management and Development Company, Central Florida Real Estate Guide, Fortunes in Foreclosures, Inc., Francis Leichman Corporation, MTI Investment, Inc., Cashflow Systems, Inc., Amazing Cash Flow, Inc., Pre-Foreclosure Bank Owned Properties, Inc. and Synchronol, Inc.

Robert Eagan
415 North Orange Ave.
Orlando, Florida 32801
(407) 836-2487

5. United States v. Utter, 6:94:cr-Orl-22DAB (United States District Court, Middle District of Florida, Orlando, Division), Judge Anne C. Conway, *rev'd, reported at* 97 F.3d 509 (11th Cir. 1996) and 211 F.3d 599 (11th Cir. 2000).

I represented the United States as sole trial counsel in this case which involved arson-for-profit. Defendant Utter was convicted of burning his restaurant to collect insurance proceeds, resulting in the death of two firefighters who became disoriented while combating the arson fire. The first trial concluded in December 1994 after an eight-day jury trial. The conviction was reversed on appeal due to the admission of similar crimes evidence. The case was retried in January 1999, at which solely circumstantial evidence could be presented. The prosecution's case turned on forensic cause and origin testimony and a detailed forensic accounting conducted by the Bureau of Alcohol, Tobacco and Firearms auditor. After a nine-day jury trial, the defendant was convicted of arson, mail fraud and related charges. Mr. Utter was sentenced to 25 years in prison.

Defendant Utter

Cheney Mason (first trial)
250 Park Avenue South
Winter Park, Florida 32789
(407) 843-5785

Joel Remland
301 S. Monroe Street
Suite 401
Tallahassee, Florida 32301
(850) 606-1000

Frederick Morello
111 North Frederick Avenue
Floor 2
Daytona Beach, Florida 32114
(386) 252-0754

6. United States v. Duran, et al.; 6:95-cr-208-Orl-19 (United States District Court, Middle District of Florida, Orlando Division); Judge Patricia C. Fawsett.

I represented the Unites States as the sole prosecutor responsible for this case. The information generated during this investigation led to the indictment and conviction of several large-scale heroin and cocaine trafficking organizations, culminating in the conviction of over 80 defendants, including the Captain of the Hoboken, New Jersey Fire Department, and the confiscation of more than $25 million in currency and as real estate. The Duran drug trafficking organization was responsible for the distribution of multi-kilogram quantities of heroin and cocaine in Central Florida on a weekly basis and numerous acts of violence associated with the drug trade. Following an extensive undercover investigation, including a financial investigation performed by the IRS Criminal Investigation Division, an indictment was returned against 14 defendants. Prior to trial four low-level defendants plead guilty and agreed to testify against the organization.

After a seven-day trial, the jury convicted the defendants. The defendants received sentences ranging from less than ten years imprisonment for minor participants up to life imprisonment for the organizers of this criminal enterprise.

Defendant I. Duran

Luis Gomez, Sr.
5626 Curry Ford Road
Suite 120
Orlando, Florida 32822
(407) 273-0224

Defendant Diaz

John Meehan
P.O. Box 2406
Orlando, Florida 32802
(407) 898-3050

Defendant M. Duran

Terry Christian
10119 Heather Sound Drive
Tampa, Florida 33647
(813) 380-7743

Defendant Cordero

Timothy Hartung
4741 Fox Street
Orlando, Florida 32814
(321) 277-7424

Defendant Ayala

Russell Crawford
390 North Orange Avenue
Suite 2100
Orlando, Florida 32801
(407) 425-8659

Defendant Salgado

Albert Tellechea
200 South Orange Avenue

Orlando, Florida 32801
(407) 425-8500

Defendant Pessotti

Charles Handlin, III
112 North Summerlin Avenue
Orlando, Florida 32801
(407) 648-4555

Defendant Dacosta

James Dowdy
520 West Lake Mary Boulevard
Suite 103
Sanford, Florida 32773
(407) 878-7103

Defendant Hains

Bruce Nants
P.O. Box 547871
Orlando, Florida 32854
(407) 294-1042

Defendant Benitez-Perez

Frederick Mann
415 East Central Boulevard
Orlando, Florida 32801
(407) 649-8485

Defendant Beltran

James McGuirk
2655 South Le Jeune Road
Suite 700
Coral Gables, Florida 33134
(305) 445-8771

Defendant Morrow

John Harris
4437 Arcie Street
Orlando, Florida 32812
(407) 277-1591

Defendant Santiago-Carbot

Ismael Solis, Jr.
115 South Lake Avenue
Groveland, Florida 34736
(352) 429-4929

7. United States v. Tobias, et al., 6:95-cr-223-Orl-22 (United States District Court, Middle District of Florida, Orlando Division); Judge Anne C. Conway.

I was the sole prosecuting attorney on this case. Defendant Tobias was indicted in a companion case to United States v. Duran, et al., along with several co-defendants, including Mr. Beltran, Mr. Nieves, Mr. Valez, Mr. Torres and Mr. Rivera. Defendants Tobias and Nieves distributed heroin and cocaine for the Beltran organization. Defendant Tobias used drive-by shootings to intimidate rival drug organizations in Orlando. Defendant Tobias proceeded to trial before a jury in the Middle District of Florida, Orlando Division, and was convicted following a two-day trial in 1996. He was sentenced to 40 years imprisonment.

Defendant Tobias
Luis Davila
911 North Main Street
Suite 5
Kissimmee, Florida 34744
(407) 933-0307

8. United States v. Blackburn, 6:92-cr-Orl-19 (United States District Court, Middle District of Florida, Orlando Division); Judge Patricia C. Fawsett, conviction affirmed at 42 F.3d 643 (11th Cir. 1994).

I was sole trial counsel in the prosecution of Mr. Blackburn. Defendant Blackburn began his career in organized crime in Tampa, Florida, dating back to the 1950s as an associate of Mafia boss Santos Trafficante. Defendant Blackburn spent approximately one-half of his life in prison for a variety of criminal acts. At age 74, Defendant Blackburn was identified by the Drug Enforcement Administration as a distributor of cocaine in Sanford, Florida. The DEA developed an informant to purchase cocaine from Defendant Blackburn, after which search warrants were secured and executed, resulting in the seizure of contraband. Defendant Blackburn was tried as a career criminal in April 1993 and was sentenced to 24 years, six months in prison.

Defendant Blackburn

Clarence Counts
4746 New Broad Street

Orlando, Florida 32814
(407) 365-9374

9. United States v. Denalli, 6:94-cr-34-Orl-18 (United States District Court, Middle District of Florida, Orlando Division); Judge G. Kendall Sharp, *affirmed* at 73 F.3d 328 (11th Cir. 1996); 90 F.3d 444 (11th Cir. 1996).

I was the sole prosecuting attorney on this case. Mr. Denalli became enraged when a neighbor drove a truck onto his lawn. The Defendant began a campaign of terror against his neighbors, which included using his home computer to create identification in their names, obtaining credit cards in their identity and ordering consumer goods. Defendant Denalli became increasingly obsessed with his neighbors and used electronic equipment to eavesdrop on cordless telephone conversations. When the Defendant overheard his neighbors disparaging him to a friend, he burned the neighbor's home to the ground while they were on vacation, killing the family pet. Defendant Denalli ultimately affixed a homemade pipe bomb to his neighbor's minivan; however, his wife became aware of this act of retribution and compelled him to remove the bomb before it detonated. As a result of the Defendant's criminal conduct, the victims moved out of the state due to fear for the safety of their young child. The United States Postal Inspection Service concealed a camera in a post office box used by the Defendant to order goods using the fraudulently obtained credit cards. The evidence generated from this surveillance provided a basis for the execution of a search warrant that provided evidence of the above-described offenses. The Defendant was tried before a jury in July 1994. The Defendant was convicted of mail fraud, possession of a destructive device, using a firearm during the commission of a felony and received a sentence of 11 years in prison.

Defendant Denalli

Clarence Counts
4746 New Broad Street
Orlando, Florida 32814
(407) 365-9374

10. United States v. Frazier, et al., 6:93-cr-71-Orl-19 (United States District Court, Middle District of Florida, Orlando Division); Judge Patricia C. Fawsett . Appellate history: 89 F.3d 1510 (11th Cir. 1996) (remanded for resentencing as to several defendants all of whom waived the hearing rather than face potentially increased sentences due to relevant conduct).

I was the sole prosecuting attorney in this trial of 13 defendants charged in a 47-count indictment with drug trafficking and weapons violations. The defendants resided in an apartment complex in Melbourne, Florida, located across the street from an elementary school. The defendants used the apartment complex as a high-volume distribution center for the sale of crack cocaine and illegal weapons. The

Bureau of Alcohol, Tobacco and Firearms conducted a long-term investigation, using an undercover agent to purchase drugs and weapons. At the conclusion of the investigation, search warrants were executed on the apartments. Four of the indicted conspirators plead guilty before trial and agreed to testify against their co-defendants. A jury trial was conducted from September 14th through September 29, 1993. The jury convicted all but two of the remaining defendants at the conclusion of trial, and the Court imposed sentences ranging from 24 years and four months imprisonment down to four years, three months imprisonment.

Defendant Hutchinson
James Skuthan
201 South Orange Avenue
Suite 300
Orlando, Florida 32801
(407) 648-6338

Defendant Griffin

Ronald Findell
3653 Highway 26
Corbin, Kentucky 40701
(606) 526-1839

Defendant Kenya Brown

Brian Gillis
870 East State Road 434
Longwood, Florida 32750
(407) 831-3434

Defendant Kenyatta Brown

Michael Nielsen
720 West State Road 434
Winter Springs, Florida 32708
(407) 327-5865

Defendant Frazier

H. Manuel Hernandez
37 North Orange Avenue
Suite 500
Orlando, Florida 32801
(800) 464-4529

Defendant Graham

Dean Mosley
P.O. Box 2707
Orlando, Florida 32802
(407) 839-8444

Defendant Brown

Christopher Smith
605 East Robinson Street
Suite 250
Orlando, Florida 32801
(407) 897-6888

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

The Prosecutor v. Prlic, et al. (IT-04-74)

While assigned as Trial Counsel with the International Criminal Tribunal for the Former Yugoslavia, I was one of four prosecutors assigned to investigate, compose the charging document, and prosecute six senior military and political officials responsible for war crimes and crimes against humanity perpetrated during and following the collapse of the Former Yugoslavia.

I was responsible for leading the investigation of war crimes perpetrated in Central and Southern Bosnia, and I was ultimately responsible for building the case against the former head of the HVO Military Police administration, the President of the Service for the Exchange of Prisoners and other Persons, and the head of the Herceg-Bosnia/HVO prisons and detention facilities.

I conducted 18 missions to Bosnia and Herzegovina, for the purpose of developing evidence that certain concentration camps, or detention centers, were used to intern civilians who ranged in age between 16 and 65 years old. I was responsible for compiling evidence necessary to establish that civilian detainees and military prisoners were routinely subjected to systematic abuse, including murder and sexual violence, in violation of the law of war. My investigation further established the role of the HVO military police in facilitating the system of detention camps, including the use of detainees as human shields and as decoys at the front line to identify the position of Bosnian Muslim snipers.

As an additional responsibility, I assisted the trial team conducting the prosecution of former Yugoslavian President Slobodan Milosevic with producing evidence of financial transactions designed to circumvent a UN arms embargo.

I drafted the portion of the charging document which ultimately formed the basis of the Prosecutor's case against the above-named individuals. The trial continued after I departed the ICTY, and all six defendants were convicted of war crimes and crimes against humanity.

Asset Forfeiture Money Laundering International Division

I was formerly the Department of Justice (DOJ) legal representative to the Caribbean Financial Action Task Force and the Financial Action Task Force committee on non-cooperating countries and territories. I have served as the DOJ representative to the G8 working group on high-risk remittance houses; the DOJ representative to the United States – Mexico bilateral anti-money laundering working group, and I have provided training on money laundering and terrorist financing to the following countries: Russia, Kosovo, Thailand, Azerbaijan, Antigua, Hungary, Lithuania, Botswana, Panama, Trinidad, and Grand Cayman.

United Nations Office of the High Representative for Bosnia and Herzegovina
In May 2004, I provided consulting services to the United Nations Office of the High Representative for Bosnia and Herzegovina and ultimately co-authored civil and criminal asset forfeiture and administrative confiscation laws for the government of Bosnia and Herzegovina. Similarly, I have contributed to drafting anti-money laundering laws and counter-terrorist financing laws for Afghanistan, Azerbaijan, Nicaragua and Sir Lanka.

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

    None.

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

    I have invested in single premium annuities, which will mature starting in 2021. If I were to leave my law firm, I would be paid a percentage of the revenue generated on legal matters which were ongoing at the time of my departure from the firm. The percentage

of this future compensation is under negotiation and would be submitted to the Florida Bar for approval prior to finalizing the agreement.

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

    I do not currently 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 I am confirmed, I will recuse myself in all cases involving any of my family members. I will recuse myself from any cases involving my law firm for a period of at least two years, and I will recuse myself in all cases in which I was formerly counsel of record or in which I provided legal advice or guidance to a former client. Additionally, I will recuse myself in cases involving close friends as parties or witnesses.

    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.

During most of my legal career, either with the Department of Defense or the Department of Justice, I have been subject to limitations on my ability to engage in legal activities outside of my job. During the portion of my career spent in private practice, I have engaged in pro bono work by waiving legal fees in cases where the recovery is insufficient to adequately compensate the injured client. Over the past five years I have waived my fees several times.

I have mostly chosen to give back to the community in other ways. For example, I have served as a founding member and vice president of the Hunter's Creek Charter School. I was a member and past president of the School Advisory Council for Hunter's Creek Elementary School. I have volunteered as a head Coach of Orange County Soccer Club U-13, Dr. Phillips Pop Warner football, and I have coached youth basketball. Additionally, I have served as a volunteer judge for the Mock Trial Competition hosted by the Florida Bar Association and served as a student advisor for the Model United Nations Program (American School of The Hague). I have also spoken as a guest lecturer at several schools, including Hunter's Creek Elementary, Pineloch Elementary School, Hunter's Creek Middle School, Dr. Phillips High School and the University of Central Florida. In 2012 and 2013 I sponsored Runway to Hope Pediatric Oncology, and for the past three years, I have sponsored a third grade class at Pineloch Elementary for their field trip to SeaWorld.

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 16, 2013, I submitted my application to the Florida Federal Judicial Nominating Commission for the Middle District of Florida, convened by Senators Nelson and Rubio. On September 10, 2013, I interviewed with the Commission in Orlando, Florida. On November 6, 2013, I interviewed with Senators Nelson and Rubio in Washington, D.C. Since November 20, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 17, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 6, 2014, 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
Byron, Paul G.	United States District Court Middle District of Florida	02/06/2014
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 02/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 01/31/2014
7. Chambers or Office Address		
Overchuck & Byron, P.A. 20 North Orange Avenue, Suite 810, Orlando, Florida 32801		

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	Overchuck & Byron, P.A.
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 14	Name of Person Reporting Byron, Paul G.	Date of Report 02/06/2014

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	Law Practice (Overchuck & Byron, P.A.)	$980,000.00
2. 2013	Law Practice (Overchuck & Byron, P.A.)	$465,000.00
3. 2014	Law Practice (Overchuck & Byron, P.A.)	$384,833.00
4.		

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

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 14	Name of Person Reporting Byron, Paul G.	Date of Report 02/06/2014

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 14	Name of Person Reporting Byron, Paul G.	Date of Report 02/06/2014

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. ABA International All Cap Equity Fund	D	Interest	L	T					
2. ABA Large Cap Equity Fund	A	Interest	L	T					
3. ABA Stable Asset Return Fund	A	Interest	K	T					
4. Florida College Prepaid		None	J	T					
5. USAA Savings and Loan cash accounts	A	Interest	K	T					
6. New Traditions Bank cash accounts	C	Interest	O	T					
7. Penta Mezzanine Fund		None	K	W					
8. AAPL	A	Int./Div.	J	T					
9. ACE	A	Int./Div.	J	T					
10. ACN	A	Int./Div.	J	T					
11. ACSAX	A	Int./Div.	J	T					
12. ADI	A	Int./Div.	J	T					
13. ADP	A	Int./Div.	J	T					
14. AEP	A	Int./Div.	J	T					
15. AFL	A	Int./Div.	J	T					
16. AGG	A	Int./Div.	K	T					
17. AJG	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 5 of 14	Name of Person Reporting Byron, Paul G.	Date of Report 02/06/2014

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)
18. AMP	A	Int./Div.	J	T					
19. AMT	A	Int./Div.	J	T					
20. APAM	A	Int./Div.	J	T					
21. AQMNX	A	Int./Div.	J	T					
22. ARLSX	A	Int./Div.	J	T					
23. AVB	A	Int./Div.	J	T					
24. AVY	A	Int./Div.	J	T					
25. BA	A	Int./Div.	J	T					
26. BAX	A	Int./Div.	J	T					
27. BBT	A	Int./Div.	J	T					
28. BGCAX	A	Int./Div.	J	T					
29. BMY	A	Int./Div.	J	T					
30. CAT	A	Int./Div.	J	T					
31. CBOE	A	Int./Div.	J	T					
32. CHDEX	A	Dividend	J	T					
33. CIU	A	Int./Div.	L	T					
34. CMBS	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 6 of 14	Name of Person Reporting Byron, Paul G.	Date of Report 02/06/2014

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. CMCSA	A	Int./Div.	J	T					
36. COP	A	Int./Div.	J	T					
37. CPA	A	Int./Div.	J	T					
38. CVX	A	Int./Div.	J	T					
39. DD	A	Int./Div.	J	T					
40. DFRAX	A	Int./Div.	J	T					
41. DIS	A	Int./Div.	J	T					
42. DOV	A	Int./Div.	J	T					
43. DRI	A	Int./Div.	J	T					
44. DRSLX	A	Int./Div.	J	T					
45. DVY	A	Int./Div.	J	T					
46. EAGMX	A	Int./Div.	J	T					
47. EMR	A	Int./Div.	J	T					
48. GE	A	Int./Div.	J	T					
49. GIS	A	Int./Div.	J	T					
50. GPC	A	Int./Div.	J	T					
51. GPFAX	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 14

Name of Person Reporting	Date of Report
Byron, Paul G.	02/06/2014

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)
52. HD	A	Int./Div.	J	T					
53. HMC	A	Int./Div.	J	T					
54. HYG	A	Int./Div.	K	T					
55. HYS	A	Int./Div.	K	T					
56. IGLAX	A	Int./Div.	K	T					
57. INTC	A	Int./Div.	J	T					
58. IP	A	Int./Div.	J	T					
59. ITC	A	Int./Div.	J	T					
60. JIGFX	A	Int./Div.	J	T					
61. JNJ	A	Int./Div.	J	T					
62. JNK	A	Int./Div.	J	T					
63. JPM	A	Int./Div.	J	T					
64. KAR	A	Int./Div.	J	T					
65. KMB	A	Int./Div.	J	T					
66. KO	A	Int./Div.	J	T					
67. LIDAX	A	Int./Div.	M	T					
68. LO	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 8 of 14

Name of Person Reporting	Date of Report
Byron, Paul G.	02/06/2014

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)
69. LPEFX	A	Int./Div.	J	T					
70. LYB	A	Int./Div.	J	T					
71. MBB	A	Int./Div.	J	T					
72. MCD	A	Int./Div.	J	T					
73. MCGIX	A	Int./Div.	J	T					
74. MCHP	A	Int./Div.	J	T					
75. MERFX	A	Int./Div.	J	T					
76. MET	A	Int./Div.	J	T					
77. MMM	A	Int./Div.	J	T					
78. MO	A	Int./Div.	J	T					
79. MRK	A	Int./Div.	J	T					
80. MSFT	A	Int./Div.	J	T					
81. MWTRX	A	Int./Div.	K	T					
82. NAV	A	Int./Div.	J	T					
83. NEE	A	Int./Div.	J	T					
84. NKE	A	Int./Div.	J	T					
85. NOC	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 9 of 14

Name of Person Reporting	Date of Report
Byron, Paul G.	02/06/2014

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)
86. NRBAX	A	Int./Div.	J	T					
87. OKE	A	Int./Div.	J	T					
88. PAUAX	A	Int./Div.	J	T					
89. PCY	A	Int./Div.	J	T					
90. PEP	A	Int./Div.	J	T					
91. PFE	A	Int./Div.	J	T					
92. PFF	A	Int./Div.	K	T					
93. PG	A	Int./Div.	J	T					
94. PGX	A	Int./Div.	K	T					
95. PHB	A	Int./Div.	K	T					
96. PII	A	Int./Div.	J	T					
97. PIOXX	A	Int./Div.	J	T					
98. PM	A	Int./Div.	J	T					
99. PPG	A	Int./Div.	J	T					
100. PX	A	Int./Div.	J	T					
101. QCOM	A	Int./Div.	J	T					
102. ROK	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 10 of 14	Name of Person Reporting Byron, Paul G.	Date of Report 02/06/2014

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)
103. RTN	A	Int./Div.	J	T					
104. SDRL	A	Int./Div.	J	T					
105. SDY	A	Int./Div.	K	T					
106. SE	A	Int./Div.	J	T					
107. SLB	A	Int./Div.	J	T					
108. SPLS	A	Int./Div.	J	T					
109. SSMVX	A	Int./Div.	J	T					
110. T	A	Int./Div.	J	T					
111. TGT	A	Int./Div.	J	T					
112. TPINX	A	Int./Div.	J	T					
113. TRGP	A	Int./Div.	J	T					
114. TROW	A	Int./Div.	J	T					
115. TRV	A	Int./Div.	J	T					
116. TUP	A	Int./Div.	J	T					
117. TWX	A	Int./Div.	J	T					
118. TXN	A	Int./Div.	J	T					
119. UGI	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 11 of 14

Name of Person Reporting	Date of Report
Byron, Paul G.	02/06/2014

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)
120. UNP	A	Int./Div.	J	T					
121. UPS	A	Int./Div.	J	T					
122. USB	A	Int./Div.	J	T					
123. UTX	A	Int./Div.	J	T					
124. VCIT	A	Int./Div.	K	T					
125. VZ	A	Int./Div.	J	T					
126. WAG	A	Int./Div.	J	T					
127. WBMRX	A	Int./Div.	J	T					
128. WFC	A	Int./Div.	J	T					
129. WLP	A	Int./Div.	J	T					
130. WM	A	Int./Div.	J	T					
131. WMT	A	Int./Div.	J	T					
132. WYNN	A	Int./Div.	J	T					
133. XOM	A	Int./Div.	J	T					
134. AIG Single Premium Immediate Annuity		None	L	T					
135. AI Life Single Premium Immediate Annuity		None	L	T					
136. Allstate Single Premium Immediate Annuity		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
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 12 of 14

Name of Person Reporting	Date of Report
Byron, Paul G.	02/06/2014

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)
137. Liberty Life Single Premium Immediate Annuity		None	L	T					
138. American General Single Premium Immediate Annuity		None	L	T					
139. Genworth Single Premium Immediate Annuity		None	N	T					
140. MetLife Single Premium Immediate Annuity		None	L	T					
141. Hartford Single Premium Immediate Annuity		None	K	T					
142. Allstate Single Premium Immediate Annuity		None	K	T					
143. Aviva Life Single Premium Immediate Annuity		None	K	T					
144. Mass Mutual Single Premium Immediate Annuity		None	N	T					
145. American General Single Premium Immediate Annuity		None	M	T					
146. American General Single Premium Immediate Annuity		None	M	T					
147. Transamerican Single Premium Immediate Annuity		None	K	T					
148. American General Single Premium Immediate Annuity		None	K	T					
149. Pacific Life Single Premium Immediate Annuity		None	M	T					
150. Genworth Single Premium Immediate Annuity		None	L	T					

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

Name of Person Reporting	Date of Report
Byron, Paul G.	02/06/2014

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

FINANCIAL DISCLOSURE REPORT Page 14 of 14	Name of Person Reporting Byron, Paul G.	Date of Report 02/06/2014

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/ **Paul G. Byron**

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		994	818	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		896	705	Notes payable to relatives			
Unlisted securities – see schedule	1	881	989	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned – see schedule	1	550	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		673	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		14	876				
Florida College Prepaid Tuition		14	400				
				Total liabilities			0
				Net Worth	6	025	788
Total Assets	6	025	788	Total liabilities and net worth	6	025	788
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	1	000	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	
3M Co. stock	4,778
ABA International All Cap Equity Fund	52,278
ABA Large Cap Equity Fund	69,122
ABA Stable Asset Return Fund	28,290
Accenture PLC stock	1,838
Ace Ltd. stock	2,135
AFLAC Inc. stock	2,879
ALPS/Red Rocks Listed Private Equity FundCuria	3,968
Altria Group Inc. stock	2,947
American Electric Power Co. stock	1,358
American Tower Corp. stock	1,727
Amerprise Financial Inc. stock	3,371
Analog Devices Inc. stock	2,025
Apple, Inc. stock	2,863
AQR Managed Futures Strategy Fund	4,804
Arthur J. Gallagher & Co. stock	1,477
Artisan Partner Asset Management Inc. stock	3,492
ASTON/Montag & Caldwell Growth Fund	4,916
ASTON/River Road Long-Short Fund	7,199
AT&T Inc. stock	4,879
Automatic Data Processing, Inc. stock	5,398
AvalonBay Communities Inc. stock	1,922
Avenue Credit Strategies Fund	4,271
Avery Dennison Corp. stock	3,648
Baxter International Inc. stock	2,089
BB&T Corp. stock	2,133
BHP Billiton plc (ADR)	516
Blackrock Global Long/Short Credit Fund	5,287
Boeing Co. stock	3,319
Bristol Myers Squibb Co. stock	2,673
Caterpillar Inc. stock	1,100
CBOE Holdings Inc.	1,614
Chevron Corp. stock	3,995
Coca Cola Co. stock	1,935
Comcast Corp. stock	3,274
ConocoPhillips stock	1,568
Copa Holdings, S.A. stock	3,333
Cullen High Dividend Equity Fund Retail	4,978
Cullen International High Dividend Fund	2,207
Darden Restaurants Inc. stock	2,705
Dover Corp. stock	2,559
Dreihaus Select Credit Fund	2,705
DWS Floating Rate Plus Fund	4,781

E.I. DuPont de Nemours & Co. stock	2,102
Eaton Vance Global Macro Absolute Return Fund	5,668
Emerson Electric Co. stock	3,121
Exxon Mobil Corp. stock	5,144
Federated Prime Obligations Fund	1,261
GameStop Corp. stock	659
General Electric Co. stock	4,351
General Mills Inc. stock	4,574
Genuine Parts Co. stock	1,802
Grant Park Managed Futures Strategy Fund	4,220
Home Depot Inc. stock	5,249
Honda Motor Co. stock	1,054
ING Global Real Estate Fund	20,267
Intel Corp. stock	3,214
International Paper Co. stock	3,214
iShares Barclays CMBS Bond Fund	6,391
iShares Barclays Intermediate Credit Bond ETF	51,018
iShares Barclays MBS Bond ETF	6,607
iShares Core Total US Bond Market ETF	43,519
iShares Dow Jones Select Dividend ETF	5,886
iShares iBoxx $ High Yield Corporate Bond ETF	17,512
iShares US Preferred Stock ETF	17,573
ITC Holdings Corp. stock	3,034
James Overseas Fund	2,482
Johnson & Johnson Co. stock	5,018
JPMorgan Chase & Co. stock	2,055
KAR Auction Services Inc. stock	2,101
Kimberly Clark Corp. stock	2,105
Lord Abbett International Dividend Income Fund	102,845
Lorillard Inc. stock	2,529
LyondellBasell Industries NV stock	3,155
McDonalds Corp. stock	2,824
Merck & Co Inc. stock	1,676
Merger Fund	4,261
Metlife Inc. stock	1,535
Metropolitan West Total Return Bond Fund	16,252
Microchip Technology Inc. stock	2,147
Microsoft Corp. stock	4,601
Neuberger Berman Risk Balanced Commodity Strategy Fund	1,735
NextEra Energy Inc. stock	1,083
Nike stock	3,148
Northrop Grumman Corp. stock	2,748
Occidental Petroleum Corp. stock	4,078
ONEOK Inc. stock	756
Pepsioc Inc. stock	1,555
Pfizer Inc. stock	3,932
Philip Morris International Inc. stock	1,288

PIMCO 0-5 Year High Yield Corporate Bond ETF	23,864
PIMCO All Asset All Authority Fund	2,628
Pitney Bowes Inc. stock	3,508
Polaris Industries Inc. stock	1,634
PowerShares Emerging Markets Sovereign Debt ETF	6,660
PowerShares Fundamental High Yield Bond ETF	19,804
PowerShares Preferred Portfolio ETF	15,046
PPG Industries Inc. stock	1,288
Praxair Inc. stock	1,156
Procter & Gamble Co. stock	2,260
Qualcomm Inc. stock	1,445
Raytheon Co. stock	2,199
Rockwell Automation Inc. stock	1,132
Royal Dutch Shell plc (ADR)	923
Schlumberger Ltd. stock	2,149
Seadrill Ltd. stock	2,774
Six Flags Entertainment Corp. stock	712
SPDR Barclays Capital High Yield Bond ETF	5,018
SPDR S&P Dividend ETF	21,041
Spectra Energy Corp. stock	2,409
Staples Inc. stock	2,201
T. Rowe Price Group Inc. stock	3,558
Targa Resources Corp. stock	3,846
Target Corp. stock	1,213
Templeton Global Bond Fund	6,980
Texas Instruments Inc. stock	3,422
The Travelers Companies Inc. stock	1,562
Time Warner Inc. stock	5,797
Tupperware Brands Corp. stock	2,144
UGI Corp. stock	1,581
Union Pacific Group stock	5,731
United Technologies Corp. stock	1,829
UPS stock	4,723
US Bancorp stock	1,265
Vanguard Intermediate-Term Corporate Bond ETF	36,645
Verizon Communications stock	2,235
Vodafone Group (plc) ADR	911
Walgreen Co. stock	5,104
Wal-Mart Stores Inc. stock	1,960
Walt Disney Co. stock	1,652
Waste Management Inc. stock	2,220
Wellpoint Inc. stock	2,048
Wells Fargo & Co stock	3,194
Wells Fargo Advantage Small Cap Value Fund	2,220
Whitebox Tactical Opportunities Fund	3,619
Wynnn Resorts Ltd. stock	3,690
Total Listed Securities	$ 899,905

Unlisted Securities	
Penta Mezzanine Fund	$ 37,000
AIG Single Premium Immediate Annuity	62,086
AI Life Single Premium Immediate Annuity	85,956
Allstate Single Premium Immediate Annuity	65,229
Liberty Life Single Premium Immediate Annuity	71,186
American General Single Premium Immediate Annuity	53,501
Genworth Single Premium Immediate Annuity	380,715
MetLife Single Premium Immediate Annuity	64,645
Hartford Single Premium Immediate Annuity	20,794
Allstate Single Premium Immediate Annuity	46,379
Aviva Life Single Premium Immediate Annuity	40,909
Mass Mutual Single Premium Immediate Annuity	315,810
American General Single Premium Immediate Annuity	147,958
American General Single Premium Immediate Annuity	141,531
Transamerica Single Premium Immediate Annuity	23,193
American General Single Premium Immediate Annuity	17,423
Pacific Life Single Premium Immediate Annuity	216,244
Genworth Single Premium Immediate Annuity	91,430
Total Unlisted Securities	$1,881,989

Real Estate Owned	
Personal residence	$ 1,200,000
Secondary residence	350,000
Total Real Estate Owned	$ 1,550,000

AFFIDAVIT

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

February 6, 2014
(DATE)

(NAME)

(NOTARY)

OVERCHUCK & BYRON, P.A.
ATTORNEYS AT LAW

JOHN R. OVERCHUCK ▪ PAUL G. BYRON

OF COUNSEL:
JOHN K. OVERCHUCK, P.A.

March 25, 2014

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
437 Russell Senate 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

Dear Chairman Leahy and Ranking Member Grassley:

I have reviewed the questionnaire submitted to the Senate Judiciary committee on February 21, 2014, in connection with my nomination to the United States District Court for the Middle District of Florida. Since the submission of my questionnaire, I have located additional information responsive to certain questions that I had inadvertently overlooked in my previous search of my records and the Internet. I sincerely apologize for the inconvenience caused by the submission of this additional information. 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. 6 and Q. 9

I served on the board of directors of the Florida Justice Association for approximately three months in 2010. The address of the Florida Justice Association is 218 South Monroe Street, Tallahassee, Florida 32301.

Q. 12(d)

I have located two additional video presentations, which are available on my firm's website and which may be accessed at the following hyperlinks:

> September 23, 2010: Video on "Toxic Tort Claims." Available at http://www.youtube.com/watch?v=lFisMqFhO1w&feature=player_detailpage#t=3

20 NORTH ORANGE AVE SUITE 810 ORLANDO, FL 32801
P: 407.872.6222 F: 407.872.6822 WWW.OVERCHUCKBYRON.COM

September 23, 2010: Video on "Importance of Contacting a Personal Injury Attorney when Having an Accident." Available at http://www.youtube.com/watch?v=xXNF46aqU9Y&feature=player_detailpage&list=UUr7xzq7eYnBJF3Igv2W6cpg#t=2

I also have discovered three additional speaking events:

November 29, 2007: Speaker, "Resources You Need to Use – Technology, Office Equipment to Create the Product, Telephony." I gave a lecture to attorneys on the use of technology in the courtroom. The CLE course was held in Tampa, Florida. I have no notes, transcript, or recording. The sponsor of the event was the Florida Justice Association, 218 South Monroe Street, Tallahassee, Florida 32301.

October 2007: Speaker, "International Criminal Tribunal for the Former Yugoslavia," Eighth Annual Conference of the Florida Trial Court Staff Attorneys Association. I gave a lecture on the mission of the ICTY and my work at the Tribunal. The conference was held in Orlando, Florida. I have no notes, transcripts, or recording. The sponsor of the event was the Florida Trial Court Staff Attorneys Association, which does not have a physical address.

October 7, 2003: Panelist, Lou Frey Institute of Politics and Government at the University of Central Florida Fall 2003 Symposium on "American Foreign Policy in Perspective." This event was held in Orlando, Florida. Video Recording available at http://www.youtube.com/watch?v=Lm8HDd-Hw6E.

Q. 12(e)

I have located the following additional interviews given to newspapers, magazines or other publications:

May 1, 2012: Interview with WFTV 9, "Parking Lot Owner Who Took Customer's Corvette on Joyride Appears to have Abandoned Business." Video recording available at http://www.wftv.com/news/parking-lot-owner-broke-law-when-driving-customers/nNN2p/.

Editorial Review of *Lawyers Crossing Lines Explores Outrageous Conduct by Legal Profession*, March 22, 2010. Copy supplied.

Timothy Aeppel, *Group Seeks Probe Into Effectiveness of Firestone Recall*, The Wall Street Journal Online, June 22, 2006. Copy supplied.

Graham Brink, *Front-Runner for U.S. Attorney in Tampa Left Out,* St. Petersburg Times Online, June 27, 2001. Copy supplied.

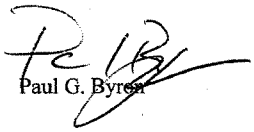
In 1996 or 1997, I was interviewed by The Discovery Channel regarding my prosecution of Forrest Jimmy Utter for arson, resulting in the death of two firefighters. The Discovery Channel was filming a program regarding forensic investigations, and I provided background on the case. The United States Attorney authorized this interview, which was subsequently aired on television. I have no notes, transcript, or recording of my interview.

Michael Higgins, *Chronic Cases of Medical Fraud No Weapons Required for these Crimes,* Osceola News Gazette, undated but likely published in 1996. Copy supplied.

Michael Higgins, *Area Cases Add to Billion-Dollar Fraud Tab*, Osceola News Gazette, undated but likely published in 1996. Copy supplied.

Please accept my apologies for this oversight. I appreciate the Committee's consideration of my nomination and regret that I overlooked these materials.

Yours very truly,



Paul G. Byron

FlaLawOnline

University of Florida Levin College of Law

Lawyers Crossing Lines explores outrageous conduct by legal profession

Published: March 22nd, 2010

Category: Feature (http://www.law.ufl.edu/flalaw/category/feature/)

What were they thinking? Shouldn't they have known better? As legal practitioners, didn't they understand their fundamental ethical obligations? *Lawyers Crossing Lines. Ten Stories.* (Carolina Academic Press, 2nd edition) is a new book that examines the bizarre conduct of members of the legal profession that will have readers shaking their heads in disbelief. Primarily designed as a supplemental text for U.S. law students enrolled in professional respons bility courses, the book can also be used as the foundation for advanced seminars in ethics. A teacher's manual is also available.

Lawyers Crossing Lines is a collection of true stories about lawyers from all segments of the legal profession. The authors, Michael L. Seigel, University of Florida Research Foundation Professor of Law at the University of Florida Levin College of Law and former first assistant U.S. Attorney for the Middle District of Florida, and James L. Kelley, who prior to his death, practiced law for more than 30 years and taught professional responsibility at Georgetown University Law Center, chronicle those who have transgressed ethical boundaries in a big way.

The book's 10 chapters reveal in rich detail some of America's most infamous trials and legal personalities. Chapter titles include, "The Ironic Road to Club Fed," "The Legal Doctor Kevorkian," "The Case of Casanova and His Clients," and "Vegas Judge Gone Wild." Comments and questions designed to explore the issues in greater depth follow each tale.

Here's what the legal profession has to say about *Lawyers Crossing Lines.*

"Students learn more from real life than they will ever learn from just reading cases and codes," said Laurie L. Levenson, David W. Burcham Chair of Ethical Advocacy and professor of law, Loyola Law School. "This book provides an opportunity for students to learn the critical lessons of ethical practice by carefully examining situations where lawyers crossed the line. These are lessons that will stick with them forever."

"I use *Lawyers Crossing the Lines*, in a required first-year course on professionalism," said Patrick E. Longan, William Augustus Bootle Chair in Ethics and Professionalism, Mercer University Walter F. George School of Law. "The stories make it poss ble for the students to see problems of ethics and professionalism from the perspectives of real lawyers dealing with real situations. They learn more from discussions about the stories than they could possibly learn from just studying abstract principles."

"The stories contained in this work are compelling, instructive and witty," said Paul Byron, partner, Overchuck, Byron, Overchuck P.A., Winter Park, Fla. "I had the pleasure of working with Professor Seigel when he was second in command at the U.S. attorney's office. M ke leads by example, and his message was clear – always take the high road and never short cut ethics. This is a lesson for lawyers, young and not-so-young, to live by."

To order *Lawyers Crossing Lines. Ten Stories.* 2nd Edition, visit www.cap-press.com/isbn/9781594606847 (http://www.cap-press.com/isbn/9781594606847).

Tagged as: Book (http://www.law.ufl.edu/flalaw/tag/book/), ethics (http://www.law.ufl.edu/flalaw/tag/ethics/), James L. Kelley (http://www.law.ufl.edu/flalaw/tag/james-l-kelley/), Michael Seigel (http://www.law.ufl.edu/flalaw/tag/michael-seigel/), Volume XIV Issue 10 (http://www.law.ufl.edu/flalaw/tag/volume-xiv-issue-10/)

← UF Law seminar to focus on professionalism, feature local judges (http://www.law.ufl.edu/flalaw/2010/03/uf-law-seminar-to-focus-on-professionalism-feature-local-judges/)

Environmental Moot Court team reaches quarterfinals (http://www.law.ufl.edu/flalaw/2010/03/environmental-moot-court-team-reaches-quarterfinals/) →

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Wolf Lecture today examines property rights and climate change (http://www.law.ufl.edu/flalaw/2014/03/wolf-lecture-today-examines-

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June 22, 2006

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Group Seeks Probe Into Effectiveness Of Firestone Recall

By TIMOTHY AEPPEL
June 22, 2006; Page D3

A research group that often works with plaintiffs' attorneys has asked federal highway-safety officials to study the effectiveness of the big Firestone tire recalls of 2000 and 2001, saying some tires weren't replaced and continue to be linked to rollover crashes on Ford Explorers.

In a filing to the National Highway Traffic Safety Administration, Safety Research & Strategies Inc. cited four cases in which spare tires not captured during the recalls were put into service and later failed, allegedly causing crashes. The result was one death and three crippling injuries.

The group wants NHTSA to initiate a "recall query," an investigation into whether a past recall was adequate. If the agency determines the efforts weren't sufficient, it could order further steps by the companies, such as additional advertisements.

"We don't have any way of estimating how many of these tires are still out there," says Sean Kane, president of Safety Research & Strategies, a research group that specializes in motor-vehicle safety issues.

An NHTSA spokesman said the agency would examine the group's request but wouldn't comment

otherwise on the filing.

As of late last year, federal authorities had linked 271 fatalities to accidents involving Firestone tires, most involving Ford vehicles.

Bridgestone Corp.'s North American unit, which produces the Firestone brand, and **Ford Motor** Co. broke off commercial relations in 2001 in a dispute over which company was to blame for a rash of deadly rollover accidents involving Explorer sport-utility vehicles equipped with certain Firestone tires. Bridgestone, based in Japan, announced a recall in August 2000, but Ford later demanded a much larger replacement program in 2001. When Bridgestone refused, Ford recalled the tires on its own. Later in 2001, Bridgestone announced a more limited replacement program of its own.

The two companies settled their dispute last year, with Bridgestone agreeing to pay Ford $240 million.

Christine Karbowiak, a spokeswoman at Bridgestone's U.S. headquarters in Nashville, Tenn., says the tire maker did all that it could to assure that as many recalled tires as possible were taken out of circulation, saying it replaced more than 6.3 million of the 6.5 million tires it originally estimated were in use in August 2000. Ms. Karbowiak says this doesn't mean they missed 200,000 tires, since the company's original estimate of the number of tires in use might have been too high.

Bridgestone has settled more than 2,300 personal-injury lawsuits arising from the recalled tires. The company won't say how many other cases are outstanding.

Jennifer Moore, a Ford spokeswoman, says, "Owners were notified by multiple letter, media advertising, and extensive media coverage," adding that "NHTSA has investigated the safety of the Ford Explorer and found no additional action was warranted."

Paul Byron, an Orlando, Fla., lawyer, represents Michael Enriquez, a 28-year-old former security guard who was left a quadriplegic last year after a recalled tire on his 1993 Ford Explorer came apart and the vehicle crashed. The driver of another car was killed in the accident. Mr. Enriquez is suing Ford and Firestone in county court in Sanford, Fla.

Mr. Byron says his client was the third owner of the Explorer and never thought to check whether any of the tires on the vehicle were subject to a past recall.

Write to Timothy Aeppel at timothy.aeppel@wsj.com[1]

URL for this article:
http://online.wsj.com/article/SB115093421290286976.html

Hyperlinks in this Article:
(1) mailto:timothy.aeppel@wsj.com

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St. Petersburg Times ONLINE TAMPA BAY

'Front-runner' for U.S. attorney in Tampa left out

By GRAHAM BRINK

© St. Petersburg Times, published June 27, 2001

The list of finalists to become U.S. attorney in Central Florida is as notable for one name that didn't make it as it is for three names that did.

The list of finalists to become U.S. attorney in Central Florida is as notable for one name that didn't make it as it is for three names that did.

The selection committee chose Edward Nucci of Miami, Paul Byron of Orlando and Paul Perez of Jacksonville from a list of nine who applied to be head federal prosecutor for the Middle District of Florida.

Tampa lawyer John "Jack" Rudy was considered one of the favorites, given a stint as interim Hillsborough County state attorney last fall and a glowing endorsement from Gov. Jeb Bush.

Rudy said Tuesday he was disappointed not to be among the three finalists but thought the selection committee gave everyone a fair shake.

Despite his early status as the possible front-runner, recent talk in local legal circles was that the committee may be looking for a younger person, someone who could stick around for several years and possibly move up in the Justice Department.

At 62, this would have likely been the last stop in Rudy's federal career.

Rudy said he will continue to practice law at his Tampa firm. His immediate plans call for some fishing. "Sure, I'd like to have gotten the job," Rudy said. "They made up their minds after a fair process, and I think they chose three capable candidates."

The successful candidate will take over from interim U.S. Attorney Mac Cauley, who has run the office since Donna Bucella resigned in May.

Bucella was appointed by President Bill Clinton. The nation's 93 U.S. attorneys serve at the pleasure of the president. Many times, only a handful keep their jobs when a new party takes over the White House.

The U.S. attorney in Florida's 35-county Middle District, which stretches from Jacksonville through Orlando and down to Fort Myers, oversees a 220-employee operation with a $17-million budget. The job is based in Tampa and pays $125,700 annually.

President George W. Bush will make the final selection. The U.S. Senate must confirm the president's choice.

Byron graduated from law school at Louisiana State University and then joined the Army, working as a public defender and prosecutor. During his four years, he also served as a paratrooper and gained the rank of captain. He then went into commercial construction law before joining the U.S. Attorney's Office in 1991.

Since then, Byron, 41, has worked everything from medical malpractice to white collar crime to drugs. His cases are often covered by the Orlando media, and he's been interviewed on various national TV shows, including NBC's Dateline. He spends most of his time prosecuting money laundering and organized crime cases.

Byron acknowledged earlier this year that he might not have the political connections of some of the other candidates.

"I've spent most of my life working and very little time networking," he said. "I'm always looking for new challenges."

Perez, 46, a Cuban-American who settled in Florida when he was 5 years old, works as a federal criminal defense attorney.

Perez graduated with a law degree from George Washington University and worked from 1988 to 1992 as an assistant U.S. attorney in the Jacksonville office.

Perez thinks his experience on both sides of the courtroom aisle puts him in a good position to assess what's being done well and what needs to change.

"My strength is in my qualifications," Perez said in March. "I certainly don't have the political connections."

Nucci, 48, is criminal division chief for the U.S. Attorney's Office in Miami. He has worked as a federal prosecutor in Orlando, Tampa and Pittsburgh. In 1995, Nucci was tapped to be part of the independent prosecution team to investigate the finances of former Commerce Secretary Ron Brown.

In Miami, Nucci was heavily involved in Operation Greenback, a money-laundering initiative in South Florida and has made the news for his successful prosecutions of high-level drug dealers.

Nucci is known for his attention to detail, said State Rep. Dan Gelber, a former colleague of Nucci's in the U.S. Attorney's Office.

"He's got a great work ethic and is exceedingly conscientious," Gelber said.

- Times news researcher John Martin contributed to this report. Contact Graham Brink at (813) 226-3365.

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Chronic cases of medical fraud No weapons required for these crimes

By Michael S. Higgins News-Gazette Staff Writer

Robbers holding up convenience stores and sticking guns in the faces of motel clerks may garner more publicity, but individuals who fraudulently bill the federal government for Medicare and Medicaid claims can steal a lot more money than your average stick-up person. These thieves don't need to wear ski masks, risk getting shot or, in many of the cases, even take a chance on losing their license to practice medicine, experts said.

False billings and sham medical clinics have long been fixtures in the Miami area, doctors and prosecutors say, but you don't have to drive south on Florida's Turnpike to see this kind of larceny.

"There is a good deal of health-care fraud going on in the Orlando area," said local Assistant U.S. Attorney Greg Miller during a recent interview. "We know that."

Medical fraud in Osceola

During the past five years, Osceola County has experienced its share of high-profile, costly, medical fraud.

The Kissimmee region has seen a medical supplies salesman/business owner go to federal prison for setting up a multistate system that earned him and nursing homes that signed up with him millions in improper Medicare refunds.

A psychiatric hospital formerly located off Orange Blossom Trail claimed to have performed dozens of startling therapeutic turnarounds with Alzheimer's patients and other difficult cases; many patients were over the age of 80. But when officials blew the whistle on the hospital, Charter Behavioral Health System Orlando agreed to pay the United States $4.75 million in August 1998.

In addition, a group of clinics primarily located in Osceola County billed Disney, Albertson's and a major airline more than $6 million by churning out sonograms, ultrasounds and electrocardiograms quickly. They used a method described by one partner after he was indicted by a federal grand jury as doing the easy tests "and making up the rest."

Another medical fraud case reflected Osceola's changing population when 14 individuals were indicted in 1998 for the "Disney" scam, a group of storefront medical clinics that targeted Hispanics, many new to the area. Six listed Kissimmee as their home in a press release provided on April 29, 1998, by the Kissimmee Police Department. In addition to local police, the Florida Statewide Prosecutors' office and the state Division of Insurance Fraud were involved.

Around the region, the U.S. Attorney's office in Tampa concluded an investigation in Central Florida earlier this year it named the Psychiatric Hospitals Project. This probe used employees and counselors to expose a pattern of bribes and kickbacks in psychiatric hospitals. As a result, two patient brokers were convicted, with combined restitution set at $3 million. One broker was said to have pocketed up to $195,000 a month for producing patients for the hospitals.

Proving few hospitals have avoided problems, a Florida Hospital director of radiology was given five years in prison for scheming to take $13.3 million through the sale of used medical equipment at the chain's Altamonte Springs hospital in 1997.

In Orlando, federal prosecutor Thomas Turner earned a distinguished service award recently. Turner was honored for working on the $450 million Heritage Life Insurance case prosecuted in Central Florida. In this investigation, 11 individuals ended up pleading guilty and four others were convicted after trials.

Suspect cooperates with investigators

Kissimmee resident Ben O. Carroll received a five-year prison term for his stewardship of three local companies, Bulldog Medical, Rocket Marine and MLG Geriatric Health Services. Presently at a federal correctional facility in Florida, Carroll received a reduced sentence after he cooperated with federal investigators.

U.S. District Court documents said that Carroll made as much as $4.5 million in Kansas on code falsifying

and about 10 times as much in Florida. Orlando-based federal prosecutor Paul Byron said Carroll made a good livelihood before by selling legitimate medical products.

"If he hadn't been so greedy, he wouldn't have been caught," Turner said.

After his arrest in 1995, federal lawmen say Carroll helped them discover just how medical fraud is wide open for those with access.

"For all the bad things he did, it's so good to have an insider," said Byron.

That medical fraud is turning up all around Kissimmee shouldn't be a surprise. After all, it's a problem everywhere else in the country.

The U.S. Justice Department reported recovering $1.5 billion through civil and criminal agreements with health-care abusers during its last fiscal year. Medical payments are an industry in which an estimated 7 to 10 percent of $176 billion nationwide is lost to fraud, waste and mistakes.

Fighting back

The local scorecard also includes some individuals who fought what they saw as medical fraud.

Francine Mettevelis is a Kissimmee mother of seven who formerly worked as a deputy in Cook County, Ill., and acted as one of two designated whistleblowers under the U.S. False Claims Act in the Charter case.

Mettevelis told of false report sheets and other profitable abuses after she was fired by Charter Hospital Kissimmee six years ago. Thanks to witnesses Mettevelis and nurse manager Rhea Rowan helped identify, Charter Hospital's parent company settled a costly federal action, prosecutors said.

The U.S. Health and Human Services Inspector General said after many prosecutions, the nation has "turned a corner" on medical fraud.

Steve Cole, the Central Florida District's spokesman for the U.S. Attorney, agreed, saying, "The word is going out to the public about medical fraud."

A settlement finalized just several weeks ago saw HCA - The Healthcare Co. agreeing to pay a massive $840 million in fines and penalties for unlawful billing. HCA was known before as Columbia - HCA. Osceola Regional Medical Center is one of the chain's hospitals.

Prison sentence not always likely

While former State Senator Alberto Guzman, R-Hialeah, received a prison sentence of five years for his role in $15 million worth of medical fraud, prosecutors say many other false claims operations move to another state when the questioning of bills paid starts here.

"There's mountains of paperwork," 12-year Assistant U.S. Attorney Paul Byron learned after he was transferred from drug investigations into medical fraud.

Trust built into system

A Florida statewide grand jury warned of the lack of periodical controls in Medicare designed to catch fraud. As federal prosecutor Miller said, the medical system is built on trust.

"There's a presumption of honesty," Miller said from his office in the federal building in Orlando. "And there has to be or the system would collapse. The bills wouldn't be paid for two years.

Doctors are seen in one state, bills often paid in another.

Not easy to stop

"The evidence convinced us that fraud against the Medicare and Medicaid systems is easily accomplished," the special grand jury appointed by the late Gov. Lawton Chiles reported four years ago.

From his office on South Orange Blossom Trail, general practitioner Dr. Oscar Merida told the Osceola News-Gazette that he thinks cheating the government is a growing industry in Central Florida. Over the years, he said he has seen it as part of "the system" in the Miami area.

Merida, a veteran of 20 years as a physician since being educated in Spain, said he was personally victimized when his father-in-law was brought to Charter Hospital in Kissimmee from a nursing home near St. Cloud a few years ago.

Roberto Colina, 76 then, suffered from Alzheimer's. Charter Hospital officials noted much improvement during Colina's 13 days at Charter.

He couldn't hold a stick of ice cream, Merida said, but did generate $14,000 of therapy and related billings for Charter, according to federal records. Merida said his father-in-law couldn't communicate to therapists, who only spoke English, not Colina's Spanish.

"There was absolutely no therapy," said Merida. "He was unable to understand basic commands."

No criminal prosecution followed, however.

"Proving criminal intent is much more difficult," said Miller.

Close

Area cases add to billion-dollar fraud tab

Officials say controls lacking to prevent fraud
By Michael S. Higgins News-Gazette Staff Writer

An atmosphere described by a statewide grand jury as being "provider friendly" without enough controls leads to dishonest people finding out how easy it is to become a certified Medicare provider.

It?s like a license to print money. That?s what experts told the Osceola News-Gazette in interviews. The U.S. Justice Department estimates more than $10 billion is lost annually to medical fraud nationwide.

Osceola County has seen its share of kickbacks, faked accidents, forged documents, billing by phony medical providers or for non-existent patients and asking for larger reimbursements by falsely labeling tests.

Such cases aren?t easy to prove, prosecutors say. And, there are other challenges.

Assistant U.S. Attorney Greg Miller said staff cutbacks at the Orlando office of the U.S. Department of Health and Human Services have hampered health-care investigations.

Investigations are paperwork intensive and can take up to four years, officials told the Osceola News-Gazette.

However, a friend of the fraud business has also become its foe. The computer systems that allowed medical fraud to become a billion-dollar business also permit insurance companies and federal investigators to notice patterns of abuse.

Sophisticated auditing of claims, called data mining, can discover fraudulent operations. Providers, such as Blue Cross/Blue Shield, notice specific procedural codes being used much more than expected.

Criminal prosecution and determining intent can be difficult, however, when claims are sent electronically with no signatures even made, Orlando-based prosecutors said.

Adult diapers worth millions

Kissimmee resident Ben Carroll knew from selling medical products and having Medicare provider status since 1993 that nursing homes aren?t reimbursed for items such as bedpans, latex gloves and the common adult diaper, prosecutors said.

Carroll knew the more costly incontinence kits were reimbursed. Sensing large profits, Carroll convinced nursing home operators in different states to accept such a change in paperwork, writing incontinence kits when they were using diapers.

This ruse allowed 50-cent diapers to net Carroll?s companies as much as $50 million in reimbursements nationally, said prosecutors.

The U.S. Attorney?s Office documented that Carroll received unjustified claim checks from July 1993 until September 1994. Prosecutors also found that Carroll gave nursing home owners and operators consulting deals for participating in his plan.

Nursing-home patients rarely double check cost invoices. Carroll was betting that it wouldn?t be discovered that Item G7542 was only an adult diaper.

Some of the nursing home operators provided evidence against Carroll, who was eventually sentenced to a low-security federal correctional institution.

He pleaded to one count of mail fraud in Kansas and was able to avoid going to trial in Florida. Cooperating with South Carolina investigators earned him a lesser sentence, officials said.

A case of excessive greed, commented Assistant U.S. Attorney Paul Byron. He said Carroll lived well when

he actually listed the diapers he sold as diapers.

"He made good money doing it," said Byron.

Charter sent elderly to psychology programs

The parent organization of the former 56-bed Charter Hospital-Orlando South in Kissimmee agreed to return $4.7 million to the government in a civil case concluded in August 1998.

According to thousands of pages of federal documents housed in the Orlando federal building, Charter would take elderly patients from nursing homes or assisted-living facilities, report intensive therapy, and then send the elderly back to their nursing homes just before the home?s federal payments would be cut off.

Attorneys for Charter argued through the lengthy civil process that therapy can help the patients it served, at least 15 percent of whom were over the age of 85. Charter officials submitted an estimated 75,000 pages worth of evidence before deciding to settle.

Dr. Peter Rabins, the director of geriatrics and neuropsychiatry at the Johns Hopkins University School of Medicine, was slated to be a Charter witness. Rabins said patients battling Alzheimer?s disease can improve with properly administered, in-patient psychiatric programs like Charter Hospital?s.

Working against Charter in the Kissimmee case, however, were depositions given by staff members, an outside peer-review that examined 600 or so Charter admissions of elderly psychological patients, and family members who said they saw relatives harmed when they were transferred.

Mary Cubelo and husband, Antonio, said Antonio?s mother deteriorated after she was sent to Charter in June 1996. The couple said she wasn?t bathed enough there, even though she was incontinent, and according to Antonio, ended up "with legs like basketballs." Rosa Cubelo was transferred back to the nursing home she came from when the home?s Medicare payments were about to expire.

Stephen Glazier, the hospital?s on-site administrator, told federal authorities that the patients would be sent home when the federal payments were about to expire.

Federal legal documents concerning Cubelo noted another problem, one shared by Dr. Oscar Merida as he observed his 76-year-old father-in-law at Charter Hospital. Neither Cubelo nor Roberto Colina, Merida?s family member, could converse in English and the Cubelos and Merida never encountered therapists at the hospital who were fluent in Spanish.

Yet, Charter patient charts found both patients dramatically improving while hospitalized in Kissimmee.

"How could they give therapy?" Merida told the Osceola News-Gazette from his family practice located on South Orange Blossom Trail. "He was unable to understand basic commands."

Rosa Cubelo died of embolisms seven months after her discharge from Charter.

Federal documents refer to elderly Charter patients described as either suffering from dementia or violent outbursts when they came in, yet improving greatly while at Charter. Insiders provided evidence explaining why this occurred, prosecutors say.

"In my view, Charter Hospital was using these patients as a money-making machine, instead of treating them in a psychiatric and therapeutic milieu," said Michael Kellogg, Charter?s former director of active therapy.

Former Nursing Manager Rhea Rowan said patient write-ups had to follow directives from administrators. She testified that administrator Glazier told her his hands were "tied" regarding the patient census; she said she saw many "incompetent" patients signing themselves in voluntarily. Abuse of Florida?s Baker Act, the process of committing patients viewed as being a danger to themselves or others, was also common at Charter, the U.S. Attorney?s Office claimed.

Rowan said she was told by a top administrative head that she had to write that each patient participated in group therapy sessions three times a day "so payment would be received." Kissimmee resident Francine Mettevelis, a health technician at Charter from 1990 until 1994, testified about "routinely" signing log sheets when she wasn?t present at the sessions described.

"If a person is brought in as suicidal and they are smiling, don?t write down that they are smiling because then the insurance company will not pay for a suicidal, smiling patient," recalled Rowan in her testimony.

A government review by peer physicians found 59 percent of the geriatric admissions examined in the Charter case were not medically necessary and 38 percent revealed unnecessarily long stays at the facility.

Hired by the prosecution, Dr. Donna Cohen, the University of South Florida?s chairman of Aging and Mental Health Studies, said the patients had disorders that couldn?t be improved by the Kissimmee hospital?s treatment. Noting that Charter had no goals plan, she joined others in finding profit as the overriding motive.

After losing Medicare and Medicaid certification, Charter Hospital Kissimmee ended up closing its doors last year. Osceola Mental Health was given county funds to occupy the site on Park Place.

The Disney scam

The plan worked out by Luis Portas, 53; his wife, Miriam Portas, 55, both of Kissimmee; Erick Bernal, 26, of Kissimmee; Domingo Bejerano, 51, of Miami; Horacio Valdes, 27, of Miami; and about seven others arrested during a May 7, 1998, raid on phony Osceola and Orange counties medical offices was simple.

Bring in many fellow Hispanics, pay some for ongoing visits to clinics with names like Optimum Diagnostics, Best Medical Clinic and Kissimmee?s A+ Diagnostic Center, and turn out a lot of fake medical tests.

After all, the plan has long been a moneymaker in South Florida.

As a fellow partner testified in Bejerano?s trial on fraud and racketeering charges last year: "So what he would do is take the easy tests and once he already had information from the patient, he would go and make up the rest of the tests..."

Four patients would visit the medical offices, but insurance companies for Albertson?s, Disney and United Airlines, among others, would be billed for 10 or more patients.

Thomas Sadaka of the statewide prosecutor?s office said "maxing out" employees at Disney World - which is self-insured - led to the ring being broken up.

"You hit Disney?s insurance for money, you?re hitting Disney," said Sadak from his Orlando office.

Not helping was another employee who informed a boss at Disney, "We have some guys offering us money to go to the doctor," said Sadaka.

Bejerano?s clinic joined the others in "treating" as many as 160 Disney employees, nearly all from Latin America.

"They definitely targeted the Spanish community," said Sadaka.

He said another "red flag" was Kissimmee residents being billed by Miami clinics.

The local clinics were frequently located in strip malls. The clinics employed doctors, billing companies, technicians and runners. No physicians were indicted, said Sadaka, because it was harder to prove they knew what was going on was illegal.

False billings added up to around $6 million, about $2 million of which was Disney?s share. Time was money and the tests were performed quickly, court records show. An estimate of between 50 to 90 percent of the tests were fabricated, court papers said.

Electrocardiograms, sonograms, echograms and nerve tests were reused for many different patients? results.

"Every one of these people was medically jeopardized," said Sadaka of employees who may not have been aware the extra tests weren?t medically necessary.

Until the group was raided by the Kissimmee police and the Florida Department of Insurance Fraud investigators, making money was as easy as Bernal was quoted as saying in court papers.

"Send me a prescription and I make the tests up."

Close

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Darrin Phillip Gayles

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

   United States District Judge for the Southern District of Florida

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

   Office: Dade County Courthouse
   73 West Flagler Street, Suite 1304
   Miami, Florida 33130

   Residence: Miami Shores, Florida

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

   1966; Peoria, 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, The George Washington University Law School; J.D., 1993

   1985 – 1990, Howard University; B.A., 1990

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

2011 – present
Eleventh Judicial Circuit of Florida
73 West Flagler Street, Suite 1304
Miami, Florida 33130
Circuit Judge

2004 – 2011
Eleventh Judicial Circuit of Florida
1130 Washington Avenue, Suite 202
Miami Beach, Florida 33139
County Judge

1999 – 2004
United States Attorney's Office, Southern District of Florida
99 N.E. Fourth Street
Miami, Florida 33132
Assistant United States Attorney

1997 – 1999
United States Department of Justice, Immigration and Naturalization Service
155 South Miami Avenue
Miami, Florida 33130
Assistant District Counsel

1993 – 1997
Miami-Dade State Attorney's Office
1350 N.W. 12th Avenue
Miami, Florida 33136
Assistant State Attorney

July 1992 – May 1993
United States Department of Labor, Occupational Safety and Health Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Legal Intern

June – December 1991
United States Department of Labor, Directorate of Civil Rights
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Legal Intern

1990 – 1991
Woodward & Lothrup (The corporation was dissolved in 1995)
Washington, D.C. 20010
Salesman

Other Affiliations (uncompensated)

2006 – present
Spellman-Hoeveler American Inn of Court
Miami, Florida
Board of Directors

2010 – 2012
Peter London Global Dance Theater
212 N.E. 59th Terrace
Miami, Florida 33137
Chairman, Board of Directors

2008 – 2011
The George Washington University Law School Alumni Association
2000 H Street, N.W.
Washington, D.C. 20052
Board of Directors

2010 – 2011
Success for Kids, Inc. – South Florida (dissolved in 2011)
North Miami Beach, Florida
Advisory Board

2002 – 2004
BAME Development Corporation of South Florida, Inc.
245 N.W. Eighth Street
Miami, Florida 33136
Board of Directors

2001 – 2011
Greater Bethel African Methodist Episcopal Church
245 N.W. Eighth Street
Miami, Florida 33136
Board of Trustees

1997 – 2004
Howard University Alumni Association of South Florida
Miami, Florida
President (1997 – 2000)
Acting President (2000 – 2004)

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 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.

Professional:

Legacy 50: South Florida's Most Powerful Black Business Leaders of 2013, *Legacy Magazine* (Independent supplement to the *Miami Herald*) (2013)

Distinguished Alumni Award, Peoria High School (2010)

Making an Impact Award, The George Washington University Black Alumni Association (2008)

Outstanding Public Service Award, The National Black Justice Coalition (2008)

Mentor of the Year Award, St. Thomas University Black Law Students Association (2007)

"South Florida's Most Influential Black Professionals Under 40," *Success South Florida Magazine* (2006)

Dedicated Service Award, Big Brothers/Big Sisters of Greater Miami (1999)

Various plaques, certificates, and other forms of recognition from several schools and civic and charitable organizations in appreciation for mentoring, speaking, and other volunteer efforts

Academic:

Howard University Board of Trustees (elected student member, 1989 – 1990)

Howard University's Patricia Roberts Harris Public Affairs Program Fellow (1989 – 1990)

Howard University academic scholarship (1986 – 1990)

Howard University Speech Team (1989 Regional champion and national quarter-finalist)

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.

11th Judicial Circuit Professionalism Committee
Co-Chairman (2012 – present)
American Bar Association
Cuban American Bar Association
Dade County Bar Association
Miami Beach Bar Association
National Bar Association Judicial Council
National Black Prosecutors Association
Florida State Representative (2004)
Florida Bar President's Pro Bono Service Awards
Nominating Committee (2014)
Spellman-Hoeveler American Inn of Court
Board of Directors (2006 – present)
Wilkie D. Ferguson, Jr. 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.

Florida, 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.

Florida state courts

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.

100 Black Men of South Florida (2006 – present)
5000 Role Models of Excellence Project (2005 – present)
BAME Development Corporation of South Florida, Inc. (2002 – 2004)
Board of Directors

Big Brothers/Big Sisters of Greater Miami (1994 – 2009)
City of Hialeah, Florida, Canvassing Board (November 3, 2009)
George Washington University Law Alumni Association (1993 – present)
Board of Directors (2008 – 2011)
Greater Bethel African Methodist Episcopal Church (1994 – present)
Trustee (2001 – 2011)
Howard University Alumni Association of South Florida (1993 – present)
President (1997 – 2000)
Acting president (2000 – 2004)
Kappa Alpha Psi Fraternity, Inc. (2002 – present)
Miami-Dade Gay & Lesbian Chamber of Commerce (2006 – 2012)
Peter London Global Dance Theater (2010 – 2012)
Board of Directors Chairman
Spellman-Hoeveler American Inn of Court (2005 – present)
Board of Directors (2006 – present)
Success for Kids, Inc. – South Florida (2010 – 2011)
Advisory Board

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.

100 Black Men of South Florida and Kappa Alpha Psi Fraternity have no female members, although female members are not specifically prohibited. 100 Black Men of South Florida has an affiliated organization (National Coalition of 100 Black Women), which is also dedicated to community service and enhancing educational and economic opportunities for African Americans. 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.

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.

Black Gay Men's Call to Action (2003). Copy supplied.

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

The list that follows represents my best efforts, through searches of my 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.

November 13, 2013: I was a panelist for the Partnership for Professionalism program at the University of Miami in Coral Gables, Florida. To facilitate the discussion, the Associate Dean of the University of Miami's Law School provided the panelists and attendees with vignettes concerning a variety of ethical issues. I have no notes, transcript, or recording. The event was co-sponsored by the University of Miami Law School, 1311 Miller Drive, Coral Gables, Florida 33146, and the Spellman-Hoeveler American Inn of Court, which does not have a physical address.

June 11, 2013: I gave brief remarks prior to administering the oath of office to North Miami Councilwoman Carol F. Keys in North Miami, Florida. I have no notes, transcript, or recording. The event was sponsored by the City of North Miami, 776 N.E. 125th Street, North Miami, Florida 33161.

June 7, 2013: I gave brief remarks prior to administering the oath of office to student government officers of Miami Dade College - North Campus, in Miami, Florida. At the invitation of the campus president, I have given brief remarks and administered the oath of office to student government officers for several years. I have no notes, transcript, or recording. The annual event is sponsored by Miami Dade College – North Campus, 11380 N.W. 27th Avenue, Miami, Florida 33167.

February 25, 2013: I gave brief remarks to commend Teen Court participants at the Black Police Precinct and Courthouse Museum in Miami, Florida. I have no notes, transcript, or recording. Teen Court is sponsored by the Miami-Dade Economic Advocacy Trust, 111 N.W. First Street, Suite 2032, Miami, Florida 33128.

February 8, 2013: I was a panelist for the topic, "Criminal Law with the Legends," for the 2013 Dade County Bar Association's Bench and Bar Conference in Coral Gables, Florida. I spoke about ethics and the work of the Eleventh Judicial Circuit's Committee on Professionalism. I have no notes, transcript, or recording. The event sponsor was the Dade County Bar Association, 123 N.W. First Avenue, Suite 214, Miami, Florida 33128.

February 7, 2013: I was a panelist for the Fifth Annual Black Judicial Forum in Coral Gables, Florida. The panel of judges discussed best practices for effective written and oral advocacy in Florida's state and federal courts. I have no notes, transcript, or recording. The forum was sponsored by the Wilkie D. Ferguson, Jr. Bar Association, P.O. Box 15487, Miami, Florida 33101.

November 7, 2012: I was the featured speaker for a small "Meet the Judge" luncheon in Miami, Florida. During the luncheon, I answered questions and advised lawyers on how to effectively practice law before judges. I have no notes, transcript, or recording. The luncheon was sponsored by the Florida Association of Women Lawyers – Miami-Dade Chapter, which does not have a physical address.

March 9, 2012: I was a panelist for the topic, "Criminal Law: Prosecutorial Misconduct," for the 2012 Dade County Bar Association's Bench and Bar Conference in Miami, Florida. Notes supplied.

March 9, 2012: I was a panelist for the topic, "Nuts and Bolts of Criminal Defense for Young/New Lawyers," for the 2012 Dade County Bar Association's Bench and Bar Conference in Miami, Florida. The panel provided practical and legal advice for new criminal defense attorneys. I have no notes, transcript, or recording. The event sponsor was the Dade County Bar Association, 123 N.W. First Avenue, Suite 214, Miami, Florida 33128.

November 30, 2011: I gave brief remarks at a fundraiser in Miami, Florida, to support my retention as a Circuit Court Judge. During my remarks, I thanked

the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Campaign to Retain Judge Darrin Gayles, which does not have a physical address.

November 17, 2011: I gave brief remarks at a fundraiser in Miami, Florida, to support my retention as a Circuit Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Campaign to Retain Judge Darrin Gayles, which does not have a physical address.

November 10, 2011: I gave brief remarks at a fundraiser in Miami, Florida, to support my retention as a Circuit Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Campaign to Retain Judge Darrin Gayles, which does not have a physical address.

November 5, 2011: I gave brief remarks at a fundraiser in Boston, Massachusetts, to support my retention as a Circuit Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Campaign to Retain Judge Darrin Gayles, which does not have a physical address.

November 2, 2011: I gave brief remarks at a fundraiser in Miami, Florida, to support my retention as a Circuit Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Campaign to Retain Judge Darrin Gayles, which does not have a physical address.

October 25, 2011: I gave brief remarks at a fundraiser in Coral Gables, Florida, to support my retention as a Circuit Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Campaign to Retain Judge Darrin Gayles, which does not have a physical address.

October 22, 2011: I gave brief remarks at a fundraiser in Atlanta, Georgia, to support my retention as a Circuit Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Campaign to Retain Judge Darrin Gayles, which does not have a physical address.

October 20, 2011: I was a panelist for the Fourth Annual Black Judicial Forum in Miami, Florida. The panel of judges discusses best practices for effective written and oral advocacy in Florida's state and federal courts. I have no notes, transcript, or recording. The forum was sponsored by the Wilkie D. Ferguson, Jr. Bar Association, P.O. Box 15487, Miami, Florida 33101.

September 17, 2011: I gave brief remarks at a fundraiser in New York, New York, to support my retention as a Circuit Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Campaign to Retain Judge Darrin Gayles, which does not have a physical address.

September 11, 2011: I gave brief remarks at a fundraiser in Washington, D.C., to support my retention as a Circuit Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Campaign to Retain Judge Darrin Gayles, which does not have a physical address.

September 10, 2011: I gave brief remarks at a fundraiser in Silver Spring, Maryland, to support my retention as a Circuit Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Campaign to Retain Judge Darrin Gayles, which does not have a physical address.

September 9, 2011: I was a panelist for the topic, "A View from the Bench - Criminal Law," for the *Daily Business Review's* 2011 Litigation Best Practices Forum in Miami, Florida. The panel of judges provided advice on how to properly litigate and otherwise handle matters before judges in our circuit's criminal division. I have no notes, transcript, or recording. The event sponsor was the *Daily Business Review,* One S.E. Third Avenue, Suite 900, Miami, Florida 33131.

July 29, 2011: I gave a speech I informally titled, "The Declining Esteem of the Courts," for the Miami Beach Chamber of Commerce Pillar Breakfast in Miami Beach, Florida. Recording available at http://youtu.be/gWiE8orKvgI.

April 19, 2011: I administered the oath of office to the Miami Shores Village Council in Miami Shores, Florida. I have no notes, transcript, or recording. The event was sponsored by the Miami Shores Village, 10050 N.E. Second Avenue, Miami Shores, Florida 33138.

April 8, 2011: I gave remarks at the conclusion of my formal investiture as a Circuit Court Judge. Notes supplied.

March 2, 2011: I participated in a panel discussion on how to succeed in Florida's judicial appointment process. I answered questions and spoke about my own experience in being appointed by two of Florida's former governors. I have no notes, transcript, or recording, but press coverage is supplied. The event was co-sponsored by the Dade County Bar Association, 123 N.W. First Avenue, Suite 214, Miami, Florida 33128.

November 3, 2010: I was a speaker at the "Rise Above Violence Forum" in Miami, Florida. At the forum, I was one of several community leaders who spoke to high school students about how to succeed in school and how to avoid gang and other youth violence. I have no notes, transcript, or recording. I have provided press coverage about the event, although it mistakenly attributes statements made by another judge regarding graduation statistics to me. The Forum was sponsored by Miami-Dade County Commissioner Audrey Edmonson, 111 N.W. First Street, Suite 220, Miami, Florida 33128.

October 19, 2010: I gave a speech, "*Padilla v. Kentucky*, A Criminal Defense Lawyer's Duty to Advise about Immigration and Other Consequences" for the Miami Beach Bar Association's General Membership Meeting and CLE Luncheon in Miami Beach, Florida. Notes supplied.

August 25, 2010: I participated in the American Bar Association Criminal Justice Section's symposium, "Padilla and Beyond," in Washington, D.C. Pursuant to the symposium, I co-created, and was featured in, a video-recorded resource DVD for judges related to the United States Supreme Court's decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010). Recording available at http://www.youtube.com/watch?v=S1mlqzpqdT4&feature=player_embedded.

July 7, 2010: I gave a lecture titled, "The ABC's of PVH's (Probation Issues)," to fellow judges at the Conference of County Court Judges' 2010 Summer Education Program in Orlando, Florida. PowerPoint supplied.

February 10, 2010: I gave a speech, "Florida Landlord/Tenant Law," for the North Dade Real Estate Lawyers Association in Sunny Isles Beach, Florida. I also answered questions about Florida law related to commercial and residential landlord and tenant relationships. Outline supplied.

October 24, 2009: I was a panelist for the topic, "Driving Your Own Success: Bar Preparation, Selecting a Career Path, Increasing Your Marketability, and Making the Most of a Clerkship," for students attending the Thurgood Marshall Leadership Institute in New York, New York. Notes supplied.

October 20, 2009: I gave a speech, "Florida Landlord/Tenant Law," along with another judge for the Miami Beach Bar Association's General Membership Meeting and CLE Luncheon in Miami Beach, Florida. We also answered questions about Florida law related to commercial and residential landlord and tenant relationships. I used the same outline as the one previously supplied for the February 10, 2010 event.

July 30, 2009: I was a panelist for the topic, "How to Effectively Represent Child Victims in Criminal Cases," at the American Bar Association's 2009 Annual Meeting in Chicago, Illinois. I discussed legal and practical considerations in protecting and otherwise handling child witnesses. I have no notes, transcript, or

recording of the discussion. The event was sponsored by the Child Victims Committee of the American Bar Association's Criminal Justice Section, 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

June 26, 2009: I was a speaker for the New Generation Leadership & Workforce Institute in Miami Beach, Florida. I spoke to the student participants about how I became a judge, the importance of setting goals, and how to succeed in school. I have no notes, transcript, or recording. The event was co-sponsored by the South Florida Workforce Investment Board, 7300 Corporate Center Drive, Suite 500, Miami, Florida 33126.

June 5, 2009: I gave brief remarks prior to administering the oath of office to student government officers of Miami Dade College - North Campus, in Miami, Florida. I have no notes, transcript, or recording. The event was sponsored by Miami Dade College – North Campus, 11380 N.W. 27th Avenue, Miami, Florida 33167.

April 21, 2009: I administered the oath of office to the Miami Shores Village Council in Miami Shores, Florida. I did not retain a copy of the oath. The event was sponsored by the Miami Shores Village, 10050 N.E. Second Avenue, Miami Shores, Florida 33138.

February 18, 2009: I participated in a panel discussion for young lawyers at Legal Services of Greater Miami in Miami, Florida. The panel consisted of judges who shared our observations and preferences concerning courtroom practice, conduct, and ethics. I have no notes, transcript, or recording. The event was sponsored by Legal Services of Greater Miami, 3000 Biscayne Boulevard, Suite 500, Miami, Florida 33137.

September 27, 2008: I gave brief remarks after receiving the "Making an Impact Award" from The George Washington University Black Alumni Association in Washington, D.C. I have no notes, transcript, or recording. The event was sponsored by The George Washington University Black Alumni Association, 1918 F Street, N.W., Washington, D.C. 20052.

June 27, 2008: I gave brief remarks prior to administering the oath of office to student government officers of Miami Dade College - North Campus, in Miami, Florida. At the invitation of the campus president, I have given brief remarks and administered the oath of office to student government officers for several years. I have no notes, transcript, or recording. The annual event is sponsored by Miami Dade College – North Campus, 11380 N.W. 27th Avenue, Miami, Florida 33167.

February 27, 2008: I gave a speech for the Arthur Ashe Middle School's Black History Month Celebration in Fort Lauderdale, Florida. Outline supplied.

February 9, 2008: At the invitation of U.S. Congresswoman Frederica Wilson, I gave brief remarks about setting educational and other life goals at a National Black HIV/AIDS Awareness Day program at Hialeah-Miami Lakes Senior High School in Hialeah, Florida. I was one of several speakers who addressed the audience of approximately 500 Miami-Dade County high school students. I have no notes, transcript, or recording, but press coverage is supplied. The event was sponsored by the 5000 Role Models of Excellence Project, 1450 N.E. Second Avenue, Room 227, Miami, Florida 33132.

June 7, 2007: I gave brief remarks prior to administering the oath of office to student government officers of Miami Dade College – North Campus, in Miami, Florida. I have no notes, transcript, or recording, but press coverage is supplied. The event was sponsored by Miami Dade College – North Campus, 11380 N.W. 27th Avenue, Miami, Florida 33167.

February 17, 2007: I participated in a panel discussion on how to succeed at a Teen Summit in Miami, Florida. The panel members also answered questions from the participating students. I have no notes, transcript, or recording. The Teen Summit was sponsored by the Greater Miami Chapter of the National Coalition of 100 Black Women, Inc., P.O. Box 174027, Miami, Florida 33017.

June 9, 2006: I gave brief remarks prior to administering the oath of office to student government officers of Miami Dade College – North Campus, in Miami, Florida. I have no notes, transcript, or recording. The event was sponsored by Miami Dade College – North Campus, 11380 N.W. 27th Avenue, Miami, Florida 33167.

April 8, 2006: I gave a speech for the University of Miami's Black Law Students Association banquet in Miami, Florida, based on their theme, "Celebrating the Past, Present, and Future." Notes supplied.

November 15, 2005: I gave a speech, "A Florida DUI Law Update," along with another judge for the Miami Beach Bar Association's General Membership Meeting and CLE Luncheon in Miami Beach, Florida. We also answered questions about Florida DUI law. Outline supplied.

November 12, 2005: I gave brief remarks at a fundraiser in Brooklyn, New York, to support my retention as a County Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Committee to Retain Judge Darrin Gayles, which does not have a physical address.

October 22, 2005: I gave brief remarks at a fundraiser in Washington, D.C., to support my retention as a County Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no

notes, transcript, or recording. The event was hosted by members of the Committee to Retain Judge Darrin Gayles, which does not have a physical address.

September 30, 2005: I gave brief remarks about domestic violence at the annual Brides Walk, which was created to raise awareness about domestic violence. In my remarks, I spoke about my experience handling domestic violence cases as a prosecutor and judge, and introduced the founder of the Brides Walk. I have no notes, transcript, or recording. The event was sponsored by the Miami-Dade State Attorney's Office, 1350 N.W. 12th Avenue, Miami, Florida 33136.

September 17, 2005: I gave brief remarks at a fundraiser in Key Biscayne, Florida, to support my retention as a County Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Committee to Retain Judge Darrin Gayles, which does not have a physical address.

July 29, 2005: I gave brief remarks at a fundraiser in Miami, Florida, to support my retention as a County Court Judge. During my remarks, I thanked the hosts and talked briefly about my educational and work experience. I have no notes, transcript, or recording. The event was hosted by members of the Committee to Retain Judge Darrin Gayles, which does not have a physical address.

May 5, 2005: I presided over a mock trial for students of the Teen Police Academy at the Richard E. Gerstein Justice Building in Miami, Florida. At the conclusion of the mock trial, I made brief remarks to the student participants, including a discussion about standard trial procedures. I have no notes, transcript, or recording. The mock trial was sponsored by the Metro-Miami Action Plan, and co-sponsored by several Miami-Dade County public officials, including Miami-Dade County Commissioner Dennis Moss, 111 N.W. First Street, Suite 320, Miami, Florida 33128.

August 10, 2004: I gave the keynote address, "Citizenship: The American Dream in Action," for a naturalization ceremony for 3,000 new U.S. citizens at the Miami Beach Convention Center in Miami Beach, Florida. Notes supplied.

July 9, 2004: I gave remarks at the conclusion of my formal investiture as a County Court 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.

Carlos Harrison, *Reno Appointment Sold Gayles on Law Job*, Daily Business Review, February 25, 2013. Copy supplied.

Jose Pagliery, *Crist Picks Miami-Dade Circuit, Palm Beach County Judges*, Miami Herald, December 28, 2010. Copy supplied.

Carli Teproff, *Miami Beach Courthouse Back in Business at Historic City Hall*, The Miami Herald, August 4, 2009. Copy supplied.

Sandra J. Charite, *Are Black Judges Absent from the Bench,* Miami Times, December 3, 2008. The article contains several misstatements, inaccuracies, and grammatical errors, including the law school I attended. I made an immediate written request for corrections to the reporter. The reporter did not respond to my request or make the requested corrections. Copy supplied.

Susan Anasagasti, *Miami Beach: Repairs Force Tenants Out of Old City Hall*, The Miami Herald, May 21, 2006. Copy supplied.

Rose Reeder, *Judge Darrin Gayles to be sworn in July 9*, Westside Gazette, June 2004. I gave an interview to the Westside Gazette regarding my background and how I came to be appointed as a judge of the County Court. The Westside Gazette is a small, community newspaper. I have been unable to obtain a copy.

Patrick May, *Hot Cars, Cold Truth Few Are Ever Punished.* The Miami Herald, July 2, 1995. Copy supplied.

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

In April 2004, I was appointed to the County Court of the Eleventh Judicial Circuit of Florida by former Florida Governor Jeb Bush. In May 2006, I was subsequently retained without opposition for a full six-year term. I served in the Civil and Criminal Divisions of the County Court. The County Court has original jurisdiction in all misdemeanor cases not cognizable by the Circuit Courts, all violations of municipal and county ordinances, certain homeowners' association disputes, and civil actions in which the matter in controversy does not exceed $15,000. The County Court has exclusive jurisdiction of preceedings related to eviction and the right of possession of real property. The County Court may also hear matters involving uncontested divorces.

Former Florida Governor Charlie Crist appointed me to the Circuit Court of the Eleventh Judicial Circuit in December 2010. In May 2012, I was retained on the Circuit Court without opposition for a full six-year term. Since my appointment, I have served in the Civil and Criminal Divisions of the Circuit Court. The Circuit Court has jurisdiction over most appeals from the County Courts and appeals from final administrative orders of local government hearing officers and code enforcement boards. The Circuit Court has

exclusive original jurisdiction in all actions not cognizable by the County Courts and in probate and estate matters, all cases in equity, all cases related to juveniles (except traffic offenses), all felonies (and of misdemeanors arising out of the same circumstances as charged felonies), ejectment actions, actions involving the title and bounderies of real property, and issues involving the legality of tax assessments and tolls.

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

   I have presided over approximately 600 cases that have gone to verdict or judgment.

   i. Of these, approximately what percent were:

jury trials:	17%
bench trials:	83%
civil proceedings:	50%
criminal proceedings:	50%

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

   Moreno v. United Automobile Insurance Co., App. Case No. 12-285-AP (Fla. 11th Cir. Ct. December 20, 2013) (unpublished opinion).

   Banks v. New Life Shoe Repair, Inc., App. Case No. 12-321-AP (Fla. 11th Cir. Ct. October 18, 2013) (unpublished opinion).

   Campbell v. State of Florida, 20 Fla. L. Weekly Supp. 766a (Fla. 11th Cir. Ct. June 10, 2013).

   United Automobile Insurance Co. v. Lauderdale Physicians Association, 20 Fla. L. Weekly Supp. 115b (Fla. 11th Cir. Ct. November 6, 2012).

   United Automobile Insurance Co. v. Glenn V. Quintana, D.C., P.A., a/a/o Maria Quesada, 19 Fla. L. Weekly Supp. 766a (Fla. 11th Cir. Ct. June 4, 2012).

   Moors Master Maintenance Association, Inc. v. Gain, 19 Fla. L. Weekly Supp. 424b (Fla. 11th Cir. Ct. February 14, 2012).

   Calderon v. Galloway, 19 Fla. L. Weekly Supp. 246a (Fla. 11th Cir. Ct. December 22, 2011).

   United Automobile Insurance Co. v. Hallandale Beach Orthopedics, Inc., a/a/o Bianca Gonzalez, 19 Fla. L. Weekly Supp. 237a (Fla. 11th Cir. Ct. December 22, 2011).

Coconut Grove Playhouse, LLC v. The City of Miami, Florida, 18 Fla. L. Weekly Supp. 1116a (Fla. 11th Cir. Ct. September 16, 2011).

United Automobile Insurance Co. v. Advance Health Services, III, Inc., Case No. 09-383-AP (Fla. 11th Cir. Ct. June 15, 2011) (unpublished opinion).

In addition to the appellate cases set forth above, I have issued hundreds of unpublished orders on substantive civil and criminal matters in the Circuit and County Courts of the Eleventh Judicial Circuit of Florida. Those trial orders are too voluminous to list, but they are on file with the Clerk of Courts for Miami-Dade County, Florida. The Clerk maintains all trial court orders and Circuit Court appellate opinions on its computer mainframe. However, a searching party must know the case number or style of the case to locate such a file. A search cannot be done based solely on a judge's name.

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. *Dolcin v. Royal Caribbean Cruises, LTD*, Case No. 10-45257-CA-22.

Plaintiff Dolcin, a native and citizen of Haiti, was employed by the defendant on one of its cruise ships. Dolcin sustained a back injury while performing cleaning duties on the ship. Rather than arranging treatment for Dolcin in Miami, Florida, while the ship was docked there, the defendant sent Dolcin for treatment in the Dominican Republic. The neurosurgeon hired to treat Dolcin performed what he believed to be emergency surgery, which left Dolcin permanently injured. Dolcin sued the defendant for Jones Act negligence, alleging that the defendant failed to provide a safe workplace, that the defendant failed to warn him of the job dangers, and that the medical care was not proper or necessary. Following a ten-day jury trial, the jury found the defendant negligent and awarded Dolcin $6.3 million.

Trial dates: December 9, 2013, through December 20, 2013.

Plaintiff's Counsel:	Brett Rivkind, Esq. Bruce M. Margulies, Esq. 66 West Flagler Street, Suite 600 Miami, Florida 33130 (305) 374-0565
Defense Counsel:	David Horr, Esq. Eduardo J. Hernandez, Esq. 9130 South Dadeland Boulevard, Suite 1700

Miami, Florida 33156
(305) 670-2525

2. *Mi-York, Inc. v. MK Contractors, LLC, et al.*, Case No. 06-24935-CA-22.

The plaintiff, Mi-York, is a shell contractor that handles large-scale commercial and residential construction projects. Mi-York entered into a construction contract with defendant MK Contractors, a general contractor, to perform shell construction work on a joint use project for $2,950,000. The project was delayed substantially due to unforeseen issues unrelated to Mi-York and substantial changes to the scope of work. Despite the build issues unrelated to Mi-York, MK Contractors blamed Mi-York for failing to advance their work pursuant to the contract. The parties asserted competing claims for breach of contract. The parties introduced 318 exhibits and presented 28 days of testimony over the 30-day bench trial. Prior to trial, the parties advised the court that the trial would last for two weeks. After the third consecutive week of trial, the balance of the trial was completed intermittently when time permitted. At the conclusion of the trial, I entered a final judgment in favor of the plaintiff.

Trial dates: January 23, 2013, through August 28, 2013 (30-day non-jury trial).

Plaintiff's Counsel:
John H. Gregory, Esq.
Welbaum, Guernsey, Hingston, et al.
901 Ponce de Leon Boulevard, Suite PH
Coral Gables, Florida 33134
(305) 441-8900

Defense Counsel:
Michael P. Peterson, Esq.
Jose I. Baldor, Esq.
Peterson & Espino, P.A.
10631 North Kendall Drive, Suite 220
Miami, Florida 33176
(305) 270-3773

3. *Vasquez v. Sarmiento, et al.*, Case No. 11-35080-CA-22, *rev'd*, 112 So. 3d 682 (Fla. 3d DCA 2013), 38 Fla. L. Weekly D855 (Fla. 3d DCA 2013). Decision supplied.

Plaintiff Vasquez, a native and citizen of Venezuela, brought this action against the defendants which asserted that defendants Sarmiento and Wahnon defrauded a Venezuelan corporation for which the plaintiff was a shareholder while those defendants resided in Venezuela. The plaintiff also asserted that defendant Ramos, the appointed intervenor/liquidator for the Venezuelan corporation, attempted to extort the plaintiff. Defendants Sarmiento and Wahnon filed motions to dismiss the action based on *forum non-conveniens*, arguing that the United States was not an appropriate forum for the lawsuit. The judge previously

assigned to the case denied their motions to dismiss. Florida's Third District Court of Appeal reversed that order, finding that the previous judge had not articulated the findings required pursuant to Florida law, and remanded the case for further proceedings. On remand, the case was assigned to me, and I conducted an evidentiary hearing. Based on my findings, I concluded that Venezuela is an adequate forum for the lawsuit and granted the motions to dismiss.

Hearing Date: August 8, 2013.

Plaintiff's Counsel:	Daniel Forman, Esq. Adele Bagley, Esq. Forman Law Group 1401 Brickell Avenue, Suite 910 Miami, Florida 33131 (305) 577-8888
Defense Counsel: (Defendant Sarmiento)	Robert J. Becerra, Esq. Devine, Goodman, Rasco & Wells, P.A. 777 Brickell Avenue, Suite 850 Miami, Florida 33131 (305) 374-8200
Defense Counsel: (Defendant Wahnon)	Tom Manos, Esq. Manos, Alwine, P.L. 1001 Brickell Bay Drive, Suite 1200 Miami, Florida 33131 (305) 341-3100

4. *Spiegel v. Dargenson*, Case No. 13-13466-CA-22.

Plaintiff Spiegel, a North Miami Beach City Council Member, filed a civil complaint for declaratory and injunctive relief against defendant Dargenson, one of Spiegel's opponents in her City Counsel re-election campaign. In her complaint, Spiegel alleged that Dargenson was not a "bona fide resident" of North Miami Beach, as that term is defined in the city's code. Following an initial hearing on May 3, 2013, I denied without prejudice Spiegel's motion for injunctive relief and to remove Dargenson from the upcoming ballot. I denied the motion without prejudice because there was still outstanding discovery. Spiegel renewed her motion prior to the run-off election between the parties. Following a subsequent evidentiary hearing with additional evidence, I believed that Dargenson was not a bona fide resident of North Miami Beach, but I did not make specific findings given the imminent run-off election. Rather, I enjoined the city's canvassing board and the county's elections department from certifying the results until further order of the court. I also retained the ability to disqualify Dargenson based on my findings from the evidentiary hearings. After Spiegel

defeated Dargenson in the run-off election, I vacated that order and permitted the city and county to certify the election.

Hearing dates: May 3, 15, 21 – 22, 2013.

Plaintiff's Counsel:	Joseph S. Geller, Esq. Greenspoon Marder, P.A. 100 West Cypress Creek Road, Suite 700 Fort Lauderdale, Florida 33309 (954) 491-1120
Defense Counsel:	Frank Wolland, Esq. 12865 West Dixie Highway North Miami, Florida 33161 (305) 899-8588

5. *Nieto v. Banco Pastor, S.A., et al.*, Case No. 10-18501-CA-22.

The plaintiff, Nieto, had been employed as a junior loan officer for the defendant Banco Pastor, Spain's fifth largest bank. In his lawsuit against the bank and two corporate officers, Nieto alleged that during the course of his employment with Banco Pastor, he was subjected to extreme and outrageous discrimination and harassment based on his national origin. Nieto alleged that the harassment became more severe after he complained to the branch's human resources manager. At trial, Nieto's attorneys requested $579,000 in compensatory damages, as well as punitive damages (which were previously permitted by another judge), under Florida civil rights and whistle-blower laws. The jury returned a verdict in favor of the defendant following a 12-day trial.

Trial dates: November 19, 2012, through December 7, 2012.

Plaintiff's Counsel:	Pelayo M. Duran, Esq. 4640 N.W. Seventh Street Miami, Florida 33126 (305) 266-9780 Roderick V. Hannah, Esq. 4120 Davie Road Extension, Suite 303 Hollywood, Florida 33024 (954) 362-3800
Defense Counsel:	Judson L. Cohen, Esq. Weinstein & Cohen, P.A. 14125 N.W. 80th Avenue, Suite 400 Miami Lakes, Florida 33016 (305) 374-1011

Harry N. Turk, Esq.
One S.E. Third Avenue, Suite 2900
Miami, Florida 33131
(305) 350-2223

6. *Baez, Trustee, v. Sea Breeze Ocean Developers, et al.*, Case No. 08-27002-CA-22.

The plaintiff executed a purchase and sale agreement with defendant Sea Breeze for two pre-construction, multi-million dollar condominiums which the plaintiff intended to convert into one penthouse-style unit. Although the closing documents clearly referenced the purchase of two units, the plaintiff believed that he was purchasing a single unit. The number of units purchased was significant because of the tax implications, the allocation of fees paid by all unit owners, and the voting structure for that building's condominium association and the master association for the whole development. Plaintiff sued the defendants for declaratory relief, unjust enrichment, conversion, and other fraud-based counts. A predecessor judge initially held that the plaintiff purchased one unit. However, that judge did not address the resulting problems incurred by the other unit owners and the condominium associations. Following a four-day non-jury trial, I entered a judgment in favor of the defendants, finding that the plaintiff purchased two units for all purposes except for tax purposes.

Trial dates: October 9, 2012, through October 12, 2012.

Plaintiff's Counsel:

Robin Corwin Campbell, Esq.
Kaplan Zeena, LLP
Two South Biscayne Boulevard, Suite 3050
Miami, Florida 33131
(305) 530-0800

Jan Douglas Atlas, Esq.
Kopelowitz, Ostrow, Ferguson, et al.
200 S.W. First Avenue, Suite 1200
Fort Lauderdale, Florida 33301
(954) 525-4100

Defense Counsel:

Eduardo Rasco, Esq.
Steve M. Bimston, Esq.
Rosenthal, Rasco, Kaplan, LLC
20900 N.E. 30th Avenue, Suite 600
Aventura, Florida 33180
(305) 937-0300

7. *Hernandez, et al., v. Gasso, et al.*, Case No. 02-29168-CA-22.

The plaintiffs, Mr. Hernandez and the estate of his deceased wife, filed a negligence and wrongful death action against two of the medical doctors who cared for Mrs. Hernandez up to her death. Specifically, the plaintiffs alleged that the defendants, a cardiologist and a pulmonologist, breached their duty of care by failing to intubate Mrs. Hernandez, causing her death. Several expert witnesses testified regarding the treatment rendered by the defendants and the cause of Mrs. Hernandez's death. This case involved a multitude of complex legal issues litigated, including expert testimony on causation and the defendants' ability to apportion fault to non-party defendants. Following a 12-day trial, the jury returned a verdict in favor of the defendants.

Trial dates: September 18, 2012, through October 3, 2012.

Plaintiffs' Counsel:	Thomas P. Murphy, Esq. 555 N.E. 34th Street, Suite 603 Miami, Florida 33137 (305) 978-5817
	Ibis J. Hillencamp, Esq. P.O. Box 162700 Miami, Florida 33116 (305) 446-2211
Defense Counsel: (Defendant Gasso)	Robert J. Cousins, Esq. Scott C. Sanky, Esq. Quintairos, Prieto, Wood & Boyer, P.A. One East Broward Boulevard, Suite 1200 Fort Lauderdale, Florida 33301 (954) 523-7008
Defense Counsel: (Defendant Mangus)	Peter R. Restani, Esq. Restani Dittmar & Hauser P A 201 Alhambra Circle, Suite 1050 Coral Gables, Florida 33134 (305) 445-4090

8. *State of Florida v. Jackson*, Case No. F08-29786.

The defendant was arrested and charged by the State with second degree murder and attempted second degree murder based on a shooting at a Miami night club. The defendant denied being involved in the shooting. At trial, the State's witnesses gave varying accounts of what they observed regarding the shooting. During a break in the testimony, I was informed that a spectator in the gallery of the courtroom had taken pictures of the testifying witnesses and identified at least

one of them as a "snitch" online, including Facebook. With the agreement of counsel for the State and defense, I barred all spectators, other than immediate family, from the courtroom. The jury subsequently acquitted the defendant of both charges.

Trial dates: September 26, 2011, through October 3, 2011.

Assistant State Attorneys:	Lisa Jacobs, Esq. Iftikhar Memon, Esq. State Attorney's Office 1350 N.W. 12th Street Miami, Florida 33136 (305) 547-0100
Defense Counsel:	Richard Della Fera, Esq. Entin & Della Fera, P.A. 110 S.E. Sixth Street, Suite 1970 Fort Lauderdale, Florida 33301 (954) 761-7201

9. *State of Florida v. Whitelock*, Case No. F09-29351.

The defendant fatally strangled his stepfather, a well-known South Florida festival organizer, after an argument in their home. Other than the defendant, the only witness to what had occurred was the defendant's mother, the decedent's widow. The defendant was arrested and the State subsequently charged him with second degree murder. To prove its case, the State relied, in great part, on the testimony of the medical examiner to establish that the defendant's chokehold was prolonged and intentional. The jury acquitted the defendant.

Trial dates: March 21, 2011, through March 23, 2011.

Assistant State Attorneys:	Scott Dunn, Esq. Ana de la Rosa, Esq. State Attorney's Office 1350 N.W. 12th Street Miami, Florida 33136 (305) 547-0100
Defense Counsel:	David Ranck, Esq. 4141 Nautilus Drive, Apartment 4D Miami Beach, Florida 33140 (786) 712-4220 Arnold Trevilla, Esq. 8180 N.W. 36th Street, Suite 327

Doral, Florida 33166
(305) 500-9232

10. *State of Florida v. Tarver*, Case No. F07-1250, aff'd, 108 So. 3d 1103, 2013 WL 692909 (Fla.App. 3d Dist.).

In 2007, a South Florida business owner discovered that one of his checking accounts had been drained of approximately $40,000 over several months. Checks for the account were used to obtain cash, pay utility bills and purchase a variety of items. Although the checks were unauthorized by the victim, his bank refused to refund a majority of the funds because the victim had not been diligent in reviewing his account. The defendant, then approximately 15-years-old, was subsequently arrested for the theft. In a post-arrest statement, the defendant took responsibility for all the purchases. The lead detective retired soon after the defendant's arrest and the investigation terminated. The State charged the defendant as an adult with a single count of grand theft in the second degree, punishable by up to 15 years' state prison. By the time the trial commenced, the defendant was 19-years-old and was in the late stages of a terminal illness, which later created a number of legal and practical issues for sentencing. After a three-day jury trial, the jury found the defendant guilty of the lesser included offense of grand theft in the third degree. I sentenced the defendant to house arrest to be followed by several years of probation, with the special conditions that he serve several weekends in jail, pay restitution, and perform community service.

Trial Dates: January 15, 2011, through January 18, 2011.

Assistant State Attorneys:

Adam Goodman, Esq.
1200 Brickell Avenue, Suite 1440
Miami, Florida 33131
(305) 482-3265

Tim Whaley, Esq.
135 San Lorenzo Avenue, Suite 500
Coral Gables, Florida 33146
(305) 447-6500

Defense Counsel:

Sara Marken, Esq.
1450 N.E. Second Avenue, Suite 430
Miami, Florida 33132
(305) 995-1311

Stephen Kramer, Esq.
Assistant Public Defender
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545-1600

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. *Vasquez v. Sarmiento, et al.*, Case No. 11-35080-CA-22, *rev'd*, 112 So. 3d 682 (Fla. 3d DCA 2013), 38 Fla. L. Weekly D855 (Fla. 3d DCA 2013). Decision supplied in response to Question 13c.

Plaintiff's Counsel:	Daniel Forman, Esq. Adele Bagley, Esq. Forman Law Group 1401 Brickell Avenue, Suite 910 Miami, Florida 33131 (305) 577-8888
Defense Counsel: (Defendant Sarmiento)	Robert J. Becerra, Esq. Devine, Goodman, Rasco & Wells, P.A. 777 Brickell Avenue, Suite 850 Miami, Florida 33131 (305) 374-8200
Defense Counsel: (Defendant Wahnon)	Tom Manos, Esq. Manos, Alwine, P.L. 1001 Brickell Bay Drive, Suite 1200 Miami, Florida 33131 (305) 341-3100

This order was written based on my detailed oral rulings following a hearing on the defendants' motions to dismiss. I substantially edited the proposed order after receiving a draft.

2. *Hernandez-Rey v. Jacobs, et al.*, Case No. 12-9159-CA-22. Decision supplied.

Plaintiff's Counsel:	Melanie E. Damian, Esq. Damian Valori 1000 Brickell Avenue, Suite 1020 Miami, Florida 33131 (305) 371-3960
Defense Counsel: (Defendant Hernandez-Rey)	Richard D. Tuschman, Esq. Akerman, LLP One S.E. Third Avenue, 25th Floor

Miami, Florida 33131
(305) 982-5530

Defense Counsel:
(Defendant Akerman)

Susan Trench, Esq.
Arnstein & Lehr LLP
200 South Biscayne Boulevard, Suite 3600
Miami, Florida 33131
(305) 428-4500

This order was written based on my detailed oral rulings following a hearing on the plaintiff's motion for summary judgment. I substantially edited the proposed order after receiving a draft.

3. *State of Florida v. Castillo*, Case No. F10-849C. Decision supplied.

Assistant State Attorney:

Christopher A. Angell, Esq.
Office of the Miami-Dade County Attorney
111 N.W. First Street
Miami, Florida 33128
(305) 375-1024

Defense Counsel:

Michael H. Bloom, Esq.
2333 Brickell Avenue, Suite A1
Miami, Florida 33129
(305) 859-7373

4. *State of Florida v. Lageyre*, Case No. F10-30962. Decision supplied.

Assistant State Attorney:

Christina Rivera, Esq.
1350 N.W. 12th Street
Miami, Florida 33136
(305) 547-0100

Defense Counsel:

Emilio de la Cal, Esq.
6161 Blue Lagoon Drive, Suite 400
Miami, Florida 33126
(305) 267-4665

5. *State of Florida v. Joseph, et al.*, Case No. F08-44855A-D, *rev'd*, 79 So. 3d 49 (Fla. 3d DCA 2011). The appellate court reversed an order issued by the judge who preceded me in my court division. My decision, issued after remand, is supplied.

Assistant State Attorney:

Lisa Jacobs, Esq.
State Attorney's Office
1350 N.W. 12th Street

	Miami, Florida 33136 (305) 547-0100
Defense Counsel: (Defendant Joseph)	Lee Friedland, Esq. Friedland & Bocksch 33 N.E. Second Street, Suite 101 Fort Lauderdale, Florida 33301 (954) 321-8810
Defense Counsel: (Defendant Toussaint)	Scott Egelston, Esq. 12000 Biscayne Boulevard, Suite 220 Miami, Florida 33181 (305) 892-8088

6. *State of Florida v. Espinosa*, Case No. F10-6391. Decision supplied.

Assistant State Attorney:	Lisa Jacobs, Esq. State Attorney's Office 1350 N.W. 12th Street Miami, Florida 33136 (305) 547-0100
Defense Counsel:	Bijan S. Parwaresch, Esq. 407 Lincoln Road, Suite 12E Miami Beach, Florida 33139 (305) 505-8858

7. *Calderon v. Galloway*, 19 Fla. L. Weekly Supp. 246a (Fla. 11th Cir. Ct. December 22, 2011). Decisions supplied.

Appellant Counsel:	Edward F. Holodak, Esq. 2500 Hollywood Boulevard, Suite 212 Hollywood, Florida 33020 (954) 927-3436
Appellee Counsel:	Andrean R. Eaton, Esq. 99 N.W. 183rd Street, Suite 120 Miami Gardens, Florida 33169 (954) 374-0707

8. *State of Florida v. Deas*, Case No. F09-4201. Decision supplied.

Assistant State Attorney:	Christine E. Zahralban, Esq. 1350 N.W. 12th Street Miami, Florida 33136 (305) 547-0100

Defense Counsel: Sara Marken, Esq.
1450 N.E. Second Avenue, Suite 430
Miami, Florida 33132
(305) 995-1311

This order was written based on my detailed oral rulings following a hearing on the defendant's motion to dismiss. I substantially edited the proposed order after receiving a draft.

9. *William A. Hall, D.C. v. Mercury Ins. Co.*, 15 Fla. L. Weekly Supp. 93a (Fla. 11th Cir. Ct. Oct. 2, 2007). Decision supplied.

Plaintiff's Counsel: Stuart Yanofsky, Esq.
130 South University Drive, Suite A
Plantation, Florida 33324
(954) 473-0117

Jose Dapena, Esq.
4960 S.W. 72nd Avenue
Miami, Florida 33155
(305) 662-4323

Defense Counsel: William M. Gilmore, Esq.
Federal Building, Suite 800
310 New Bern Avenue
Raleigh, North Carolina 27601
(919) 856-4530

This order was written based on my detailed oral rulings following a hearing on the parties' cross motions for final summary judgment. I substantially edited the proposed order after receiving a draft.

10. *Millennium Diagnostic Imaging Center v. Allstate Property & Casualty Ins. Co.*, 14 Fla. L. Weekly Supp. 84a (Fla. 11th Cir. Ct. Oct. 12, 2006). Decision supplied.

Plaintiff's Counsel: Lewis Mertz, Esq.
6291 Bird Road
Miami, Florida 33155
(305) 821-4581

Defense Counsel: Scott E. Danner, Esq.
Kirwan, Spellacy & Danner, P.A.
200 South Andrews Avenue, Eighth Floor

Fort Lauderdale, Florida 33301
(954) 463-3008

This order was written based on my detailed oral rulings following a hearing on the defendant's motion for summary judgment. I substantially edited the proposed order after receiving a draft.

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

I am not aware of any cases in which certiorari was requested or granted based on an order I issued.

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 Florida v. Harris, Case No. F97-28460B, *aff'd*, 109 So.3d 1165 (Fla. 3d DCA 2013), *rev'd in part*, -- So.3d – 2014 WL 54789 (Fla. 3d DCA 2014). Harris filed a post-conviction motion to correct the sentence imposed by the trial judge, who had passed away. For two of his seven counts, I found that Harris' sentence was illegal because the sentencing judge did not orally pronounce the sentence that was imposed in the written sentencing order. The State conceded error by the sentencing judge on another issue related to Harris' consecutive life sentences. I denied Harris' post-conviction motion on the remaining grounds. Florida's Third District Court of Appeal reversed my order granting a new sentencing hearing on the aforementioned counts. While the appellate court agreed that the oral pronouncement of sentence for those two counts was ambiguous, the appellate court concluded that the sentencing judge's intent was clearly discernible from the record.

Garcia v. State of Florida, F10-13607, *rev'd in part*, -- So.3d – 2013 WL 6818385 (Fla. 3d DCA 2013). Following a three-day jury trial, Garcia was convicted of attempted voluntary manslaughter (Count 1) and carrying a concealed firearm (Count II). On appeal, the State confessed error, conceding that there was insufficient evidence as a matter of law to support Garcia's conviction for carrying a concealed firearm. Accordingly, Florida's Third District Court of Appeal reversed Garcia's conviction as to that charge, and remanded the matter for entry of a judgment of acquittal for Count II.

State of Florida v. Palmer, Case No. F09-26658(A), *rev'd in part*, 124 So.3d 1043 (Fla. 3d DCA 2013). Following a three-day jury trial, Palmer was convicted of armed burglary with an assault or battery, three counts of armed robbery with a firearm, and possession of a firearm while engaged in a criminal offense. I subsequently sentenced the defendant to more than 20 years' state prison. On

appeal, Florida's Third District Court of Appeal affirmed Palmer's convictions for armed robbery, but reversed his convictions for burglary with an assault or battery and possession of a firearm while engaged in a criminal offense. While noting that the issue was not preserved by Palmer for review, the appellate court concluded that the burglary offense could not stand as a matter of law because the offense occurred at a barber shop which was then open for business. The appellate court also reversed Palmer's conviction for possession of a firearm while engaged in a criminal offense because it amounted to double jeapardy based on Palmer's convictions for armed robbery with a firearm.

State of Florida v. Leonard, Case No. 10-2671, *rev'd*, 103 So.3d 998 (Fla. 3d DCA 2012). Leonard was arrested after discarding a small amount of cocaine during a foot chase by officers. I granted Leonard's motion to suppress after finding that the officers lacked reasonable suspicion to initially detain Leonard. Florida's Third District Court of Appeal, however, concluded that the arrest was lawful because Leonard discarded the drugs before he was "seized" within the meaning of the Fourth Amendment.

Padron v. State of Florida, Case No. 08-12259, *rev'd*, 96 So.3d 1041 (Fla. 3d DCA 2012). After reviewing the court record, I summarily denied Padron's *pro se* motion seeking additional jail time credit and attached to the order the plea transcript and relevant parts of the record. Florida's Third District Court of Appeal reversed and remanded the matter to provide a clearer basis for my denial. I subsequently issued another order denying Padron's motion.

United Automobile Insurance Co. v. Millennium Diagnostic Imaging Center, Inc., Case No. 03-3435-CC-24, *rev'd*, 12 So.3d 242 (Fla. 3d DCA 2012). In granting the claimant's motion for summary judgment, I struck an insurance company's peer review report and prohibited any expert testimony based on that peer review in opposition of the motion for summary judgment. Relying on decisions from Florida's Third District Court of Appeal and Florida's 11th Judicial Circuit, I found that the peer review, prepared by a physician hired by the insurer one year after treatment was rendered and litigation commenced, was untimely submitted and could not be used to defeat the insured's claim. Subsequent to my order, a panel of the 11th Judicial Circuit issued an appellate opinion that reached a different conclusion regarding the timeliness of such peer reviews. I denied a subsequent motion for reconsideration, but certified to the Third District Court of Appeal two questions of great public importance regarding the conflict of law. The appellate court recognized the conflict, resolved the legal issues, and reversed the matter, finding that such peer reviews were valid and could be used to deny treatment.

Sanchez v. State Farm Mutual Automobile Insur. Co., 14 Fla. L. Weekly Supp. 395b (Fla. 11th Cir. Ct. January 26, 2007), *rev'd*, 15 Fla. L. Weekly Supp. 1153a (Fla. 11th Cir. October 23, 2008). Following a hearing, I granted State Farm's motion for final summary judgment, finding that the insured lacked standing to

file an action against his insurer for nonpayment of benefits because the insured failed to comply with the statutory requirement to furnish a pre-suit demand letter. An appellate panel of the 11th Judicial Circuit reversed my order, concluding that the demand letters previously submitted by the medical providers, prior to terminating the insured's assignment of benefits, were sufficient.

United Automobile Insurance Company v. Future Medical Center, Inc., Case No. 03-3028-CC-24, *rev'd*, 15 Fla. L. Weekly Supp. 563 (Fla. 11th Cir. April 3, 2008). In calculating the appropriate billing supsension date in an insurance case, I determined that where an insurer has chosen to schedule a second independent medical examination after the insured missed the first unilaterally scheduled independent medical examanation, the first date cannot be used as the billing suspension date because the insurance company elected to provide the insured with a second date. On appeal, an appellate panel of the 11th Judicial Circuit reversed my decision, relying on a new opinion of Florida's Third District Court of Appeal, for which I did not have the benefit of considering.

United Automobile Insurance Company v. Open MRI of Miami Dade, LTD., Case No. 05-2705-SP-24, *rev'd*, 15 Fla. L. Weekly Supp. 433b (Fla. 11th Cir. March 17, 2008). I granted the appellee's motion for summary judgment based on my finding that the insurer's peer review was time barred and because the insurer refused to pay for treatment incurred before it notified the insured of its termination of benefits. An appellate panel of the 11th Judicial Circuit reversed, concluding that the peer review should have been deemed timely.

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.

Nearly all of my orders and judgments are unpublished, except for orders and judgments submitted by attorneys for publication. To the best of my knowledge, 17 (less than 1%) of my orders and judgments have been published in Florida Law Weekly. To the best of my knowledge, nearly 100% of the written opinions issued by the Circuit Court appellate panels on which I have sat were published in Florida Law Weekly. All unpublished orders, judgments, and opinions are on file with the Clerk of Court.

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

I have not issued a significant opinion on a federal or state constitutional issue. However, as a judge, I regularly made findings and issued orders related to search and seizure, due process, and right to counsel issues based on the Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and the Florida Constitution.

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

None.

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

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

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

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

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

The Florida Code of Judicial Conduct governs the judicial duties and responsibilities of judges in Florida. Pursuant to Canon 3E(1) of the Code, a judge is required to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where the judge knows that he or she has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding. I have complied with the requirements of this Canon. I make determinations on a case-by-case basis.

On one occasion in 2013, an attorney requested that I recuse myself in a civil matter because the opposing counsel and I were Facebook "friends." After verifying that the attorney and I were Facebook "friends," I granted the motion. I also "defriended" the attorney as I had previously endeavored to do with all attorneys who would likely appear before me. I do not recall the style of that case or the case number. Otherwise, I have recused myself, *sua sponte*, in only a few cases where I knew a litigant or witness. I did not retain copies of those orders, and I do not recall the case styles or case numbers.

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 non-judicial 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 not had a contested judicial election, and I have not otherwise held a position or played a role in a political campaign.

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

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

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

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

1993 – 1997
Miami-Dade State Attorney's Office
1350 N.W. 12th Avenue
Miami, Florida 33136
Assistant State Attorney

1997 – 1999
United States Department of Justice
Immigration and Naturalization Service
155 South Miami Avenue
Miami, Florida 33130
Assistant District Counsel

1999 – 2004
United States Attorney's Office, Southern District of Florida
99 N.E. Fourth Street
Miami, Florida 33132
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 not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

As an Assistant State Attorney, I was assigned to the County Court, Juvenile and Felony Divisions. While assigned to the County Court Division, I specialized in the prosecution of cases involving domestic violence and competency issues. I also represented the State of Florida in hundreds of civil involuntary commitment hearings pertaining to mental health under the Baker Act and substance abuse under the Marchman Act. While assigned to the Juvenile Division, I prosecuted felony and misdemeanor criminal cases involving juvenile defendants. In the Felony Division, I represented the State of Florida in 40 felony jury trials before several Circuit Judges of the Eleventh Judicial Circuit Court of Florida. As an Assistant District Counsel with the Immigration and Naturalization Service (INS), I represented the United States in hundreds of political asylum, removal/deportation and adjustment of status hearings before United States Immigration Judges. I also provided legal advice and litigation support to INS operational units (administrative divisions).

During my service as an Assistant United States Attorney for the Southern District of Florida, I was assigned to the Appellate, Major Crimes and Narcotics Sections. In the Appellate Section, I conducted legal research and wrote legal briefs on behalf of the United States for appeals in the

United States Court of Appeals for the Eleventh Circuit. While in the Major Crimes and Narcotics Sections, I represented the United States in felony jury trials before United States District Judges. I also represented the United States in various pre-trial and post-trial hearings before United States District and Magistrate Judges.

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

As an Assistant State Attorney, my client was the State of Florida. For my first two years at the Miami-Dade State Attorney's Office, I specialized in handling mental health, substance abuse, and domestic violence cases. I later specialized in prosecuting juvenile cases and other significant criminal matters.

As an Assistant District Counsel for the Immigration and Naturalization Service and as an Assistant United States Attorney, my client was the United States of America. As an Assistant District Counsel, I specialized in immigration law as it pertained to deportation and adjustment of status. As an Assistant United States Attorney, I specialized in the prosecution of complex economic and narcotics 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.

As an attorney, 100% of my practice was in litigation, for which I appeared in court almost daily. As an attorney, the majority of my practice was in trial court, with a small percentage of my practice devoted to handling appeals in the United States Court of Appeals for the Eleventh Circuit.

i. Indicate the percentage of your practice in:
   1. federal courts: 40%
   2. state courts of record: 40%
   3. other courts: 0%
   4. administrative agencies: 20%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 20%
   2. criminal proceedings: 80%

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

I have tried approximately 247 criminal and civil cases to verdict or judgment, including 47 felony jury trials in the United States District Court for the Southern District of Florida and the Eleventh Judicial Circuit of Florida. I was the sole or lead counsel in approximately 90% of those cases.

As an Assistant United States Attorney, I tried to verdict 18 felony jury trials before United States District Judges. For those trials, I was sole counsel in six cases, lead counsel in six cases, and associate counsel in six cases.

As an Assistant District Counsel with the Immigration and Naturalization Service, I tried to judgment hundreds of deportation/removal hearings before United States Immigration Judges. I was the sole counsel in each of those cases.

As an Assistant State Attorney, I tried to verdict 29 felony jury trials in the Felony Division. For those trials, I was sole counsel in 20 cases, lead counsel in four cases, and associate counsel in five cases. While assigned to the Juvenile Division, I tried to verdict approximately 30 non-jury felony and misdemeanor trials for which I was sole counsel. While assigned to the County Court Division, I also tried to verdict approximately 20 jury and non-jury misdemeanor cases for which I was sole counsel. I was also sole counsel in hundreds of civil involuntary commitment hearings.

i. What percentage of these trials were:
   1. jury: 19%
   2. non-jury: 81%

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. Bernard, et al.*, Case No. 03-20551-Cr-Ungaro-Benages(s), *aff'd in part*, 144 Fed.Appx. 855 (11th Cir. 2005), *aff'd*, 205 Fed.Appx. 790 (11th Cir. 2006), *cert. denied*, 549 U.S. 1244 (2007).

I was lead counsel for the United States in this jury trial. The defendants had been arrested during a controlled-delivery of cocaine, which was seized pursuant to a large, international DEA investigation titled "Operation Intercontinental." The defendants were subsequently indicted for conspiracy to possess with intent to distribute five kilograms or more of cocaine, attempted possession with intent to distribute five kilograms or more of cocaine, possession of a firearm during a drug trafficking crime, and possession of a firearm by a convicted felon. After an eight-day trial, the jury acquitted defendant Ribeiro but convicted defendant Bernard of possession of a firearm by a convicted felon. The jury was unable to reach a verdict on the drug counts against Bernard. Bernard was sentenced on the firearm count along with his subsequent convictions on the drug counts in his retrial.

Trial dates:	January 27, 2004, through February 5, 2004
Judge/Court:	The Honorable Ursula Ungaro United States District Judge
Co-counsel:	Kim Selmore, Assistant U.S. Attorney 99 N.E. Fourth Street Miami, Florida 33132 (305) 961-9189
Defense Counsel: (Defendant Bernard)	Robert C.L. Vaughan, Esq. Ward Kim Vaughan & Lerner, LLP One Financial Plaza, Suite 2001 Fort Lauderdale, Florida 33394 (954) 527-1115
	Rebekah Poston, Esq. Squire, Sanders & Dempsey, LLP 200 South Biscayne Boulevard, Suite 4000 Miami, Florida 33131 (305) 577-4715
Defense Counsel: (Defendant Ribeiro)	Larry Handfield, Esq. 4770 Biscayne Boulevard, Suite 1200 Miami, Florida 33137 (305) 576-1011

2. *United States v. Bernard, et al.*, Case No. 03-20551-Cr-Ungaro-Benages/Huck(s), *aff'd in part*, 144 Fed.Appx. 855 (11th Cir. 2005), *aff'd*, 205 Fed.Appx. 790 (11th Cir. 2006), *cert. denied*, 549 U.S. 1244 (2007).

I was lead counsel for the United States in this re-trial of *United States v. Bernard, et al.*, Case No. 03-20551-Cr-Ungaro-Benages. Defendant Bernard, had been arrested during a controlled-delivery of cocaine which was seized pursuant to a large, international U.S. Drug Enforcement Administration (DEA) investigation titled "Operation Intercontinental." The defendant was subsequently indicted for drug trafficking and firearm offenses. At his first trial, the defendant was convicted of possession of a firearm by a convicted felon, but the jury could not reach a verdict on the drug counts. The re-trial was before a different United States District Court Judge, with a new co-counsel, a new defense counsel, and with new legal arguments and strategies. After a four-day jury trial, the defendant was convicted of conspiracy to possess with intent to distribute five kilograms or more of cocaine. Although I did not participate in the appeal as I had left the office to join the bench, I understand that the United States Court of Appeals for the Eleventh Circuit affirmed the defendant's convictions, but remanded the case for resentencing in light of the U.S. Supreme Court's then-recent decision in *United States v. Booker*, 543 U.S. 220 (2005). The defendant's subsequent sentence was affirmed on appeal and the United States Supreme Court denied his petition for writ of certiorari.

Trial dates:	April 19, 2004, through April 22, 2004
Judge/Court:	The Honorable Paul C. Huck Senior United States District Judge
Co-counsel:	Markenzy Lapointe, Esq. (Former Assistant U.S. Attorney) Boies, Schiller & Flexner, LLP 100 S.E. Second Street, Suite 2800 Miami, Florida 33131 (305) 357-8419
Defense Counsel:	Robert C.L. Vaughan, Esq. Ward Kim Vaughan & Lerner, LLP One Financial Plaza, Suite 2001 Fort Lauderdale, Florida 33394 (954) 527-1115
	Mia Burroughs-Fraser, Esq. Fraser Law Group, PA 2980 McFarlane Road, Suite 202 Coconut Grove, Florida 33133 (305) 282-6487

3. *United States v. Villada*, Case No. 02-20726-Cr-Martinez, *aff'd*, 87 Fed.Appx. 713 (Table) (11th Cir. 2003).

I was the sole counsel representing the United States in this jury trial. The defendant was arrested during a controlled delivery of 151 kilograms of cocaine. The case raised issues about the sufficiency of the evidence in light of the large quantity of drugs involved. After the four-day trial, the jury convicted the defendant of conspiracy to possess with intent to distribute cocaine based on circumstantial evidence. The court granted a defense motion for judgment of acquittal after the jury's verdict based on the court's finding that there was insufficient evidence to convict the defendant. The Eleventh Circuit affirmed. I did not participate in the appeal.

Trial dates:	November 4, 2002, through November 7, 2002
Judge/Court:	The Honorable Jose E. Martinez United States District Judge
Defense Counsel:	Celeste Higgins, Assistant Federal Public Defender 150 West Flagler Street, Suite 1700 Miami, Florida 33130 (305) 530-7000
	Mark D. Seitles, Esq. 40 N.W. Third Street, Suite PH 1 Miami, Florida 33128 (305) 403-8070

4. *United States v. Aldao, et al.*, Case No. 01-812-Cr-Seitz(s), *aff'd*, 405 F.3d 1260 (11th Cir. 2005).

A federal grand jury returned an indictment against the seven defendants, charging them with several counts of drug manufacturing and trafficking related to their growing and distributing large amounts of marijuana in a large and sophisticated drug manufacturing and distribution network. After a 17-day jury trial, all defendants were convicted of conspiracy to manufacture and possess with intent to distribute marijuana, manufacturing marijuana, and opening and maintaining a residence to manufacture marijuana. As co-counsel, I substantially participated in this trial by presenting the testimony of several witnesses, including expert witnesses, and by researching and arguing several legal issues related to expert testimony. The United States Court of Appeals for the Eleventh Circuit affirmed the defendants' convictions, but remanded for re-sentencing two of the seven defendants. I did not participate in the re-sentencing because I was then a sitting judge.

Trial dates:	September 23, 2002, through October 15, 2002
Judge/Court:	The Honorable Patricia A. Seitz Senior United States District Judge
Lead Counsel:	William H. Bryan, III, Assistant U.S. Attorney 40 North Central Avenue, Suite 1200

	Phoenix, Arizona 85004 (602) 514-7580
Defense Counsel: (Defendant A. Artires)	Juan Mourin, III, Esq. 1370 N.W. 16th Street Miami, Florida 33125 (305) 325-8119
Defense Counsel: (Defendant J. Artires)	Albert Levin, Esq. 2937 S.W. 27th Avenue, Suite 101 Miami, Florida 33133 (305) 379-7101
Defense Counsel: (Defendant Suarez)	Ramona Tolley, Esq. 400 S.E. Ninth Street Fort Lauderdale, Florida 33316 (954) 763-3453
Defense Counsel: (Defendant Garcia)	Gennaro Cariglio, Jr., Esq. 10800 Biscayne Boulevard, Suite 900 Miami, Florida 33161 (305) 899-0438
Defense Counsel: (Defendant Menendez)	Ernesto Medina, Esq. 782 N.W. 42nd Avenue, Suite 641 Miami, Florida 33126 (305) 260-0541
Defense Counsel: (Defendant Mercado)	George Vila, Esq. 201 Alhambra Circle, Suite 702 Coral Gables, Florida 33134 (305) 445-2540
Defense Counsel: (Defendant Enriquez)	Roderick Vereen, Esq. 14630 South River Drive Miami, Florida 33167 (786) 391-1751

5. *United States v. D'Sa*, Case No. 01-783-Cr-King, *aff'd*, 54 Fed.Appx. 490 (11th Cir. 2002), *cert. denied*, 537 U.S. 1245 (2003).

Following an undercover U.S. Secret Service investigation of child Internet predators, the defendant in this case was indicted for the crime of using a facility of interstate commerce to induce a minor to engage in sexual activity. The charge was based on the defendant's use of an Internet chat room to induce someone who he believed to be a 13-year-old girl to have sexual intercourse with him and his subsequent attempt to meet her.

In his jury trial, the defendant raised an entrapment defense, claiming that the government induced him into committing a crime that he was not otherwise predisposed to commit. The defendant was convicted after a two-day jury trial. This was one of the early prosecutions for this type of Internet crime. The conviction was affirmed, per curiam, by the Eleventh Circuit Court of Appeals. The United States Supreme Court denied certiorari. I did not participate in the appeal.

Trial dates:	October 24, 2001, through October 25, 2001
Judge/Court:	The Honorable James Lawrence King Senior U.S. District Judge
Co-Counsel:	Ben Greenberg, Chief Assistant U.S. Attorney 99 N.E. Fourth Street Miami, Florida 33132 (305) 961-9100
Defense Counsel:	Hector Flores, Esq. (Former Assistant Federal Defender) 40 N.W. Third Street, Penthouse One Miami, Florida 33128 (305) 374-3998

6. *United States v. Martin*, Case No. 00-955-Cr-Huck.

I was the sole counsel representing the United States in this jury trial. This case was the culmination of a large federal grand jury investigation that I led concerning organized credit card fraud committed by approximately 50 individuals in South Florida. Using a credit card processing device, the co-conspirators fraudulently received financial credit to their credit card accounts for purported returned items which were, in fact, never purchased from several merchants. Most of the co-defendants entered guilty pleas prior to trial, but I tried the case against the remaining defendant. After a two-day jury trial, the defendant was convicted of conspiracy to commit access device (credit card) fraud and access device (credit card) fraud.

Trial dates:	May 30, 2001, through May 31, 2001
Judge/Court:	The Honorable Paul C. Huck Senior United States District Judge
Defense Counsel:	Abe A. Bailey, Esq. 18441 N.W. Second Avenue, Suite 217 Miami, Florida 33169 (786) 657-2915

7. *United States v. Rodriguez-Mosquera*, Case No. 01-0094-Cr-Graham.

I was the sole counsel representing the United States in this jury trial. The defendant had attempted to smuggle more than $5 million worth of heroin and cocaine into the United

States in the bay of a cargo ship. The prosecution of this case was particularly difficult because the defendant's confession had been suppressed prior to trial, and the remaining evidence was primarily circumstantial. Although there were no eye witnesses to the defendant's possession of the narcotics, I presented the testimony of witnesses who identified the defendant as a stowaway on the ship and a fingerprint expert who tied the defendant to the area of the ship where the narcotics were hidden. After a two-day jury trial, the defendant was convicted of nine drug trafficking counts.

Trial dates:	April 16, 2001, through April 17, 2001
Judge/Court:	The Honorable Donald L. Graham Senior United States District Judge
Defense Counsel:	Richard Lautenbach, Esq. 3510 Scotts Lane, Suite C30 Philadelphia, Pennsylvania 19129 (484) 343-4423

8. *State of Florida v. Ramirez*, Case No. F83-29429, *rev'd*, 810 So.2d 836 (Fla.2001).

The defendant was charged with first degree murder, armed robbery, and armed burglary based on a brutal murder and theft. Law enforcement officers identified the defendant as the assailant, in great part, by a partial fingerprint left by the defendant at the crime scene and through a positive "tool mark" comparison between the victim's bone cartilage and a knife found in the defendant's possession. As co-counsel, I substantially participated in this trial by presenting the testimony of several witnesses for the State of Florida. The jury found the defendant guilty of the charged offenses and later recommended life imprisonment during the penalty phase of the trial. The judge sentenced the defendant to death. The defendant's conviction and sentence were reversed on appeal by the Florida Supreme Court, which held that the tool mark indentification was scientifically unreliable and that the trial judge erroneously overrode the jury's recommendation of life imprisonment. Ramirez was subsequently convicted of first degree murder in a re-trial. I did not participate in the retrial because I was then working as an Assistant District Counsel for the Immigration and Naturalization Service.

Trial dates:	September 16, 1997, through October 22, 1997
Judge/Court:	The Honorable Ronald Dresnick, Circuit Judge, Eleventh Judicial Circuit of Florida
Lead Counsel:	Flora Seff, Esq. (Former Assistant State Attorney) 9300 N.W. 41st Street Doral, Florida 33178 (786) 331-5103
Defense Counsel:	Eugene Zenobi, Esq. Regional Counsel, Third Region of Florida

401 N.W. Second Avenue, Suite S310
Miami, Florida 33128
(305) 679-6550

Kenneth H. White, Esq.
2937 S.W. 27th Avenue, Suite 101
Miami, Florida 33133
(305) 442-4277

9. *State of Florida v. Brunache,* Case No. 97-2254.

I was the sole counsel representing the State of Florida in this jury trial. The defendant, who had an extensive criminal history, was arrested and charged with committing several violent felonies based on the armed robbery of a car dealership in Miami, Florida. After a two-day jury trial, the defendant was convicted of aggravated assault with a firearm, attempted armed robbery, armed burglary with an assault, and possession of a short barreled firearm.

Trial dates:	November 4, 1997, through November 5, 1997
Judge/Court:	The Honorable Leon Firtel Circuit Judge, Eleventh Judicial Circuit of Florida
Defense Counsel:	Alberto "Kiko" Sarasua, Esq. 442 Hampton Lane Key Biscayne, Florida 33149 (305) 361-7480

10. *State of Florida v. Page*, Case No. 95-35128.

I was the lead attorney representing the State of Florida in this re-trial. The defendant, designated as an armed career criminal under Florida law, robbed the owner of a small gas station with what appeared to the victim to be a firearm. The robbery victim thereafter chased the defendant and shot the defendant in the back, leaving him paralyzed. The police later determined that the defendant used a toy gun to rob the victim. The defendant subsequently filed a civil lawsuit against the victim of the robbery, which was pending at the time the criminal trial commenced. This case was initially tried by me in November 1996, but the jury could not reach a unanimous verdict. The defendant was subsequently convicted of robbery with a weapon in the re-trial.

Trial dates:	January 13, 1997, through January 14, 1997.
Judge/Court:	The Honorable Barbara Levenson (Retired) Circuit Judge, Eleventh Judicial Circuit of Florida.
Co-Counsel:	Teresa Alvarez, Esq. 6780 Coral Way

Miami, Florida 33155
(305) 667-3040

Defense Counsel: Kenneth Hassett, Esq.
6099 Stirling Road, Suite 217
Davie, Florida 33314
(954) 791-3939

Defense Counsel: Elizabeth Katsen, Esq.
7700 North Kendall Drive, Suite 610
Miami, Florida 33156
(305) 596-2000

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

As an Assistant U.S. Attorney, I led several large-scale international investigations for the DEA and other federal agencies, including *Operation Busted Manatee*, *Operation Intercontinental*, and *Operation Joker's Wild*. I led the federal grand jury investigation for *Operation Busted Manatee*, and assisted the DEA in obtaining court-approved wire surveillance and search warrants. I subsequently obtained federal grand jury indictments for dozens of people in the United States, Colombia, Jamaica, and the Bahamas who were responsible for smuggling tons of cocaine into the United States, including one of the U.S. government's most-wanted cocaine suppliers. This investigation, along with another criminal investigation, *Operation Double Talk*, cut the flow of cocaine into the United States by approximately ten percent by closing key smuggling routes through the Caribbean. The investigations ultimately resulted in more than 330 arrests and the seizure of 26,000 kilograms of cocaine and $85 million in laundered money.

As an Assistant U.S. Attorney assigned to the Appellate Section of the U.S. Attorney's Office, I also successfully handled several appeals for the United States in the Eleventh Circuit Court of Appeals. The briefs I wrote on behalf of the United States include the following appellate cases: *United States v. Daniel Chaguala-Carrillo*, 234 F.3d 710 (11th Cir. 2000), *cert. denied*, 531 U.S. 1202 (2001); *Steven Jackson, Jr., v. Arthur Cullen, et al.*, 229 F.3d 1168 (11th Cir. 2000); *United States v. Intheay Martin*, 209 F.3d 724 (11th Cir. 2000); *United States v. Joseph Shames*, 207 F.3d 662 (11th Cir. 2000); and *United States v. Juan Carlos Arana*, 220 F.3d 592 (11th Cir. 2000).

As a judge, I have tried to be a leader in South Florida's legal community on issues concerning professionalism and civility. For several years, I have been a member of the Board of Directors of the Spellman-Hoeveler American Inn of Court, which hosts

monthly programs related to the law and ethics. I am also the co-chairman of the 11th Judicial Circuit of Florida's Professionalism Committee, having been appointed to that position by our circuit's former Chief Judge. The Professionalism Committee is comprised of several County and Circuit Judges, a judge of Florida's Third District Court of Appeal, the Miami-Dade State Attorney, the Miami-Dade County Public Defender, and several other prominent South Florida attorneys. Under my leadership, the Professionalism Committee hosted South Florida's first Professionalism and Civility Action Summit, which included representatives of most of South Florida's voluntary bar associations and several judges. This year, the Professionalism Committee also created and hosted our circuit's first New Attorney Breakfast, designed to provide new lawyers with guidance on ethics and practical advice on the practice of law.

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.

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 likely conflicts-of-interest. If confirmed, I will adhere to the Code of Conduct for United States Judges and all other applicable authority.

    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 resolve potential conflicts of interest and otherwise act pursuant to the Code of Conduct for United States District Judges and all other applicable authority.

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

    As a member of the Florida Bar, I have been prohibited from performing most forms of pro bono legal work due to my positions as Circuit and County Judge, Assistant U.S. Attorney, Assistant District Counsel, and Assistant State Attorney. However, I accepted a permissable Guardian Ad Litem appointment through the Dade County Bar Association's "Put Something Back" Program in 2003.

    I am also an active volunteer with several local and national community service organizations, including 100 Black Men of South Florida, the 5000 Role Models of Excellence Project, and Big Brothers/Big Sisters of Greater Miami. I have mentored several law students from the South Florida law schools, and received the 2007 Mentor of the Year Award from the St. Thomas University Black Law Students Association. I was the designated Justice Teaching volunteer at Lillie C. Evans Elementary School in Miami, Florida, and the 5000 Role Models of Excellence Project mentor coordinator for Miami Beach High School. I have participated in numerous career fairs and other programs at area elementary, middle and high schools, for which I provide educational and career advice. I also donate substantial time to my church, Greater Bethel A.M.E. Church, and its community programs.

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 15, 2013, I submitted my application to the Florida Federal Judicial Nominating Commission, convened by Senators Bill Nelson and Marco Rubio, for the two vacancies on the United States District Court for the Southern District of Florida. On September 17, 2013, I was interviewed by the Nominating Commission in Miami, Florida. In the evening following my interview, I received an email from the Chairman of the Nominating Commission's Southern District Conference that I was being recommended to Senators Nelson and Rubio. On November 7, 2013, I was interviewed by Senators Nelson and Rubio in Senator Nelson's office in Washington, D.C. On November 20, 2013, Senator Nelson's General Counsel notified me that my name was being forwarded to the White House. I have been in contact with officials from the Office of Legal Policy at the Department of Justice since that same day. On January 17, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 6, 2014, 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
Gayles, Darrin P.	U.S. District Court, Southern District of Florida	02/06/2014
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 - Active Status	☑ Nomination Date 02/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 01/31/2014
7. Chambers or Office Address		
73 W. Flagler Street Suite 1304 Miami, Florida 33130		

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	Date of Report
Gayles, Darrin P.	02/06/2014

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. 2014	State of Florida - Circuit Judge salary	$9,058.00
2. 2013	State of Florida - Circuit Judge salary	$108,901.00
3. 2012	State of Florida - Circuit Judge salary	$109,705.00
4.		

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

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Gayles, Darrin P.	Date of Report 02/06/2014

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.	Chase Bank	Mortgage on Rental Property, Miami, Florida (Pt. VII, line 1)	M
2.	Chase Bank	Credit Card	K
3.	American Express	Credit Card	K
4.	Bank of America	Credit Card	K
5.	Citibank	Credit Card	J

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Gayles, Darrin P.	Date of Report 02/06/2014

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. Rental Property, Miami, Florida	E	Rent	M	W	Exempt				
2. FRS Select Moderate Balanced Fund (A20)		None	N	T	Exempt				
3. AXA Equitable variable life insurance policy									
4. - EQ/BlackRock Basic Value Equity		None	J	T	Exempt				
5. - EQ/Common Stock Index		None	J	T	Exempt				
6. - EQ/Equity 500 Index		None	J	T	Exempt				
7. - EQ/International Equity Index		None	J	T	Exempt				
8. - EQ/Mid Cap Index		None	J	T	Exempt				
9. - EQ/Mid Cap Value PLUS		None	J	T	Exempt				
10. - Multimanager Core Bond		None	J	T	Exempt				
11. - Multimanager International Equity		None	J	T	Exempt				
12. - Multimanager Multi-Sector Bond		None	J	T	Exempt				
13.									
14.									
15.									
16.									
17.									

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	

Name of Person Reporting	Date of Report
Gayles, Darrin P.	02/06/2014

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

Name of Person Reporting	Date of Report
Gayles, Darrin P.	02/06/2014

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/ Darrin P. Gayles

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		6	824	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		133	059
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		431	695
Real estate owned – see schedule		650	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		95	000	Education loan		100	215
Cash value-life insurance		16	863				
Other assets itemize:							
FRS Select Moderate Balanced Fund		324	754				
				Total liabilities		664	969
				Net Worth		428	472
Total Assets	1	093	441	Total liabilities and net worth	1	093	441
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 425,000
Rental property	225,000
Total Real Estate Owned	$ 650,000

Real Estate Mortgages Payable	
Personal residence	$ 313,542
Rental property	118,153
Total Real Estate Mortgages Payable	$ 431,695

AFFIDAVIT

I, Darrin P. Gayles,
do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 6, 2014
(DATE)

(NAME)

(NOTARY)

ELIZABETH GARIAZZO
MY COMMISSION # FF 033980
EXPIRES: November 8, 2017
Bonded Thru Budget Notary Services

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Carlos Eduardo Mendoza

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

   United States District Court for the Middle District of Florida

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

   Putnam County Courthouse
   410 St. Johns Avenue
   Palatka, Florida 32177

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

   1970; Hialeah, Florida

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

   1994 – 1997, West Virginia University College of Law; J.D. (Order of the Barristers), 1997

   1991 – 1993, West Virginia University; B.A. (*magna cum laude*), 1993

   1988 – 1991, Central Florida Community College (College of Central Florida); A.A., 1991

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

2011 – present
State of Florida
Seventh Judicial Circuit
410 St. Johns Avenue
Palatka, Florida 32177
Circuit Judge and Administrative Judge

2008 – 2011
City of St. Augustine
P.O. Box 210
St. Augustine, Florida 32084
Assistant City Attorney

2005 – 2008
Office of the State Attorney
4010 Lewis Speedway, Suite 2022
St. Augustine, Florida 32084
Assistant State Attorney and Division Chief

2004 – 2005
101 West Main Street, Suite 8000
Norfolk, Virginia 23510
Special Assistant United States Attorney

1997 – 2005
Judge Advocate General's Corps
United States Navy
Norfolk, Virginia 23510
Judge Advocate

1995 – 1997
Steptoe & Johnson
1085 Van Voorhis Road, Suite 400
Morgantown, West Virginia 26507
Student Law Clerk

1993 – 1995
United States Marine Corps (Reserves)
Connellsville Airport
Connellsville, Pennsylvania
U. S. Marine and Diesel Mechanic

April – May 1994
Penn Capital Management
(now defunct)

Pittsburgh, Pennsylvania
Trainee

January – March 1994
L.C. Wegard
(now defunct)
Pittsburgh, Pennsylvania
Trainee

November – December 1993
Stephen Dunn & Associates
1728 Kinney Boulevard
Venice, California 90291
Ticket Sales

August – November 1993
Barefoot Grass Lawn Service
(now defunct)
Worthington, Ohio
Lawn Care

Other affiliations (uncompensated unless indicated otherwise):

2011 – present
Palatka Rotary Club, District 6970
1600 Twigg Street
Palatka, Florida 32177
Sergeant-at-Arms
Paul Harris Fellow

2010 – present
Hispanic Heritage Council of St. Johns County
636 Remington Court
St. Augustine, Florida 32092
Legal Adviser and Former Registered Agent

2009 – 2011
Epic Behavioral Healthcare
1400 Old Dixie Highway
St. Augustine, Florida 32084
Board of Directors

2011 – present
Madeleine August, LLC
P.O. Box 4543

St. Augustine, Florida 32085
Managing Member (50% profit share)

2005 – present
Jackson Claire, LLC
2405 Gray Heron Street
St. Augustine, Florida 32084
Managing Member (33% profit share)

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 timely registered for selective service.

   1989 – 1995
   United States Marine Corps Reserves
   Corporal
   Honorably Discharged

   1997 – 2005
   United States Navy
   Lieutenant
   Honorably Discharged

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.

   Palatka Rotary, Paul Harris Fellow (2012)
   State Attorney's Office, Plaque for Exemplary Service (2009)
   Department of Justice Seal, in recognition of exemplary service (2005)
   Navy/Marine Corps Commendation Medal (2005, 2003, 2001, 2001)
   Letter of Commendation, Junior Officer of the Quarter (2000)
   Navy/Marine Corps Achievement Medal (1999)
   Navy Meritorious Unit Commendation Ribbon (1999)
   Navy Rifleman Medal (1998)
   Naval Justice School, Judge Advocate Certification, Naval Station Newport, Newport, Rhode Island (1997)
   Navy Expert Pistol Medal (1997)
   Selected Marine Corps Reserve Medal (1993)
   Combat Action Ribbon (1991)
   Navy Unit Commendation (1991)
   National Defense Service Medal (1991)

Southwest Asia Service Medals for Defense of Saudi Arabia, Liberation and Defense of Kuwait, and Southwest Asia Cease Fire Campaign (1991)
Sea Service Deployment Ribbon (1991)
Armed Forces Reserve Medal with Bronze Letter "M" (1991)
Kuwait Liberation Medal, Saudi Arabia (1991)
Kuwait Liberation Medal, Kuwait (1991)
Marine Rifleman Badge (1989)

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

Dunn Blount Inn of Court (2012 – present)
Florida Conference of Circuit Judges (2011 – present)
Florida Municipal Attorney's Association (2008 – 2011)
Florida Association of Police Attorneys (2008 – 2011)
Order of the Barristers (1997 – present)
Putnam County Bar Association (2011 – present)

10. **Bar and Court Admission**:

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

Florida, 2005
West Virginia, 1997

There have been no lapses in membership.

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

Supreme Court of the State of Florida, 2005
United States District Court for the Eastern District of Virginia, 2003
Navy/Marine Corps Court of Criminal Appeals, 1998
Supreme Court of Appeals of West Virginia, 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.

Big Brothers/Sisters, Celebrity Waiter/Tips for Kids (2008 – 2011)
Fundraiser
Cattle Baron's Ball (2007 – 2010)
Fundraiser
Epic Behavioral Healthcare (2009 – 2011)
Board of Directors (2009 – 2011)
Annual Epic Community Service Garden Expo (2009 – 2011)
Fundraiser
High School Outreach (2013 – present)
Hispanic Heritage Council of St. Johns County (2010 – present)
Legal Adviser & Registered Agent (2010 – 2011)
Limelight Theater Fundraiser (2007)
Marine Corps League (St. Augustine, Florida) (2011 – present)
Palatka Rotary Club, District 6970 (2011 – present)
Sergeant-at-Arms (2011 – present)
Paul Harris Fellow (2011 – present)
Annual Rotary Blood Drive, Putnam County (2011 – present)
Annual Rotary Dictionaries for Students Program (2011 – present)
Annual Rotary Health Expo, Putnam County (2011 – present)
Pinking Up the Pace (2007 – 2010)
Fundraiser
Putnam County Public Safety Coordinating Council (2011 – present)
Relay for Life (2007 – 2010)
Fundraiser
Sexual Assault Response Team (St. Augustine, Florida) (2005 – 2009)
St. Augustine Rotary Club, District 6970 (2007 – 2010)
St. Augustine Little League (2007 – 2008)
Coach
St. Johns Academy High School Mock Trial Competition (2007 – present)
Judge
Toys for Tots (1989 – present)
USTA First Serve Tennis Program (2007 – 2009)
Assistant Coach

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.

Years before I was a member, Rotary International, an organization devoted to community service, restricted membership to male members. To the best of my knowledge none of the other organizations listed in 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

"No Strain Here Between Tanner, Law Enforcement," St. Augustine Record, July 11, 2008. Copy supplied.

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

I have not prepared reports, memoranda or policy statements on behalf of any bar association, committee, conference, or organization of which I was or am currently a member.

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

August 24, 2012: Public Statements at Putnam County Public Safety Coordinating Council meeting discussing the court system and efforts to process cases as expeditiously as possible. Minutes supplied.

May 25, 2012: Public Statements at Putnam County Public Safety Coordinating Council meeting on overcrowding at the Putnam County Jail. Minutes supplied.

November 18, 2011: Public Statements at Putnam County Public Safety Coordinating Council referencing a meeting with the Clerk of Court and a County Commissioner on the court process, including a discussion on expediting violation of probation cases. Minutes supplied.

In my capacity as an Assistant City Attorney for the City of St. Augustine from 2008 to 2011, I advised the city as to proposed ordinances and to updates related to litigation and police matters from time to time. I have listed my official public statements related to this advice below.

July 25, 2011: Statements at Public Hearing regarding the 450th Commemoration of the Founding of St. Augustine, *Wendler v. City of St. Augustine* and consideration of Ordinances 2011–08 and 2011–09. Audio recording supplied.

July 12, 2011: Statements at Public Hearing before the Code Enforcement, Adjustments and Appeals Board as Assistant City Attorney on general legal issues. Minutes supplied.

June 14, 2011: Statements at Public Hearing before the Code Enforcement, Adjustments and Appeals Board as Assistant City Attorney on general legal issues. Minutes supplied.

May 23, 2011: Statements at Public Hearing regarding consideration of Ordinance 2011–05. Audio recording supplied.

May 9, 2011: Statements at Public Hearing regarding consideration of Ordinances 2011–05, 2011–06 and 2011–07. Audio recording supplied.

May 3, 2011: Statements at Public Hearing before the Planning and Zoning Board as Assistant City Attorney on general legal issues. Minutes supplied.

April 11, 2011: Statements at Public Hearing regarding consideration of Ordinance 2011–01. Audio recording supplied.

March 28, 2011: Statements at Public Hearing regarding consideration of Ordinance 2011–01. Audio recording supplied.

March 14, 2011: Statements at Public Hearing regarding City of St. Augustine Police Matters and consideration of Ordinance 2011–01. Audio recording supplied.

March 1, 2011: Statements at Public Hearing before the Planning and Zoning Board as Assistant City Attorney on general legal issues. Minutes supplied.

February 28, 2011: Statements at City Commission Workshop regarding Horse Drawn Carriage Ordinance. Audio recording supplied.

January 24, 2011: Statements at Public Hearing regarding consideration of Ordinance 2011–01 and vandalism of the Castillo San Marcos. Audio recording supplied.

January 11, 2011: Statements at Public Hearing before the Code Enforcement, Adjustments and Appeals Board as Assistant City Attorney on general legal issues. Minutes supplied.

December 13, 2010: Statements at Public Hearing regarding settlement agreement in *City of St. Augustine v. RBD Investment, Inc.* Audio recording supplied.

November 8, 2010: Statements at Public Hearing regarding consideration of Ordinance 2010–42. Audio recording supplied.

October 25, 2010: Statements at Public Hearing regarding consideration of Ordinance 2010–37. Audio recording supplied.

October 11, 2010: Statements at Public Hearing regarding consideration of Ordinance 2010–35. Audio recording supplied.

October 5, 2010: Statements at Public Hearing before the Planning and Zoning Board as Assistant City Attorney on general legal issues. Minutes supplied.

September 27, 2010: Statements at Public Hearing regarding consideration of Ordinance 2010–35. Audio recording supplied.

September 13, 2010: Statements at City Commission Workshop regarding Horse Drawn Carriage Ordinance. Audio recording supplied.

September 13, 2010: Statements at Public Hearing regarding consideration of consideration of Ordinances 2011–05, 2011–06, 2011–07 and 2010–30. Audio recording supplied.

August 23, 2010: Statements at Public Hearing regarding consideration of Ordinances 2010–24 and 2010–30. Audio recording supplied.

August 9, 2010: Statements at Public Hearing on strategies to reduce aggressive panhandling. Audio recording supplied.

July 26, 2010: Statements at a Horse Drawn Carriage Workshop. Audio recording supplied.

July 19, 2010: Host, Public Information Meeting on Proposed Amendments to Horse Drawn Carriage Ordinance, St. Augustine, Florida. Members of the public were given an opportunity to pose questions to me on proposed amendments to the above ordinance. I have no notes, transcripts or recording.

May 24, 2010: Statements at a Horse Drawn Carriage Workshop. Minutes supplied.

February 8, 2010: Statements at Public Hearing regarding consideration of Ordinance 2010–06. Audio recording supplied.

January 25, 2010: Statements at Public Hearing regarding consideration of Ordinance 2010–06. Audio recording supplied.

November 19, 2009: Statements at Public Hearing before the Historical Architectural Review Board as Assistant City Attorney on general legal issues. Minutes supplied.

October 26, 2009: Statements at Public Hearing regarding consideration of Ordinance 2009–36. Audio recording supplied.

October 12, 2009: Statements at Public Hearing regarding consideration of Ordinance 2009–36. Audio recording supplied.

October 6, 2009: Statements at Public Hearing before the Planning and Zoning Board as Assistant City Attorney on general legal issues. Minutes supplied.

September 8, 2009: Statements at Public Hearing before the Code Enforcement, Adjustments and Appeals Board as Assistant City Attorney on general legal issues. Minutes supplied.

September 1, 2009: Statements at Public Hearing before the Planning and Zoning Board as Assistant City Attorney on general legal issues. Minutes supplied.

August 4, 2009: Statements at Public Hearing before the Planning and Zoning Board as Assistant City Attorney on general legal issues. Minutes supplied.

July 14, 2009: Statements at Public Hearing before the Code Enforcement, Adjustments and Appeals Board as Assistant City Attorney on general legal issues. Minutes supplied.

May 5, 2009: Statements at Public Hearing before the Planning and Zoning Board as Assistant City Attorney on general legal issues. Minutes supplied.

March 23, 2009: Statements at Public Hearing regarding consideration of Ordinance 2009–09, as amended. Audio recording supplied.

March 9, 2009: Statements at Public Hearing regarding consideration of Ordinance 2009–09. Audio recording 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.

November 8, 2013: Speaker, Palatka Rotary's Dictionary for Third Graders Program, Children's Reading Center, Palatka, Florida. The topic focused on the importance of reading comprehension and vocabulary. I have no notes, transcripts or recording. The address for the Children's Reading Center is 7901 St. Johns Avenue, Palatka, FL 32177.

May 17, 2013: Speaker, Speech to Graduating Seniors, Crescent City High School, Crescent City, Florida. The topic focused on the responsibilities that accompany adulthood. I have no notes, transcripts or recording. The address for Crescent City High School is 2201 South US Highway 17, Crescent City, Florida 32112.

May 17, 2013: Speaker, Speech to Graduating Seniors, Palatka High School, Palatka, Florida. The topic focused on the responsibilities that accompany adulthood. I have no notes, transcripts or recording. The address for Palatka High School is 302 Mellon Road, Palatka, Florida 32177.

May 17, 2013: Speaker, Speech to Graduating Seniors, Interlachen High School, Interlachen, Florida. The topic focused on the responsibilities that accompany adulthood. I have no notes, transcripts or recording. The address for Interlachen High School is 126 North County Road 315, Interlachen, Florida 32148.

March 19, 2013: Mock Trial Judge, St. Johns Academy Mock Trial Competition, St. Augustine, Florida. I offered graded critique and spoke to the students subsequent to their presentations as to the importance education and effective public speaking. I have served annually for five years as a judge for this student mock trial competition. I have no notes, transcripts or recording, nor do I recall the exact dates of each event. The address for St. Johns Academy is 1533 Wildwood Drive, St. Augustine, Florida 32086.

February 22, 2013: Speaker, Awarding of Plaque from Conference of Circuit Judges, The Investiture of Circuit Judge Howard Maltz, St. Augustine, Florida. Transcript supplied.

November 9, 2012: Speaker, Congratulatory Speech, The Investiture of District Judge Wendy W. Berger, St. Augustine, Florida. I congratulated Judge Berger on her appointment to the Fifth District Court of Appeal. I have no notes, transcripts or recording, but press coverage is supplied. The address for the Fifth District Court of Appeal is 300 South Beach Street, Daytona Beach, Florida 32114.

September 28, 2012: Speaker, Speech to Grade School Students, Durbin Creek Elementary School, St. Johns, Florida. The topic focused on the concept of fairness. I have no notes, transcripts or recording. The address for Durbin Creek Elementary School is 4100 Race Track Road, St. Johns, Florida 32259.

April 4, 2012: I hosted Interlachen High School Students, who observed court proceedings at the Putnam County Courthouse, Palatka, Florida. Once the proceedings ended, students were invited to ask questions about what they had observed in court that day. I have no notes, transcripts or recording. The address for the Putnam County Courthouse is 410 St. Johns Avenue, Palatka, Florida 32177.

October 7, 2011: Speaker, Acceptance Speech at my Investiture, Palatka, Florida. Transcript supplied.

February 2011: Interpreter, Spanish delegation visiting St. Augustine, Florida. I was one of several on call interpreters for non-legal functions that required interpretation for the visiting delegation. The events were all informal tours of sites in and around St. Augustine. I have no notes, transcripts or recording. The interpreter services were sponsored by the City of St. Augustine, 75 King Street, St. Augustine, Florida, 32086.

February 2010: Interpreter, Spanish delegation visiting St. Augustine, Florida. I was one of several on call interpreters for non-legal functions that required interpretation for the visiting delegation. The events were all informal tours of sites in and around St. Augustine. I have no notes, transcripts or recording. The interpreter services were sponsored by the City of St. Augustine, 75 King Street, St. Augustine, Florida, 32086.

April 2009: Interpreter, St. Augustine delegation traveling to Aviles, Spain. I served as an interpreter for non-legal functions that required interpretation. The events were all informal tours in and around Aviles, Spain. I have no notes, transcripts or recording. The interpreter services were sponsored by the City of St. Augustine, 75 King Street, St. Augustine, Florida, 32086.

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

After searching my records, my personal recollection, and the Internet, I have listed those articles for which I gave interviews. It is possible, however, that there may be articles that I may have missed.

Skiba, Pete, "Mendoza Finalist for Judge's Seat", Palatka Daily News, September 13, 2013. Copy supplied.

Justice, Molly, "Courthouse Renovations, Expansions in Putnam, St. Johns Counties," The Docket Call, Winter 2012. Copy supplied.

Court Administration, "Criminal Court Services Annual Report," Fiscal Year 2012. Copy Supplied.

Guinta, Peter, "Mendoza Selected for Circuit Judge Job," St. Augustine Record, July 21, 2011. Copy supplied.

Griffin, Justine, "City Seeks Jail Time for Vandals," St. Augustine Record, February 18, 2011. Copy supplied.

Hunt, David, "Graffiti in Historic St. Augustine Leads to Overtime Patrols, Reward Offer," Jacksonville.com, Florida Times Union, February 16, 2011. Copy supplied.

Edwards, Jennifer, "Where Are They Now? Carlos Mendoza Now a Judge in Putnam County," St. Augustine Record, December 21, 2011. Copy supplied.

I recall giving an interview for an article in Hola Noticias about my 2011 appointment to the circuit bench in August 2011. I have been unable to obtain a copy.

Prior, Richard, "Local Attorney to Replace Christensen on Circuit Bench," St. Augustine Record, December 17, 2010. Copy supplied.

Guinta, Peter, "Board OKs Project on Lightsey Road," St. Augustine Record, June 1, 2010. Copy supplied.

Guinta, Peter, "Lightsey Road Project Tabled," St. Augustine Record, April 16, 2008. Copy supplied.

Clark, Jessica, "Man Sentenced to Chemical Castration," First Coast News at Five, February 14, 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.

In July 2011, I was appointed as a Circuit Court Judge by Governor Rick Scott. Circuit courts are the highest level of trial court in the State of Florida with jurisdiction over felony criminal cases, cases involving juvenile delinquency, civil cases with amounts in dispute over $15,000, family law cases, and probate proceedings. Circuit Courts in Florida also have jurisdiction over appeals from county courts and exercise certiorari review from administrative proceedings. In 2013, the Chief Judge for the Seventh

Judicial Circuit appointed me to serve as the administrative judge for Putnam County, Florida. As administrative judge, I am responsible for re-assignment of any cases involving judicial disqualification or recusal. I also oversee the jury selection process, courthouse security and the overall daily operation of the Putnam County Courthouse. As administrative judge, I continue to maintain my overall caseload.

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

I have presided over approximately 40 cases that have gone to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	90%
bench trials:	10%
civil proceedings:	10%
criminal proceedings:	90%

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

As a trial court judge, I have not issued published opinions. The hard copies of my orders and decisions are on file with the Clerk of Court. However, I have sat by special designation as an associate judge with the Fifth District Court of Appeal, which has resulted in one opinion that I wrote.

Lakey v. State of Florida, 113 So.3d 90 (Fla. 5th DCA 2013)

Morgan v. State of Florida, 112 So. 3d 122 (Fla. 5th DCA 2013) (concurring)

Price v. State of Florida, 112 So. 3d 652 (Fla. 5th DCA 2013) (concurring)

Marian Farms, Inc. v. SunTrust Banks, Inc., 2014 WL 25585 (Fla. 5th DCA 2014) (concurring)

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 of Florida v. Hill*, Case No. 10–2498 CF. Order Supplied.

Minutes after an alleged burglary, police arrested the defendant, who was covered with vegetation, sweating profusely, and running away from the scene of the crime. In addition, property uniquely identifiable to the burglarized residence was

found at or near the location where the defendant was apprehended. After apprehension, the alleged victim was transported to the location where the defendant was arrested and immediately identified the defendant as the perpetrator. I denied a motion to suppress challenging the on-scene identification. The matter then proceeded to trial where the jury subsequently acquitted the defendant of the charge of burglary of an occupied dwelling.

Prosecutor:	Anthony Eric Leonard 536 Sarto Court St. Augustine, Florida 32086 (904) 547-2362
Defense Counsel:	Kurt Francis Teifke P.O. Box 844 300 North State Street Bunnell, Florida 32110 (386) 269-4551

2. *Sardo, et al. v. Beck, et al.*, Case No. 11–0291 CP and 11–0527 CA. Order supplied.

A wrongful death action relating to a child resulted in a significant monetary settlement, which was deposited into the estate of the deceased child for distribution. Ms. Sapp, the mother of the deceased child filed a petition seeking appointment as personal representative. In the petition, Ms. Sapp identified a person named Mr. Sardo as the father. Five months subsequent to the mother being appointed as personal representative, Mr. Beck filed an emergency petition alleging fraud. Mr. Beck claimed to be the father of the deceased child and sought the removal of Ms. Sapp as personal representative. He also sought sanctions against Ms. Sapp. In the midst of litigating the emergency petition, Ms. Sapp and Mr. Sardo filed a declaratory action seeking to independently establish the biological paternity of the deceased child. I ordered consolidation of both actions, held contested evidentiary hearings and issued a final order granting the emergency petition. I also ordered sanctions against Ms. Sapp for defrauding the Court and further denied the relief requested in the declaratory action. The entire matter was *per curiam* affirmed by the Fifth District Court of Appeal in 5D12-0748. The matter was later settled pursuant to court ordered mediation.

Counsel for Respondent:	Stephen E. Hilker P.A. P.O. Box 470969 Lake Monroe, Florida 32747 (386) 328-1464
Counsel for Petitioner:	John Key Law Offices of John Key, P.A. 417 St. Johns Avenue, Suite Eight

Palatka, Florida 32177
(386) 385-3646

3. *State of Florida v. Harris*, Case No. 10–0499 CF.

As part of an ongoing dispute with several persons, Harris and Anderson confronted them while carrying loaded firearms. There was an exchange of gunfire with no injuries. Over the course of the next month, Anderson individually and at times with Harris, approached several attendees of the initial dispute and warned them under the threat of great bodily harm or death not to speak about what they had observed. Later, Harris and Anderson arrived at a location occupied by their adversaries and opened fire on the residence, killing one of the occupants. The State sought to introduce and impute all of Anderson's acts to Harris as facts inextricably intertwined to the eventual murder of the victim. I issued an order permitting the introduction of said acts. At the conclusion of a week-long trial, the jury found Harris guilty of first degree murder. Anderson's case is still pending in a pre-trial status.

Prosecutor:	Mark Johnson Office of the State Attorney 410 St. Johns Avenue, Room 109 Palatka, Florida 32177 (386) 329-0259
Defense Counsel:	Kevin Robert Monahan 601 St. Johns Avenue Palatka, Florida 32177 (386) 325-8673

4. *State of Florida v. Williams*, Case No. 08–1844 CF. Orders supplied.

The State of Florida alleged that the defendant robbed a federal agent at gunpoint and then used the stolen and marked currency to pay for his criminal defense in a separate case. A judge ordered that the attorney compensated with the stolen and marked currency could be called to testify on how he came into possession of said currency. The State instead chose to call the defendant's spouse as a witness to establish a link between the defendant and the marked currency. The Fifth District Court of Appeal reversed the conviction, citing the trial judge's failure to recognize the spousal privilege. I was assigned the case on remand. I ordered the former attorney to testify in response to a subpoena issued by the State of Florida and made findings that the entirety of the interaction between the attorney and his former client did not constitute a confidential communication. The Fifth District Court of Appeal *per curiam* affirmed my order in 5D12-4481. The attorney subsequently attempted to plead the Fifth, which I denied. This denial is currently on appeal with the Fifth District Court of Appeal in case number 5D14-488.

Prosecutor:	Mark Johnson Office of the State Attorney 410 St. Johns Avenue, Room 109 Palatka, Florida 32177 (386) 329-0259
Defense Counsel:	Garry Wood 417 St. Johns Avenue Palatka, Florida 32177 (386) 326-3993
Counsel for Movant:	Amy Elizabeth Osteryoung Johnson & Osteryoung, P.A. 3910 Lewis Speedway, Suite 1101 St. Augustine, Florida 32084 (904) 819-5353

5. *Holland, et al. v. Estate of J. Russell, et al.*, Case No. 11–290 CA. Order supplied.

Fearing civil litigation, the plaintiffs transferred assets to their eldest daughter who subsequently passed away. There was no written agreement setting forth limitations on the transfer so the daughter's family claimed unencumbered ownership of the transferred property. The plaintiffs filed a verified complaint seeking declaratory relief, asserting the creation of a resulting or constructive trust. The defendants responded with a motion to dismiss, arguing that the complaint failed to state a cause of action pursuant to Rule 1.140(b) of the Florida Rules of Civil Procedure because the sole purpose for the transfer of the property was to facilitate the commission of fraud. I denied the motion to dismiss and ordered the parties to proceed with discovery. Subsequent to the denial, the parties were able to reach a settlement agreement.

Counsel for Plaintiff:	John Middleton Middleton Law Office 304 State Road 26, Suite 1 Melrose, Florida 32666 (352) 475-1611
Defense Counsel:	Marvin W. Bingham, Jr., P.A. P.O. Box 1930 Alachua, Florida 32616 (386) 462-5120

6. *State of Florida v. Perez*, Case No. 11–1259 CF. Order supplied.

While in custody at the Putnam County Jail unable to post bond on unrelated robbery charges, the defendant agreed to speak to two law enforcement officers in reference to a homicide for which the defendant was a person of interest. The defendant was subsequently charged in the homicide case. At a pre-trial evidentiary hearing in reference to this disputed interrogation, the defendant claimed he invoked his right to silence and his right to counsel. The State disputed these assertions. After scrutinizing the recorded interview, I denied the defendant's motion to suppress. The case continued to trial where the defendant was found guilty by a jury of First Degree Murder. The Fifth District Court of Appeal *per curiam* affirmed the conviction in 5D13-209.

Prosecutor:	Jennifer Dunton Office of the State Attorney 4010 Lewis Speedway, Suite 2022 St Augustine, Florida 32084 (904) 209-1620
Defense Counsel:	Garry Wood 417 St. Johns Avenue Palatka, Florida 32177 (386) 326-3993

7. *State of Florida vs. Adams*, Case No. 10–1997 CF. Orders supplied.

A judge issued a search warrant based on felony probable cause to search a computer for the presence of child pornography and evidence of video voyeurism. When the search took place, the only evidence seized that related back to the affidavit in support of the search warrant established probable cause for the commission of a misdemeanor but not for a felony. The defendant sought to suppress all the evidence seized, alleging that a search warrant could not have been lawfully predicated on suspicion that a misdemeanor had been committed. I denied the motion based on expert testimony indicating that computer files were missing from the computer hard drive and that sophisticated measures had been employed for the purpose of removing or destroying said computer files. After a three-day trial, the defendant was found guilty by a jury. I made a special finding that the defendant posed a danger to society and sentenced him to a consecutive prison sentence. The case was later *per curiam* affirmed by the Fifth District Court of Appeal in 5D12–4487.

Prosecutor :	Jennifer Dunton Office of the State Attorney 4010 Lewis Speedway, Suite 2022 St. Augustine, Florida 32084 (904) 209-1620

Defense Counsel: Ralph L. Rowe
P.O. Box 2234
Palatka, Florida 32178
(386) 329-0301

8. *State of Florida v. Lambert*, Case No. 12–1350 CF. Orders supplied.

I suppressed an incriminating statement made during the course of an interrogation where the defendant's attorney contacted law enforcement during a lawful interrogation and demanded that the interrogation cease so that she could speak to her client. Her demands were ignored. After law enforcement exited the interrogation room, family members were permitted to enter the room to speak to the defendant. Upon entering the room, family members warned each other to speak in low tones because of their suspicions that they were being recorded. A conversation ensued where family members questioned the defendant on what facts he had disclosed. These questions from family members elicited incriminating statements. I suppressed the statement made to law enforcement but declined to suppress the statements made to family members on the defendant's claim of privacy. The parties reached a plea agreement subsequent to the issuance of the two orders.

Prosecutor : Jennifer Dunton
Office of the State Attorney
4010 Lewis Speedway, Suite 2022
St. Augustine, Florida 32084
(904) 209-1620

Defense Counsel: Terry J. Shoemaker
Mowrey Shoemaker Beardsley P.L.
2825 Lewis Speedway, Unit 107
St. Augustine, Florida 32084
(904) 824-5711

9. *State of Florida v. Hogg*, Case No. 12–0114 CF. Order supplied.

An anonymous on-line tip resulted in a home visit from an FBI agent and an agent of the Florida Department of Law Enforcement temporarily assigned to an FBI task force. When the law enforcement officials asked the defendant if he would mind if they searched his computer, he responded "sure." Law enforcement officials then searched the computer and discovered significant amounts of child pornography. The defendant sought to suppress the seized evidence claiming he never consented to the search. The law enforcement officials had surreptitiously recorded their conversation with the defendant during the search. After listening to the recording, I denied the motion to suppress. After a two-day trial, the jury found the defendant guilty as charged.

Prosecutor:	Anthony Eric Leonard 536 Sarto Court St. Augustine, Florida 32086 (904) 547-2362
Defense Counsel:	Ronald E. Clark Clark & Roberts PLC P.O. Box 2138 Palatka, Florida 32178 (386) 328-2778

10. *Community Services, LLC, et al. v. Burnett, et al.*, Case No. 11–296 CA. Order supplied.

The plaintiff and defendant were both beneficiaries of a trust created by a written declaration of trust agreement in Miami–Dade, Florida. From 1999 until July 2010, the defendant acted as trustee for the trust until lawfully removed in 2010. The defendant's administration of the trust in Miami–Dade, Florida served as the principal basis for the litigation. Upon gaining control of the trust, the plaintiff sought to litigate an allegation of breach of fiduciary duty in Putnam County, Florida. The defendant sought to transfer the proceedings to Miami–Dade, Florida on a theory of forum *non-conveniens*. I granted the defendant's motion and transferred the case to Miami-Dade County.

Counsel for Plaintiff:	James J. Taylor Taylor Law Firm P.A. P.O. Box 2000 Keystone Heights, Florida 32656 (352) 473-8088
Defense Counsel:	Richard Lewis Allen Solowsky & Allen P.L. 201 South Biscayne Boulevard, Suite 915 Miami, Florida 33131 (305) 371-2223

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.

I serve primarily as a trial judge. Due to the size of my caseload, I often issue rulings from the bench or draft succinct written orders. In response to this question, I have reviewed my records and listed written orders in the following nine cases. I also cited one published opinion I authored while sitting by

appointment as an associate judge with the Fifth District Court of Appeal.

1. *Lakey v. State*, 113 So.3d 90 (Fla. 5th DCA 2013).

Counsel for Appellant:	William R. Ponall Snure & Ponall Winter Park, Florida 32789 (407) 469-6200
Counsel for Appellee:	Rebecca Roark Wall Assistant Attorney General 444 Seabreeze Boulevard, 5th Floor Daytona Beach, Florida 32118 (386) 238-4990

2. *Sardo, et al. v. Beck, et al.*, Case No. 11–0291 CP and 11–0527 CA. Order supplied in response to 13(c).

Counsel for Respondent:	Stephen E. Hilker P.A. P.O. Box 470969 Lake Monroe, Florida 32747 (386) 328-1464
Counsel for Petitioner:	John Key Law Offices of John Key, P.A. 417 St. Johns Avenue, Suite Eight Palatka, Florida 32177 (386) 385-3646

3. *Community Services, LLC, et al. v. Burnett, et al.*, Case No. 11–296 CA. Order supplied in response to 13(c).

Counsel for Plaintiff:	James J. Taylor Taylor Law Firm P.A. P.O. Box 2000 Keystone Heights, Florida 32656 (352) 473-8088
Defense Counsel:	Richard Lewis Allen Solowsky & Allen P.L. 201 South Biscayne Boulevard, Suite 915 Miami, Florida 33131 (305) 371-2223

4. *State of Florida v. Hill*, Case No. 10–2498 CF. Order supplied in response to 13(c).

Prosecutor:	Anthony Eric Leonard 536 Sarto Court St. Augustine, Florida 32086 (904) 547-2362
Defense Counsel:	Kurt Francis Teifke P.O. Box 844 300 North State Street Bunnell, Florida 32110 (386) 269-4551

5. *State of Florida v. Williams*, Case No. 08–1844 CF. Order supplied in response to 13(c).

Prosecutor:	Mark Johnson Office of the State Attorney 410 St. Johns Avenue, Room 109 Palatka, Florida 32177 (386) 329-0259
Defense Counsel:	Garry Wood 417 St. Johns Avenue Palatka, Florida 32177 (386) 326-3993
Counsel for Movant:	Amy Elizabeth Osteryoung Johnson & Osteryoung, P.A. 3910 Lewis Speedway, Suite 1101 St. Augustine, Florida 32084 (904) 819-5353

6. *Holland, et al. v. Estate of J. Russell, et al.*, Case No. 11–290 CA. Order supplied in response to 13(c).

Counsel for Plaintiff:	John Middleton Middleton Law Office 304 State Road 26, Suite 1 Melrose, Florida 32666 (352) 475-1611
Defense Counsel:	Marvin W. Bingham, Jr., P.A. P.O. Box 1930

Alachua, Florida 32616
(386) 462-5120

7. *State of Florida v. Blakely*, Case No. 09–1347 CF. Order supplied.

Prosecutor: Jason S. Lewis
Office of the State Attorney
2446 Dobbs Road
St. Augustine, Florida 32086
(904) 209-1300

Defense Counsel: J. Peyton Quarles
125 Basin Street, Suite 215
Daytona Beach, Florida 32114
(386) 255-0305

8. *State of Florida v. Green*, Case No. 10–0326 CF. Order supplied.

Prosecutor: Alexander M. Sharp IV
Office of the State Attorney
410 St. Johns Avenue, Room 109
Palatka, Florida 32177
(386) 329-0259

Defense Counsel: Stephanie Harris Park
Law Offices of the Public Defender
514 St. Johns Avenue
Palatka, Florida 32177
(386) 329-0301

9. *State of Florida v. Bennett*, Case No. 12–1261 CF. Order supplied.

Prosecutor: Jason S. Lewis
Office of the State Attorney
2446 Dobbs Road
St. Augustine, Florida 32086
(904) 209-1300

Defense Counsel: Raymond M. Warren
Law Offices of the Public Defender
101 North Alabama Ave, Number B304
Deland, Florida 327244316
(386) 313-4545

10. *State of Florida v. Bruce*, Case No. 08–1552 CF. Order supplied.

Prosecutor:	Anthony Eric Leonard 536 Sarto Court St. Augustine, Florida 32086 (904) 547-2362
Defense Counsel:	Garry Wood 417 St. Johns Avenue Palatka, Florida 32177 (386) 326-3993

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.

Hagans v. State, 114 So. 3d 418 (Fla. 5th DCA 2013). I denied the defendant's request for additional jail credit subsequent to entering a plea agreement without a hearing and failed to supplement the record with a transcript of the plea dialogue. The appellate court instructed me to supplement the record by granting the defendant a hearing. I held a hearing and then granted the credit requested.

Matos v. State, 111 So. 3d 964 (Fla. 5th DCA 2013). The defendant sought removal of his requirement to register as a sex offender under Florida law, claiming that his sexual encounter with the victim was in fact, consensual. The defendant had been previously convicted of lewd or lascivious assault upon a child. In the State of Florida, children are deemed incapable to consent to sexual acts as a matter of law. Relying on a pre-sentence investigation where the victim, contemporaneous to the date of the sentence, indicated unequivocally that the sexual contact occurred against her will, I denied the relief requested without a hearing. The appellate court reversed and ordered a full evidentiary hearing for the defendant on remand. The case is currently set for a full evidentiary hearing in April 2014.

Dumas v. State, 121 So. 3d 1164 (Fla. 5th DCA 2013). I had not attached the final civil order of forfeiture to my denial of defendant's motion to have the forfeited currency returned. The appellate court remanded, instructing me to attach the final civil order of forfeiture to my order, which I did.

Mann v. State, 109 So. 3d 1202 (Fla. 5th DCA 2013). The defendant was sentenced to a term of incarceration in the Florida Department of Corrections followed by a period of probation. The defendant later violated the terms of his probation and was sentenced in accordance with a negotiated plea agreement. On appeal, the defendant asserted that the judgment and sentence failed to grant him credit for time he had previously served. The appellate court agreed, concluding that the defendant should have been awarded credit for time served during his split sentence. On remand, I issued a corrected judgment and sentence.

Chambliss v. State, 116 So. 3d 615 (Fla. 5th DCA 2013). The defendant was serving a probationary sentence on multiple criminal counts. The State alleged a violation of probation. The defendant entered into a negotiated plea agreement with the State but later appealed the findings asserting that jurisdiction over a misdemeanor count had expired prior to entry of the plea. The appellate court reversed as to one of the counts. I issued a corrected judgment and sentence.

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 circuit court judge in the State of Florida my decisions are not published. There are approximately 1,800 felony criminal cases filed in my division annually. I issue rulings from the bench in approximately 600 of those cases and written orders in approximately 200 of the total cases filed. All rulings from the bench are recorded electronically and memorialized in the form of minutes by a deputy clerk of court. Written orders are filed with the Clerk of Court and stored electronically in a database. All such rulings are available for review by attorneys, the media and members of the public, through the Clerk of Court.

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 Florida v. Williams, Case No. 08–1844 CF. Orders supplied in response to 13(c).

State of Florida v. Blakely, Case No. 09–1347 CF. Order supplied in response to 13(d).

State of Florida vs. Adams, Case. No. 10–1997 CF. Orders supplied in response to 13(c).

State of Florida v. Perez, Case No. 11–1259 CF. Order supplied in response to 13(c).

State of Florida v. Hogg, Case No. 12–0114 CF. Order supplied in response to 13(c).

State of Florida v. Lambert, Case No. 12–1350 CF. Orders supplied in response to 13(c).

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

I have not sat by designation on a federal court of appeals.

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

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

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

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

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

There is not an automatic recusal system in the State of Florida. In Florida, when a litigating party seeks to remove a judge for cause it is referred to as disqualification. When a judge removes him or herself, the process is referred to as recusal.

The Florida Rules of Judicial Administration set the parameters under which disqualification is to be considered. If a litigating party seeks disqualification, the judge is not permitted to deny the allegations supporting the motion as untrue, reject them as unfounded, or comment upon them at all. To do so establishes independent grounds for disqualification. If the motion to disqualify is timely and legally sufficient the judge must disqualify him or herself. I review all such requests on a case-by-case basis.

State of Florida v. Shelton, Circuit Court, Seventh Judicial Circuit, Putnam County, Florida, Case No. 12–1477 CF, 12–1478 CF, 12–1509 CF: I granted

disqualification in this case on a finding that the motion for disqualification was legally sufficient.

State of Florida v. Anderson, Circuit Court, Seventh Judicial Circuit, Putnam County, Florida, Case No. 10–0498 CF: I granted disqualification in this case on a finding that the motion for disqualification was legally sufficient.

State of Florida v. Clark, Circuit Court, Seventh Judicial Circuit, Putnam County, Florida, Case No. 12–2017–CF, 12–2109 CF: I granted disqualification in this case on a finding that the motion for disqualification was legally sufficient.

State of Florida v. DePriest, Circuit Court, Seventh Judicial Circuit, Putnam County, Florida, Case No. 13–370 CF: I recused myself voluntarily because I was personally familiar with the family of the defendant.

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

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

I have not held public office other than judicial office.

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

2007 – 2008, Re-Election of State Attorney John Tanner. I mailed campaign literature to registered voters, delivered campaign signs to those requesting signs, and put up campaign signs throughout St. Johns County, Florida.

1992, West Virginia University, Students for Clinton. I put up signs on campus in support of then-Governor Bill Clinton's presidential 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 clerk for 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.

1997 – 2005
Judge Advocate General's Corps
United States Navy
Norfolk, Virginia 23510
Judge Advocate

2004 – 2005
101 West Main Street, Suite 8000
Norfolk, Virginia 23510
Special Assistant United States Attorney

2005 – 2008
Office of the State Attorney
4010 Lewis Speedway, Suite 2022
St. Augustine, Florida 32084
(904) 209-1620
Assistant State Attorney and Division Chief

2008 – 2011
City of St. Augustine
P.O. Box 210
St. Augustine, Florida 32084
Assistant City 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 as an arbitrator.

b. Describe:

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

I began my active duty service as a judge advocate in the U.S. Navy in

1997. From 1997 to 1999, I worked as a legal assistance attorney or the Navy's version of a legal aid clinic.

In 1999, I was transferred to the criminal division of the Naval Legal Service Office in Norfolk, Virginia where I served as a court appointed criminal defense counsel. There, I represented service members charged with crimes under the Uniform Code of Military Justice and represented service members before administrative separation boards.

In 2001, I was selected to serve as officer-in-charge of the largest tax assistance center in the Navy. I supervised, trained and managed over 80 service members with the ultimate goal of assisting active duty service members and dependents with the preparation of income tax returns.

After teaching for nearly two years at the Naval Justice School Detachment in Norfolk, Virginia, I received orders to report to Commander, Navy Region, Mid-Atlantic where I served as an assistant staff judge advocate in 2003. There, I served as legal advisor to the Regional Child Sexual Assault Response Team and the Family Advocacy Program. I supervised all courts-martial cases in the region, negotiated pre-trial agreements, supervised the implementation of all orders from the Navy/Marine Corps Court of Criminal Appeals and administered officer administrative separation boards.

In 2004, I was appointed by my military command to serve as a Special Assistant United States Attorney for the Eastern District of Virginia. I was sworn in by the United States Attorney and tasked with the prosecution of all criminal offenses committed on military installations by civilians. I routinely litigated matters before magistrates and district judges and presented cases to grand juries.

Upon being honorably discharged from the United States Navy in 2005, I accepted a position as an assistant state attorney in Florida's Seventh Judicial Circuit. I was eventually promoted to division chief of the State Attorney's Office in St. Johns County, Florida where I supervised all felony and misdemeanor attorneys in St. Johns County.

In 2008, I accepted a position as an assistant city attorney for the City of St. Augustine. I managed and litigated the city's misdemeanor criminal docket for all city ordinance violations and served as legal counsel for the City of St. Augustine Historic Architectural Review Board, Planning and Zoning Board, Code Enforcement Board and the St. Augustine Police Department. I advised on the drafting of some of the city's proposed legislation and worked with the city's public works department on environmental compliance issues.

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

While serving as a judge advocate from 1997 to 2005, I provided service members with a wide range of legal services. The types of services I provided correlated directly to the type of duty station to which I was assigned or deployed.

As an assistant state attorney from 2005 to 2008, I prosecuted cases on behalf of the State of Florida. I represented no individual clientele.

As assistant city attorney from 2008 to 2011, I represented the City of St. Augustine. I was involved with and worked on any matter that involved legal representation of the City of St. Augustine.

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 the course of my career, I spent approximately 60% of my time in litigation. From 1997 to 1999, I worked as a legal assistance attorney or the Navy's version of a legal aid clinic. During this time, I did not appear in court. From 1999 to 2001, I appeared in court almost daily as a criminal defense attorney litigating jury trials nearly every month. From 2001 to 2003, I appeared in court occasionally, as I continued to work part time as a court appointed criminal defense lawyer while primarily assisting service members and their families with tax issues and subsequently working as an instructor at the Naval Justice School. From 2003 to 2005, I worked as an assistant staff judge advocate and as a staff member for the Navy Family Advocacy Program and the Navy Regional Child Sexual Assault Response Team. I appeared in court occasionally during this time period. In 2004, I was given the added assignment by the staff judge advocate of Special Assistant United States Attorney for the Eastern District of Virginia. During this time, I appeared in court almost daily. From 2005 to 2009 while serving as an assistant state attorney in St. Johns County, Florida, I appeared in court daily. In 2009 through 2011, the frequency of my court appearances decreased when I litigated a city ordinance docket one day per week in county court, while also spending time counseling the city as to various ordinances. I have estimated my overall percentages below, including courts-martial.

i. Indicate the percentage of your practice in:

1.	federal courts:	40%
2.	state courts of record:	60%
3.	other courts:	0%
4.	administrative agencies:	0%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 25%
2. criminal proceedings: 75%

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

As an attorney, I litigated over 75 contested trials as sole or lead counsel in both state and federal courts including federal district court, federal magistrate court, courts-martial and state court.

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 had the privilege of practicing 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, ENFN Orth*, Court-Martial Convening Order No. 3–99, Tidewater Judicial Circuit

I was appointed as defense counsel representing a service member charged under an anti-hazing Navy instruction. I asserted in a pre-trial motion that the Navy instruction was overly broad and void for vagueness. I argued that the instruction

erroneously focused on the subjective reaction of an alleged victim to words or behaviors rather than a distinct set of objectively criminalized acts. The judge agreed, concluding that the anti-hazing instruction was unconstitutional. The judge dismissed all charges arising from the Navy instruction and the case proceeded to trial on the remaining offenses. The jury eventually acquitted my client of all charges. All prosecutions in the region under the instruction ceased and months later, the Department of the Navy withdrew the instruction.

The presiding judge was Commander James Winthrop (no longer active duty).

Co-counsel:	Peter J. D'Auria Office of The United States Trustee One Newark Center 1085 Raymond Boulevard, Suite 2100 Newark, New Jersey 07102 (973) 645-3992
Opposing Counsel:	Lieutenant Michael Navarre (Current business information unknown)

2. *United States v. DT3 Butler*, General Court-Martial Convening Order Number 3–99, Tidewater Judicial Circuit

After a lengthy set of polygraph examinations, a service member confessed to a sexual assault that he later denied. I was appointed as defense counsel. At trial, I highlighted the dubious manner in which the examinations were employed. I also called the NCIS polygraph administrator as an adverse witness to illustrate that the polygraph examinations were a method by which unreliable confessions were being extracted. The jury deliberated for several days before returning a verdict of not guilty.

The presiding judge was Captain Richard Williams (no longer on active duty).

Co-counsel:	Commander Aaron C. Rugh 1435 Euclid Street Northwest, Number 2 Washington D.C. 20009 (202) 251-3103
Opposing Counsel:	Captain T. J. Horse, USMC (Current business information unknown)

3. *United States v. SGT Godenitz*, General Court Martial Convening Order Number 1, United States Army Transportation Center, Ft. Eustis, Virginia

The defendant was alleged to have kidnapped and imprisoned his spouse over the course of a weekend. The United States further alleged that the defendant

repeatedly committed several aggravated batteries on his spouse. I was assigned as defense counsel. The prosecution did not respond to my discovery requests. When the case was finally docketed for trial, my client had spent 140 days in pre-trial confinement. I filed and litigated a motion to dismiss alleging a speedy trial violation. The judge dismissed all pending charges with prejudice.

The presiding judge was Colonel Paul L. Johnston (no longer on active duty).

Co-counsel:	Commander Aaron C. Rugh 1435 Euclid Street Northwest, Number 2 Washington D.C. 20009 (202) 251-3103
Opposing Counsel:	Captain Benjamin L. Heim (Current business information unknown)

4. *State of Florida v. Brinson*, Case No. 06–0283 CF

I prosecuted this case as an assistant state attorney. In investigating the case, I concluded that the defendant had actually kidnapped the victim separately from the sexual battery that ensued. At trial, my direct examination of the victim highlighted the kidnapping and the sexual battery as two separate and distinct criminal episodes. The jury found the defendant guilty of both offenses and the judge sentenced the defendant to a term of life in prison. The case was later *per curiam* affirmed by the Fifth District Court of Appeal in 5D07–517.

The presiding judge was the Honorable Wendy W. Berger.

Defense Counsel:	W. Charles Fletcher 233 East Bay Street, Suite 1020 Jacksonville, Florida 32202 (904) 652-0352

5. *State of Florida v. Thomas*, Case No. 05–1146 CF

As a woman walked from her automobile to the entrance of a retail store, the defendant snatched her purse then fled towards a dark colored sports utility vehicle. The defendant jumped into the front passenger seat of the vehicle. The victim gave chase and grabbed her purse as the SUV began to drive away. The victim was subsequently dragged by the SUV while fighting to regain possession of her purse. The victim eventually lost her grip and suffered permanent injury when the sports utility vehicle ran over her leg. The victim could not identify the driver. I charged the defendant with robbery by sudden snatching and principal to aggravated battery. In the case-in-chief, I argued that it did not matter who the driver was, only that there was a driver. The victim admitted that while she could not identify the driver, she was confident in having observed the silhouette of a

person in the driver's seat. The victim then told the jury that in her struggle with the defendant she screamed and fought in a manner that was so vocal and so visual that the driver had to be aware of the fact that she was being dragged during the attempt to flee the scene. The jury returned a verdict of guilty on both counts. The defendant was sentenced to a term of ten years in prison and the case was later *per curiam* affirmed by the Fifth District Court of Appeal in 5D06–1202.

The presiding judge was the Honorable J. Michael Traynor.

Defense Counsel: Rene H. Peshek
Office of the Public Defender
4010 Lewis Speedway, Suite 1101
St. Augustine, Florida 32084
(904) 827-5699

6. *State of Florida v. Hayes,* Case No. 06–0254 CF

One evening in St. Augustine someone fired multiple gunshots into a crowded residence. Only a vague description of the car was given with no witnesses being able to identify any person inside the vehicle. Over the course of several days, the defendant called the victim. One such call occurred while a deputy was on scene conducting an investigation. The victim placed her cell phone on speaker mode and held it while both she and the deputy listened. The defendant bragged about the shooting and warned that he was willing to shower them with more mayhem should he deem it necessary. The defendant further relayed several details that only someone present at the shooting could have known and warned the victim that he had spared her life. The defendant made other key admissions to several different witnesses. Properly pieced together this evidence and testimony created a firm and compelling timeline. The jury convicted the defendant as charged. The case was later *per curiam* affirmed by the Fifth District Court of Appeal in 5D08–4031.

The presiding judge was the Honorable Richard O. Watson (deceased).

Defense Counsel: John W. Morris
Office of the Public Defender
4010 Lewis Speedway, Suite 1101
St. Augustine, Florida 32084
(904) 827-5699

7. *State of Florida v. Lamphier,* Case No. 07–2457 CF

The bizarre nature of circumstances surrounding a set of alleged offenses convinced me as a prosecutor that the defendant did not understand the nature and quality of his actions during the alleged crimes. Both experts agreed with my

conclusion and further identified a need to pursue some sort of continued compulsory treatment. The State and defense agreed to elect a bench trial, stipulate to an agreed upon set of facts and further stipulate as to the admissibility of multiple forensic psychiatric evaluations. The judge found the defendant not guilty by reason of insanity and conducted an extensive sentencing hearing where the judge ordered a psychiatric treatment regimen consistent with the recommendation of both experts.

The presiding judge was the Honorable Wendy W. Berger.

Defense Counsel: Henry M. Coxe, III
The Bedell Building
101 East Adams Street
Jacksonville, Florida 32202
(904) 353-0211

8. *State of Florida v. Odermatt*, Case No. 05–2340 CF

As an assistant state attorney I was assigned to a case involving a defendant alleged to have committed capital sexual battery. The child was very young, traumatized and potentially unreliable as a witness. The defendant had a history of criminal sexual behavior with children dating back 40 years. Prior victims of unprosecuted cases contacted my office and began following the case intently. Lengthy negotiations resulted in a 25-year sentence recommendation that removed any possibility that the victim would be questioned further. The court accepted my recommendation and set the matter for a full sentencing hearing where the defense, as part of the plea agreement, refrained from objecting to statements offered by prior victims. I prepared a legal brief for the judge informing her that chemical castration could be included as part of the sentence should the defendant survive his incarceration. The judge ordered chemical castration.

The presiding judge was the Honorable Wendy W. Berger.

Defense Counsel: Michael S. Bossen
1639 Emerson Street
Jacksonville, Florida 32207
(904) 396-3242

9. *State of Florida v. Davis*, Case No. 07–689 CF

I filed and litigated this case from the moment the St. Johns County Sherriff's Department referred this case to the State Attorney's Office in 2007 until my departure in 2008. A different prosecutor tried this case. The defendant laid in wait while burglarizing an elderly victim's home. The defendant then sexually battered the victim nearly ending her life with a brutal beating. In the process of

litigating the matter of the defendant's competency I became quite concerned over delays due to competency evaluations. I pressed the court for legal findings so that I could move forward on my attempt to perpetuate the victim's testimony. The victim's medical condition continued to worsen. Sadly, the victim died prior to trial but the new prosecutor was able to play a video recording of the perpetuated testimony for the jury who convicted the defendant. The defendant was sentenced to life in prison and the case was *per curium* affirmed by the Fifth District Court of Appeal in 5D10–2994.

Prosecutor: Kelly F. Wark
P.O. Box 9531
Daytona Beach, Florida 32120
(386) 503-5680

Defense Counsel: Jeremiah S. Mulligan
Rumrell, Bate, McLeod & Brock, P.A.
24 Cathedral Place, Suite 504
St. Augustine, Florida 32084
(904) 829-3300

10. *State of Florida v. Bloom*, Case No. 07–0067 CF

The defendant was alleged to have inappropriately touched a 15-year-old minor in a lewd or lascivious manner. The defendant was a trusted family friend who convinced the parents to allow the victim to work part time with him to earn extra income. This minor had behavioral problems and the parents saw the defendant as a productive avenue to correct these perceived problems. The defendant had been previously convicted of lewd or lascivious molestation in 1993. Upon gaining possession of the 1993 investigative report, I was able to locate the previous victim who relayed the details of the 1993 crime. I filed a notice of similar fact evidence, and the 1993 victim's testimony was deemed admissible by the judge. The jury subsequently found the defendant guilty as charged. The case was later *per curiam* affirmed by the Fifth District Court of Appeal in 5D07-4139.

The presiding judge was the Honorable Wendy W. Berger.

Defense Counsel: Gary W. Smolek
Office of the Public Defender
4010 Lewis Speedway, Suite 1101
St. Augustine, Florida 32084
(904) 827-5699

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 serving as a Judge Advocate in the United States Navy I was assigned as counsel to provide legal assistance for three service members injured during the attack on the USS COLE on October 12, 2000. Specifically, it was my responsibility to advise and assist these service members and their families on all possible legal implications and their individual rights with regard to injuries, future medical concerns, possible medical separation and any other questions that arose during the course of my representation. I walked my clients through several administrative mazes that resulted in a smooth transition towards the goals they identified.

As a legal assistance attorney in Norfolk, Virginia, I initiated a campaign to void unconscionable contracts entered into by young sailors and Marines. I secured releases for over 30 service members in circumstances where businesses were engaged in unlawful practices in violation of a host of federal consumer protection laws.

As an attorney for the City of St. Augustine, I drafted an ordinance franchising the 100-year-old horse drawn carriage industry in St. Augustine. This process involved 18 months of public outreach, including meetings with carriage permit holders and counsel, input from bed and breakfast owners, input from animal rights activists, and comments from the public at-large before the City of St. Augustine enacted legislation.

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

    I was an instructor while assigned to the Naval Justice School Detachment in Norfolk, Virginia from 2002 to 2003. I taught administrative law and military justice to senior officers prior to their assuming major commands. I also taught senior enlisted personnel and command legal officers. During this tour of duty, I had the privilege of lecturing at the United States Naval Academy, various defense conferences and numerous Naval Justice School training seminars throughout the east coast and the Gulf of Mexico region. I have been unable to locate a syllabus for any of these courses.

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

customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

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

    If confirmed, I have no plans to pursue any outside employment with our 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 am unaware of any existing circumstance likely to present a potential conflict of interest. However, if confronted with any situation that would give even the appearance of a conflict, I would strictly adhere to 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.

       Should any conflict arise, I would not hesitate to recuse myself in accordance with 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.

Because I have worked in the public sector for my entire career either in the military or for the Florida government, I have been restricted from offering my legal services *pro bono*. However, I have given back to the community in a non-legal capacity. Throughout my career I have given my personal time, contributed financially and prior to my transition to the bench, actively raised funds for organizations such as Rotary International, Epic Behavioral Healthcare, Big Brothers and Sisters, numerous cancer research organizations, and Toys for Tots.

26. **Selection Process**:

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

I submitted my application to the Florida Federal Judicial Nominating Commission for the Middle District of Florida, convened by Senators Nelson and Rubio, in August 2013. I interviewed with the Nominating Commission on September 10, 2013 in Orlando, Florida. That same day, I received an email from the Chair of the Nominating Commission informing me that I was moving forward in the process. On November 6, 2013, I met with Senators Nelson and Rubio in Washington, D.C., where the Senators informed me that they would be forwarding my name to the President for further consideration. Since November 21, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 21, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 6, 2014, 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
Mendoza, Carlos E.	United States District Court	02/06/2014
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	☑ Nomination Date 02/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 1/31/2014
7. Chambers or Office Address		
Putnam County Courthouse P.O. Box 758 Palatka, Florida 32178		

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

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

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Mendoza, Carlos E.	Date of Report 02/06/2014

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	State of Florida, Judicial Salary	$142,177.92
2. 2013	State of Florida, Judicial Salary	$143,878.95
3. 2014	State of Florida, Judicial Salary	$12,173.92
4.		

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

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2013	Halifax Health - Salary
2. 2014	Halifax Health - 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 Mendoza, Carlos E.	Date of Report 02/06/2014

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
Mendoza, Carlos E.	02/06/2014

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. DFA Emerging Markets Fund	A	Dividend	J	T	Exempt				
2. DFA Small Cap Fund	A	Dividend	J	T					
3. iShares National AMT-Free Municipal Bond Fund	A	Dividend	K	T					
4. iShares Russell 1000 Growth ETF	B	Dividend	L	T					
5. iShares S&P 500 Index ETF	A	Dividend	K	T					
6. Schwab U.S. Small Cap	A	Dividend	J	T					
7. T. Rowe Price Retirement 2035 Fund	A	Dividend	K	T					
8. Vanguard Energy Fund	A	Dividend	J	T					
9. Vanguard Growth Portfolio - 529		None	L	T					
10. Vanguard Health Care ETF	A	Dividend	K	T					
11. Vanguard Institutional Index 500 Fund	A	Dividend	K	T					
12. Vanguard Mid Cap Index Portfolio - 529		None	K	T					
13. Vanguard REIT ETF	A	Dividend	J	T					
14. Vanguard Small Cap Index Portfolio - 529		None	K	T					
15. Vanguard Target Retirement 2035 Fund	C	Dividend	M	T					
16. Vanguard International Stock Portfolio - 529		None	K	T					
17. Vanguard Total Stock Market Index Fund	A	Dividend	K	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Mendoza, Carlos E.	02/06/2014

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)
18. Vanguard Total Stock Market Portfolio - 529		None	K	T					
19. Vanguard Value Index Fund	A	Dividend	L	T					
20. Vanguard Mid Cap Index Fund	A	Dividend	J	T					
21. Bank of America, Cash Accounts	A	Interest	M	T					
22. Merrill Edge CMA	A	Interest	J	T					
23. Jackson Claire, LLC	D	Interest	L	W					
24. Madeleine August, LLC	D	Interest	M	T					

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

Name of Person Reporting	Date of Report
Mendoza, Carlos E.	02/06/2014

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Mendoza, Carlos E.	Date of Report 02/06/2014

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/ Carlos E. Mendoza

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		129	290	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		763	317	Notes payable to relatives			
Unlisted securities – see schedule		318	100	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		286	261
Real estate owned – personal residence		676	780	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		137	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		286	261
				Net Worth	1	738	226
Total Assets	2	024	487	Total liabilities and net worth	2	024	487
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		404	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	
DFA Emerging Markets Fund	$ 3,401
DFA US Small Cap Fund	6,802
iShares National AMT-Free Municipal Bond Fund	18,362
iShares Russell 1000 Growth ETF	91,017
iShares S&P 500 Index ETF	19,865
Schwab U.S. Small Cap ETF	6,248
T. Rowe Price Retirement 2035 Fund	40,620
Vanguard Energy Fund	5,952
Vanguard Growth Portfolio -529	83,218
Vanguard Health Care ETF	29,852
Vanguard Institutional Index 500 Fund	15,305
Vanguard Mid Cap Index Fund	11,053
Vanguard Mid Cap Index Portfolio -529	31,827
Vanguard REIT ETF	22,569
Vanguard Small Cap Index Portfolio -529	31,855
Vanguard Target Retirement 2035 Fund	159,845
Vanguard Total International Stock Portfolio -529	30,656
Vanguard Total Stock Market Index Fund	43,998
Vanguard Total Stock Market Portfolio -529	32,130
Vanguard Value Index Fund	78,742
Total Listed Securities	$ 763,317

Unlisted Securities	
Jackson Claire LLC	$ 91,900
Madeleine August LLC	226,200
Total Unlisted Securities	$ 318,100

Contingent Liabilities	
Jackson Claire LLC - Comaker, Rental Real Estate Mortgages	$ 404,000
Total Contingent Liabilities	$ 404,000

AFFIDAVIT

I, CARLOS E. MENDOZA, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

FEBRUARY 6, 2014
(DATE)

(NAME)

Trinisha S Austin
(NOTARY)

Personally Known

TRINISHA S. AUSTIN
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE078422
Expires 3/28/2015

Senator Grassley
Questions for the Record

Beth Bloom,
Nominee: U.S. District Judge for the Southern District of Florida

1. During your hearing I asked you about *Miami Elevator Co. v. Marbrad*, a case where you were reversed for not recusing. In your hearing, you said you did not remember the case very clearly. You denied the motion, finding that it was "legally insufficient." In its reversal, the Circuit Court relied on *Caleffe v. Vitale*. The appellate court held that you were "obliged" to ignore the technical deficiencies of the motion and had you done so, you should have recused.

   a. Please explain your rationale. Did you consider *Vitale* when you reached your decision?

   b. Do you agree that if the motion had been legally sufficient, you should have recused?

2. You indicated in your questionnaire that have unable to find notes, transcripts, or recordings for several of your speeches. Could you provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the talk you gave in March 1997 when you moderated the panel on the topic, "The Impact of Law Enforcement and the Judicial System on Community Relations"?

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. 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?

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. 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. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she

personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

   i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

   ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

   iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

   iv. Are you committed to upholding this precedent?

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.
[3] *Id.* 2691.

'[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

10. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

13. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

15. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

16. If confirmed, how do you intend to manage your caseload?

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

17. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

18. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

19. 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". You have indicated that you are a member of the AAJ.

    a. Will you please explain your interest in and your work for the AAJ?
    b. 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.

    c. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

20. Please describe with particularity the process by which these questions were answered.

21. Do these answers reflect your true and personal views?

Senator Grassley
Questions for the Record

Paul Byron,
Nominee: U.S. District Judge for the Middle District of Florida

1. You have a wide range of legal experience as a practicing attorney. How will these experiences influence you, if at all, in your job as a federal judge, if confirmed?

2. Given that you received a partial "Not Qualified" rating from the ABA's Standing Committee on the Federal Judiciary, I wanted to give you an opportunity to outline your qualifications and experience. Would you please explain to the Committee why you believe you are qualified to serve as a United States District Judge?

3. Please describe some traits or judicial philosophy that you would like to emulate as a judge, if confirmed. Which characteristics would you hope to avoid?

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. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

   a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

      i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

      ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

      iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

iv. Are you committed to upholding this precedent?

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

ii. Will you commit to give this portion of the Court's opinion full force and effect?

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". You have indicated that you are a member of the AAJ.

    a. Will you please explain your interest in and your work for the AAJ?
    b. 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.

c. 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

Darrin P. Gayles,
Nominee, U.S. District Judge for the Southern District of Florida

1. During your confirmation hearing, you indicated that consultation of the legislative history of a statutory provision "may be a factor" in your decision making process as a judge. Please describe with specificity the circumstances under which you deem it appropriate to look to legislative history as an aid to reaching an understanding about the meaning or construction of a statute.

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

Carlos Mendoza,
Nominee: U.S. District Judge for the Middle District of Florida

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 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?

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. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

   a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

      i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

      ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

      iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

      iv. Are you committed to upholding this precedent?

   b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate

[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

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". You have indicated that you are a member of the AAJ.

    a. Will you please explain your interest in and your work for the AAJ?
    b. 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.

    c. 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?

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 Grassley
Questions for the Record

Beth Bloom,
Nominee: U.S. District Judge for the Southern District of Florida

1. **During your hearing I asked you about *Miami Elevator Co. v. Marbrad*, a case where you were reversed for not recusing. In your hearing, you said you did not remember the case very clearly. You denied the motion, finding that it was "legally insufficient." In its reversal, the Circuit Court relied on *Caleffe v. Vitale*. The appellate court held that you were "obliged" to ignore the technical deficiencies of the motion and had you done so, you should have recused.**

   a. **Please explain your rationale. Did you consider *Vitale* when you reached your decision?**

   Response: In reaching my decision in *Miami Elevator v. Marbrad*, I did not consider *Caleffe v. Vitale*. I relied on Rule 2.160, Florida Rules of Judicial Administration. Subsection (c) entitled, *Disqualification of Trial Judges*, states:

   > (c) *Motion*. A motion to disqualify shall be in writing and specifically allege the facts and reasons relied on to show the grounds for disqualification and shall be sworn by the party by signing the motion under oath or by a separate affidavit. The attorney for the party shall also separately certify that the motion and the client's statements are made in good faith.

   b. **Do you agree that if the motion had been legally sufficient, you should have recused?**

   Response: Yes.

2. **You indicated in your questionnaire that you have been unable to find notes, transcripts, or recordings for several of your speeches. Could you provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the talk you gave in March 1997 when you moderated the panel on the topic, "The Impact of Law Enforcement and the Judicial System on Community Relations"?**

   Response: I was the moderator of this panel and, therefore, I did not have any specific points to cover. Instead, my function was to ensure that the panel was given an opportunity for brief remarks and to facilitate the question and answer session that followed. As I recall, the panel included a member of the Miami-Dade County Community Relations Board, a representative from the Miami-Dade Police Department and a member of the Eleventh Judicial Circuit's Administrative Office of the Courts. While I believe other cases may have been discussed, the discussion centered on the high-profile case of *State of Florida v. McDuffie*. In that case, four officers were indicted for the manslaughter of

Arthur McDuffie. The panel discussion centered on the community's response to the riots and the protests in Miami, Florida, following the jury verdict and resulting acquittal of the officers.

3. **Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: No, 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 based on the law applied to the facts.

4. **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: Although other federal circuits have addressed the issue, neither the Supreme Court nor the Eleventh Circuit Court of Appeals has decided this precise issue. As such, if faced with this issue, I would consider the parties' submissions, the analysis by other federal courts and all Supreme Court or Eleventh Circuit Court of Appeals precedent that may apply.

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: In *Walz v. Tax Commission of the City of New York*, 397 U.S. 664, 669 (1970), the Supreme Court stated 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 Supreme Court has reinforced this principle in several subsequent opinions. The most recent opinion is *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005), in which the Supreme Court confirmed that "legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause" may constitutionally exist. If confirmed, I would apply *Walz, Cutter* and all other applicable Supreme Court and Eleventh Circuit Court of Appeals 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 integrity. Integrity includes approaching each case with an open and unbiased mind, a commitment to the rule of law and a diligent work ethic. I believe that I possess integrity and have demonstrated this attribute during my almost 20 years as a state court judge.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge must be patient, even-tempered and attentive, treating all that come before the judge with the utmost dignity and respect. A judge must be eager to learn and possess humility. I consider each of these qualities of the appropriate judicial temperament to be essential and I believe that I meet this 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?**

   Response: If confirmed as a United States District Court Judge, I will faithfully follow and apply the precedents of the Supreme Court and the Eleventh Circuit Court of Appeals regardless of whether I agree or disagree with those precedents. I have done this for almost 20 years as a trial court judge and will continue my commitment.

9. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

   a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

      i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

         Response: Yes. I understand this statement and the entirety of the majority opinion to be binding precedent and entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

      ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

         Response: In *United States v. Windsor*, Justice Kennedy's reference to "lawful marriages" are those "marriages that are made lawful by the State." 133 S. Ct. 2675, 2695 (2013).

      iii. **Is it your understanding that this holding and precedent is limited only to circumstances in which states have legalized or permitted same-sex marriage?**

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

Response: Yes. The Court's holding applies to §3 of the Defense of Marriage Act. *Id.* at 2679. This section amends the Dictionary Act in Title 1, §7 of the United States Code that provides a federal definition of "marriage" and "spouse." *Id.* The Supreme Court held that, as applied to states where same-sex marriage has been deemed lawful, the federal statute is unconstitutional as a deprivation of the equal liberty of persons that is protected by the Fifth Amendment.

iv. **Are you committed to upholding this precedent?**

Response: Yes. If confirmed, I will follow *Windsor* and any other relevant precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. This portion and all portions of the *Windsor* opinion are binding precedent to which a lower court judge should give full force and effect.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. I will commit to give this portion and all portions of the *Windsor* opinion full force and effect.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. This portion and all portions of the *Windsor* opinion are binding precedent and entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.

Response: Yes. I will commit to give this portion and all portions of the *Windsor* opinion full force and effect.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

   Response: Yes. This portion and all portions of the *Windsor* opinion are binding precedent and entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court precedent.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

   Response: Yes. I will commit to give this portion and all portions of the *Windsor* opinion full force and effect.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

   Response: Yes. This portion and all portions of the *Windsor* opinion are binding precedent and entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court precedent.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

   Response: Yes. I will commit to give this portion and all portions of the *Windsor* opinion full force and effect.

10. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

Response: If there were no controlling precedent from the Supreme Court or the Eleventh Circuit Court of Appeals, then I would first thoroughly review the text of the provision, statute, rule or regulation in order to determine its plain and ordinary meaning. If the language is clear and unambiguous, I would apply the plain meaning to the facts of the case. If the language was ambiguous, I would look for guidance from the Supreme Court and the Eleventh Circuit Court of Appeals on issues that are analogous to the case at hand. If there were no such cases, I would turn to and consider other federal appellate court decisions on the subject for persuasive authority.

11. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If I am confirmed as a United States District Court Judge, my duty would be to follow and apply all precedent from the Supreme Court and the Eleventh Circuit Court of Appeals and my personal opinion would play no role.

12. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes enacted by Congress are presumed to be constitutional. The statute should be declared unconstitutional when it is clear that Congress has exceeded its authority to enact the statute at issue or when the statute violates a provision of the Constitution.

13. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No. Neither foreign law nor the views of the "world community" are proper sources upon which a judge should rely for purposes of determining the meaning of the Constitution.

14. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: As a state court judge for nearly 20 years, my decisions have remained grounded in precedent and the text of the law rather than any underlying political ideology or motivation. I will continue my commitment to the faithful application of precedent.

15. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: As a state court judge for nearly 20 years, I have faithfully applied the law to the facts and have done so without regard to my personal views. I have approached each case

with an open and unbiased mind and have always treated all who appear before me with the utmost dignity, patience and respect. I will continue to demonstrate to each and every litigant that each will be treated equal under the law.

16. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I intend to use the case management techniques I have learned during my service as a state court judge. The Southern District of Florida utilizes a differentiated case management track system and I will ensure that early pretrial conferences and status conferences are held. I will establish meaningful and reasonable deadlines and I will work with the court personnel and the assigned magistrate judge to ensure timely resolution of pretrial motions. I will continue to work hard, issue rulings promptly and be accessible to the litigants.

17. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. Judges have an important role in controlling the pace and conduct of litigation. If confirmed as a United States District Court Judge, I would continue to ensure that meaningful and reasonable timelines are set and that I am accessible to all litigants so that discovery motions or unexpected issues are promptly addressed.

18. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: In reaching a decision in cases that come before me, I first begin with a thorough reading of the submissions, all of the cited legal authorities, and in some cases, additional legal authorities that appear to be relevant to the cases based on my own research. If there is oral argument, I come prepared and ask questions to narrow the issues of concern. I then consider the arguments and any additional authority, review my notes taken from the hearing, engage in additional research as necessary and apply the law to the facts of the case.

19. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees". You have indicated that you are a member of the AAJ.

a. Will you please explain your interest in and your work for the AAJ?

Response: I was a member of the American Association for Justice (at the time it was known as the Association of Trial Lawyers of America) from 1991 until I became a state court judge in 1995. My work consisted solely of membership in the organization.

b. **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 of the communications.**

Response: No.

c. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

20. **Please describe with particularity the process by which these questions were answered.**

Response: On April 8, I received these questions from the Office of Legal Policy at the Department of Justice. I thoroughly reviewed the questions, conducted the necessary 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.

21. **Do these answers reflect your true and personal views?**

Response: Yes.

Questions for the Record
Senator Ted Cruz

Beth Bloom,
Nominee: U.S. District Judge for the Southern District of Florida

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy as a state court judge for nearly 20 years has been to approach each case with an open and unbiased mind and to faithfully apply the law to the facts. I ensure that I listen patiently, rule promptly, explain my decisions clearly and treat all parties with the dignity and respect each deserves. I have not studied each Supreme Court Justice's judicial philosophy but, to the extent that any or all Justices share my beliefs set forth above, then our philosophies would be aligned.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The Supreme Court has used "original public meaning" when interpreting the Constitution in certain cases. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008). I would faithfully follow that precedent and all other precedents relating to 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: If confirmed as a United States District Court Judge, there are no circumstances under which I would overrule precedent. I would faithfully follow controlling precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

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 *Garcia* case is binding precedent and if I am confirmed as a United States District Court Judge, I would apply that precedent and the precedent of all Supreme Court and Eleventh Circuit Court of Appeals cases fairly and impartially to the facts of each case.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court in *United States v. Lopez*, 514 U.S. 549, 558 (1995) has identified three general categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of the channels of interstate commerce; (2) instrumentalities of interstate commerce and persons or things in interstate commerce; and (3) activities that substantially affect interstate commerce. In *United States v. Lopez, supra,* and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has also articulated limitations to the reach of the Commerce Clause to certain non-economic activity. If confirmed as a United States District Court Judge and presented with a challenge to a law on the grounds that it impermissibly extended to non-economic activity, I would apply controlling precedent.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The power of the President to issue executive orders or executive actions must stem either from an act of Congress or from the Constitution itself. *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (internal citations omitted); *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). If confirmed, I would follow and apply precedent of the Supreme Court and the Eleventh Circuit Court of Appeals in deciding issues relating to 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?

Response: The Supreme Court has stated that the "Due Process Clause protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (internal citations and quotations omitted). If confirmed, I would follow and apply precedent of the Supreme Court and the Eleventh Circuit Court of Appeals 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 ruled that "equal protection analysis requires strict scrutiny of a legislative classification when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Board of Retirement v. Murgia,* 427 U.S. 307, 312 (1976). The Supreme Court in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985) has stated that strict scrutiny applies to classifications based on "race, alienage or national origin" or when "laws impinge on personal rights protected by the Constitution"; otherwise intermediate scrutiny applies to classifications based on gender and illegitimacy.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed as a United States District Court Judge, I will apply *Grutter v. Bollinger*, *Fisher v. University of Texas,* 133 S. Ct. 2411 (2013), and any other binding precedent in this area of the law. During my nearly 20 years as a state court judge, any personal views or expectations have been irrelevant to my decisions and they will continue to play no role. I will faithfully follow and apply the precedent of the Supreme Court and the Eleventh Circuit Court of Appeals.

Responses of Paul G. Byron
Nominee to the United States District Court for the Middle District of Florida
To the Written Questions of Senator Grassley

1. **You have a wide range of legal experience as a practicing attorney. How will these experiences influence you, if at all, in your job as a federal judge, if confirmed?**

Response: Over the past 28 years, I have represented the United States Army, soldiers, the United States of America, individuals and corporations as both plaintiff and defense counsel. The majority of my legal practice has been in federal court, both at the trial and appellate level, and throughout my career I have repeatedly served as lead counsel in complex criminal and civil litigation. I believe that the diversity of my experience as a practicing attorney has prepared me to serve as a District Court Judge, if confirmed, by enabling me to evaluate legal issues from all perspectives. The complexity of the cases in which I have served as lead or co-lead counsel required considerable organizational skills and attention to detail. I believe these attributes and experiences will assist me in executing the duties of a District Court Judge, if fortunate enough to be confirmed.

2. **Given that you received a partial "Not Qualified" rating from the ABA's Standing Committee on the Federal Judiciary, I wanted to give you an opportunity to outline your qualifications and experience. Would you please explain to the Committee why you believe you are qualified to serve as a United States District Judge?**

Response: I began my legal career as a Judge Advocate General in the United State Army during which time I served as defense counsel and subsequently as a prosecutor. During my nearly 12 years as an Assistant United States Attorney (AUSA), I successfully represented the United States in the prosecution of organized crime, money laundering, healthcare fraud, complex white collar crime and whistle blower actions under the False Claims Act. I also represented physicians and hospitals in medical negligence actions, and I represented the National Aeronautics and Space Administration in an employment discrimination action. While serving as an AUSA, I volunteered to provide training on the prevention of money laundering and terrorist financing to foreign law enforcement agencies in a number of countries. I also argued 16 appeals before the Eleventh Circuit Court of Appeals, I have tried to conclusion approximately 85 trials during the course of my career, and I received numerous awards and commendations from state and federal law enforcement, including an award presented by the Attorney General for superior performance.

In 2001, I was selected to prosecute crimes against humanity and war crimes committed in the Former Yugoslavia. Accordingly, I served in the International Criminal Tribunal for the former Yugoslavia (ICTY). Since the prosecutors and investigators serving within the ICTY come from a wide variety of cultural backgrounds, working within the ICTY required me to appreciate, listen to and cooperate with diverse points of view. The procedural and substantive law applied at the ICTY is unique, and I adjusted to this legal system by starting with a careful analysis of the statutory authority governing the ICTY

and detailed study of existing precedent. While at the ICTY, I often worked with senior political and military officials from Croatia and Bosnia and Herzegovina, requiring a level of diplomacy.

I concluded my government service with the Department of Justice International Division of Asset Forfeiture and Money Laundering Section (AFMLS). As an attorney with AFMLS, I represented the United States in a number of bilateral and multilateral treaty organizations, working closely with the United States Department of State and Department of the Treasury. My service with AFMLS once again required me to understand and appreciate diverse views held by the numerous countries, law enforcement agencies, central banks and private banks with whom we interacted.

In my 10 years as an attorney in private practice, I have represented individuals and corporations in complex civil litigation in federal and state courts. I have served as plaintiff's counsel and as defense counsel, and I have argued two significant appeals in state appellate courts and one case before the Eleventh Circuit. I am well versed in federal criminal and civil law and procedure.

I believe that the diversity of my legal experience, my ability to learn new technical subject matter, as well as new procedural and substantive law, and my success in listening to and carefully considering opposing points of view qualify me to serve as a District Court Judge, should I be confirmed.

3. **Please describe some traits or judicial philosophy that you would like to emulate as a judge, if confirmed. Which characteristics would you hope to avoid?**

Response: I believe a judge must respect the rule of law and be cognizant of the court's limited role in our constitutional democracy. I further believe that a judge must be patient, considerate to the parties and litigants, demonstrate thoughtfulness, diligence, intellectual honesty and a firm commitment to the principle of stare decisis. If I am confirmed, my judicial philosophy will be to decide only those cases and controversies properly before me and to base my decisions upon binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals. If confirmed, I would strive to emulate these traits, and I would avoid any action which could convey even the appearance that all parties and their counsel are not receiving equal and impartial consideration from the court.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is integrity, which includes the ability to faithfully and impartially apply the law, regardless of the judge's personal opinion, based upon the facts as applied to precedent. I believe I possess this attribute.

5. **Please explain you 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 serves his or her country, community and the parties that appear before the court. A judge must possess patience, humility and the willingness to listen to opposing positions without bias or prejudice in an effort to resolve disputed issues of fact and apply the law to the facts. A judge must also treat the parties, attorneys and public with respect, thereby promoting confidence in the administration of justice. I believe I possess these qualities.

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: Throughout my career in both public service and private practice, I have been committed to citing controlling precedent in support of my position, and I have been equally committed to acknowledging when opposing counsel has cited controlling precedent. The doctrine of stare decisis is fundamental to our legal system. If confirmed as a District Court Judge, I will faithfully follow controlling Supreme Court and Eleventh Circuit precedent, regardless of my personal beliefs or opinions.

7. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."**

i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

Response: I do believe that the statement is part of the Court's holding.

ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

Response: Justice Kennedy's reference to "lawful marriages" is limited to those same-sex "marriages that are made lawful by the State." *United States v. Windsor*, 133 S. Ct. 2675, 2695 (2013).

iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex**

marriage?

Response: Yes. It is my understanding that the holding applies to section 3 of the Defense of Marriage Act's prohibition against federal recognition of same-sex marriages that a state has recognized to be lawful.

iv. **Are you committed to upholding this precedent?**

Response: Yes. If confirmed as a District Court Judge, I will follow *Windsor* and any other relevant precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The majority opinions of the Supreme Court, in their entirety, are binding precedent and, as such, are entitled to full force and effect by lower court judges unless and until they are overruled by later Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed as a District Court Judge, I will follow *Windsor* in its entirety as I would any other precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The majority opinions of the Supreme Court, in their entirety, are binding precedent and, as such, are entitled to full force and effect by lower court judges unless and until they are overruled by later Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed as a District Court Judge, I will follow *Windsor* in its entirety as I would any other precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the [p]rotection of offspring, property interests, and the enforcement of marital responsibilities."**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The majority opinions of the Supreme Court, in their entirety, are binding precedent and, as such, are entitled to full force and effect by lower court judges unless and until they are overruled by later Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed as a District Court Judge, I will follow *Windsor* in its entirety as I would any other precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning: for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The majority opinions of the Supreme Court, in their entirety, are binding precedent and, as such, are entitled to full force and effect by lower court judges unless and until they are overruled by later Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed as a District Court Judge, I will follow *Windsor* in its entirety as I would any other precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

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 the absence of controlling precedent from the Supreme Court or the Eleventh Circuit, I would begin my analysis of the issue by applying accepted principles of statutory construction. I would first look at the plain meaning of the constitutional provision, statute or regulation, and, if the language is clear and unambiguous, I would apply the plain meaning of the provision, statute or regulation to the facts. If the language is not clear and unambiguous, I would look to Supreme Court and Eleventh Circuit decisions interpreting analogous provisions and, if necessary, I would consult decisions from other circuits as persuasive authority.

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 District Court Judge, I would faithfully apply Supreme Court and Eleventh Circuit precedent regardless of any personal opinions or views I may possess.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: All statutes enacted by Congress are presumed constitutional. *United States v. National Dairy Products Corp.*, 372 U.S. 29, 32 (1963). The statute may only be declared unconstitutional if it is clear that Congress has exceeded its authority to enact the statute or when the statute violates a provision of the Constitution. If it is possible to decide the issue that is before the court without addressing the constitutionality of a statute, the court must do so. *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548, 571 (1973).

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. The Constitution is a uniquely American document, and district courts should be guided by domestic law.

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: Throughout my career, both in public service and private practice, I have advocated positions on behalf of my clients by citing controlling precedent. Our federal judicial system is predicated upon strict adherence to the rule of law which has at its foundation the doctrine of stare decisis. I have spent my professional life supporting and enforcing the rule of law. If confirmed as a District Court Judge, I will faithfully execute my duty to ensure that the rule of law is adhered to, regardless of personal opinions or views that I may possess.

13. **What assurances can 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 experience in both criminal and civil law, as counsel for the plaintiff and for the defense, provides me with the perspective necessary to appreciate the importance of appearing before judges who treat the parties fairly and who maintain neutrality while applying the law. Individuals and businesses are entitled to rely upon consistent application of the rule of law. If confirmed as a District Court Judge, I will set aside any personal view I may have and will be fair to all parties and their counsel.

14. **If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I will manage my caseload by setting and maintaining reasonable and efficient schedules in all matters with deadlines clearly established in a case management order entered promptly after a case has been filed. At the initial status conference, I would have the parties identify any unique issues which may require modification to the case management order, and I would encourage the parties in complex litigation to engage in periodic status conferences. I would also promptly decide motions, including dispositive motions, and make efficient use of Magistrate Judges.

15. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, I believe that judges play a significant role in ensuring that cases proceed in an orderly fashion towards final resolution. I would utilize the steps set forth in response to question number 14 in order to control and manage my docket. Additionally, when appropriate, in order to make efficient use of the parties' time, I would advise parties verbally or in writing prior to submission of written motions or oral argument whether a particular legal or factual issue should be emphasized in their presentation.

16. **You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for**

guidance. What do you expect to be most difficult part of this transition for you?

Response: I understand that the role of a judge is to decide cases and controversies based upon applicable constitutional and statutory provisions and with strict adherence to controlling precedent. In deciding cases, I will consider the facts as presented by the parties, resolve disputed issues of fact, and apply the law to those facts. In applying the law, whether a constitutional provision, statute, or rule of procedure, I will turn first to the plain meaning of the controlling provision. If the provision is not clear and unambiguous, I will research controlling precedent from the Supreme Court and the Eleventh Circuit. In the absence of controlling precedent, I will consider decisions from other circuits as persuasive authority. The most difficult part of this transition will be developing the proper balance between setting and enforcing case management orders to ensure the prompt and efficient resolution of cases and identifying when modification to the scheduling order, including extension of deadlines, is reasonable and justified.

17. **According to the website of the 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". You have indicated that you are a member of the AAJ.**

    a. **Will you please explain your interest in and your work for the AAJ?**

    Response: I became a member of the AAJ in order to attend continuing legal education seminars. The AAJ also publishes periodic journals, similar to the American Bar Association Journal, which contain articles addressing a variety of legal issues. I have never worked on or for the AAJ.

    b. **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.

    c. **Are you aware of any endorsements or promised endorsement 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 April 8, 2014 and prepared my responses on April 9-10, 2014. I submitted my responses to the Department of Justice Office of Legal Policy for review. I then finalized my responses and authorized their transmittal to the Committee.

19. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Paul G. Byron
Nominee to the United States District Court for the Middle District of Florida
To the Written Questions of Senator Ted Cruz

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: I believe a judge must respect the rule of law and be cognizant of the court's limited role in our constitutional democracy. I further believe that a judge must demonstrate thoughtfulness, diligence, intellectual honesty and a firm commitment to the principle of stare decisis. If I am confirmed, my judicial philosophy will be to decide only those cases and controversies properly before me and to base my decision upon binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals. While I have read opinions from the Warren, Burger and Rehnquist Courts, I have not studied the individual justices sufficiently to enable me to characterize a particular justice's philosophy as analogous to my own.

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: The United States Supreme Court has employed originalism to interpret the Constitution. Therefore, if confirmed as a District Court Judge, I would follow cases from the Supreme Court which have examined the original public meaning of constitutional provisions in deciding the constitutionality of statutes, *see, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

3. **If a decision is precedent today while you're going through the confirmation process, under what circumstances would you overrule that precedent as a judge?**

   Response: As a District Court Judge, I would be bound by the precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals. I would not and could not overrule any 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: The United States Supreme Court in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 550 (1985) noted that, with few exceptions, the Constitution does not contain an enumeration of rights retained by the States and that "[a]part from the limitation on federal authority inherent in the delegated nature of Congress' Article I powers, 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." However, in other

cases, the Supreme Court has also determined that state sovereign interests are protected via judicially created limitations on federal power. For example, in *Printz v. United States*, 521 U.S. 898 (1997), the Supreme Court limited federal power by declaring that certain provisions of the Brady Act were unconstitutional, because they preempted state sovereign rights. *See also New York v. United States*, 505 U.S. 144 (1992). If confirmed as a District Court Judge, I would follow all applicable precedent.

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 United States Supreme Court in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), held that the federal laws under consideration were unconstitutional because they exceeded congressional power under the Commerce Clause. In both cases, the Supreme Court emphasized the noneconomic nature of the activity being subjected to federal regulation. Neither of these opinions, however, hold that the Commerce Clause may never extend to noneconomic activity. In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia's concurring opinion cited the Necessary and Proper Clause in conjunction with the Commerce Clause to opine 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 as a District Court Judge, I would follow all applicable precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

6. **What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: The United States Supreme Court held, in *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)), that the "President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" Judicially enforceable limits on the President's ability to issue executive orders or executive actions thereby include circumstances wherein the President acts without express constitutional or statutory authority, or when the executive action impermissibly interferes with the functions that the Constitution assigns to another branch of government or otherwise violates a constitutional or statutory provision. If confirmed as a District Court Judge, I would follow all applicable precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

7. **When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: For purposes of substantive due process protection, fundamental rights include those liberties that the United States Supreme Court has found to be "objectively deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). If confirmed as a District Court Judge, I would

apply that precedent.

8. **When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: The United States Supreme Court has held 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).

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: The Unites States Supreme Court noted in *Grutter* that "race-conscious admissions policies must be limited in time. This requirement reflects that racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands." *Grutter*, 539 U.S. at 342. While I have no personal opinion as to whether the use of racial preferences will no longer be necessary in public higher education 15 years from now, if confirmed as a District Court Judge, I will apply precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

Responses of Darrin P. Gayles,
Nominee, United States District Judge for the Southern District of Florida
to the Written Questions of Senator Grassley

1. **During your confirmation hearing, you indicated that consultation of the legislative history of a statutory provision "may be a factor" in your decision making process as a judge. Please describe with specificity the circumstances under which you deem it appropriate to look to legislative history as an aid to reaching an understanding about the meaning or construction of a statute.**

   Response: A court should rely solely on the language of a statute if it is clear and unambiguous. If the language is not clear and unambiguous, and there is no binding precedent, judges should look to the following sources to help interpret the statute: canons of statutory construction, binding precedent interpreting analogous statutory provisions, and persuasive (though not controlling) precedent from other courts interpreting the same provision. If these sources do not resolve the question, it may be appropriate to look to the legislative history of a statute. A court should consider a statute's legislative history as a last resort because the legislative history may not be an accurate reflection of the legislature's intent in enacting the statute.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: Integrity is the most important attribute of a judge. I believe that I possess that attribute, and have demonstrated it over my ten years as a Florida state 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 must at all times maintain an appropriate judicial temperament as he or she sets the standard for professionalism and civility among the litigants and attorneys. A judge's temperament is also an essential factor in how parties perceive judges and the judicial system as a whole. The most important elements of judicial temperament are patience, fairness, humility, and respect. In the ten years that I have served as a Florida state judge, I believe that my judicial temperament has met 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: If confirmed, I commit that I will always faithfully follow the precedents of the Supreme Court and the Eleventh Circuit. I will give those precedents full force and

effect, even if I personally disagree. As a Florida state judge for the last ten years, I have applied binding precedent regardless of whether I personally disagreed with the precedent.

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 deciding cases of first impression, I will continue to rely on the clear and unambiguous language of the statute at issue. If a provision of the statute is ambiguous and there is no controlling precedent, I would consider the statute as a whole and related statutes to determine its meaning. If the meaning remains unclear, I would consider the opinions and legal analyses of other judges who have interpreted similar statutes, which may be persuasive. As a last resort, I may consider the statute's 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, I will faithfully follow Supreme Court and Eleventh Circuit precedent even if I believe that the higher courts seriously erred in rendering their decisions. As a Florida state judge, I have applied binding precedent regardless of any personal views I might have had.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: A statute enacted by Congress is presumed to be constitutional. A statute should be upheld unless it clearly violates a provision of the Constitution or Congress exceeded its 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: No. If I am confirmed, I would not rely on foreign law or the views of the "world community" to determine the meaning of the Constitution.

9. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

   Response: In my ten years as a Florida state judge, my decisions have been grounded solely in precedent and the text of the law at issue. I assure the Committee that if I am confirmed, my decisions will never be affected by 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: Over ten years as a judge, I have adjudicated thousands of issues in civil and criminal cases. I have always put aside my personal views and have been fair to all who have appeared before me. I assure the Committee that if I am confirmed, I will continue to do so as a federal judge.

11. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will first seek advice from my colleagues regarding their most effective methods in managing their caseloads. As I have done for the past ten years as a state judge, I will maintain a log of my cases so that I can track their progress from filing to resolution. I will issue detailed scheduling orders, including reasonable but firm deadlines for the parties. I will conduct regular status conferences and order mediation where appropriate.

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 an important role in controlling the pace and conduct of litigation. If confirmed, I will control my docket in several ways. I will maintain a progress log of the cases assigned to me. At the earliest opportunity, I will ask the parties in each case how I can best assist them in advancing the case to trial or otherwise reaching a resolution. I will also issue detailed scheduling orders, including regular status conferences and mediation where appropriate.

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: In every case that comes before me, I read the motions and other pleadings filed by the parties, and I research the applicable case law. When oral argument is necessary, I give the parties a sufficient opportunity to argue their positions. In reaching my decisions, I apply the facts to the applicable law. After thorough consideration, I issue fair and just rulings grounded in the law.

14. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees."

a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

   Response: I have had no such contact.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

   Response: No.

15. **Please describe with particularity the process by which these questions were answered.**

    Response: I received these questions from the Department of Justice's Office of Legal Policy on April 8, 2014, and immediately began preparing my answers. After completing my answers, I submitted them to the Office of Legal Policy for review. Thereafter, I made revisions and finalized my answers for submission to the Committee.

16. **Do these answers reflect your true and personal views?**

    Response: Yes.

Responses of Darrin P. Gayles,
Nominee, United States District Judge for the Southern District of Florida
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 judges must decide each case on its own merits, based on the facts and applicable law, and I have done so in the ten years I have served as a Florida state judge. Judges must apply the law faithfully and impartially, and must at all times maintain the dignity of the court. I have not sufficiently studied the opinions of the justices from the Warren, Burger, and Rehnquist Courts to be able to determine which justice's 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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court interpreted the Second Amendment by looking to the normal and ordinary meaning of words as they were understood at the time of the Amendment's ratification. If confirmed, I would interpret the Constitution consistent with such guidance provided by the Supreme Court in *Heller* and all Supreme Court and Eleventh Circuit precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed, I will faithfully follow Supreme Court and Eleventh Circuit 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 the Supreme Court's decision in *Garcia* as well as other related Supreme Court and Eleventh Circuit precedent regarding state sovereign interests. *See, e.g.*, *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has addressed the scope of, and limitations on, Congress' regulation of non-economic activity pursuant to the Commerce Clause in *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), and *Gonzales v. Raich*,

545 U.S. 1 (2005). In his concurring opinion in *Raich*, Justice Scalia recognized that Congress may regulate noneconomic activity if the regulation is a necessary part of a more general regulation of interstate commerce. *See Raich* at 37. If confirmed, I would follow all Supreme Court and Eleventh Circuit precedent regarding Congress' power under 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, 585 (1952), the Supreme Court held that the President's authority to issue an executive order or take executive actions "must stem either from an act of Congress or from the Constitution itself." If confirmed, I would follow Supreme Court and Eleventh Circuit precedent to resolve questions regarding executive orders and actions.

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 it is specifically protected by the Bill of Rights or if it is "objectively, deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (internal quotations and citations omitted). If confirmed, I would follow Supreme Court and Eleventh Circuit precedent to determine 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: Because legal classifications, such as race, alienage, and national origin, are seldom relevant to the achievement of any legitimate state interest, such classifications are subjected to strict scrutiny. *See City of Cleburne v. Cleburne Living* Center, 473 U.S. 432, 440 (1985). Other classifications, including gender and illegitimacy, require intermediate scrutiny. *Id.* at 440-41. If confirmed, I would follow Supreme Court and Eleventh Circuit precedent in deciding all issues under the Equal Protection Clause.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have no expectations regarding the future use of racial preferences in public higher education. If confirmed, I would follow *Grutter; Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013); and other Supreme Court and Eleventh Circuit precedent regarding the consideration of race in public higher education.

Senator Grassley
Questions for the Record

Carlos Mendoza,
Nominee: U.S. District Judge for the Middle District of Florida

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. Demographic factors should play no role in the outcome of any case.

2. **What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?**

   Response: The Supreme Court "has long recognized that the government may . . . accommodate religious practices . . . without violating the Establishment Clause." *Cutter v. Wilkinson*, 544 U.S. 709, 713-14 (2005) (internal citations and quotations omitted). With respect to any case that presented First Amendment issues, as with all other issues, I would follow precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

3. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is neutral detachment. My professional experiences as a Marine, a Naval Officer, a lawyer and a state trial judge taught me that effective decision makers rely on intellect and reason. I continue to draw from those experiences as a state trial judge and if confirmed, I will continue to embody this trait moving forward.

4. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge must maintain a patient, calm and respectful temperament in order to create an environment where contested legal matters may be effectively litigated. I believe I meet this standard as evidenced by my performance managing a challenging docket in state court.

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: Yes. *Stare decisis* preserves and promotes the finality and consistency that judicial determinations offer those parties seeking resolution of contested legal matters. I am committed to faithfully abiding by the decisions of higher courts.

6. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

   a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

      i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

         Response: Yes. The quoted language is binding legal authority.

      ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

         Response: The term "lawful marriages" as stated by Justice Kennedy refers to same-sex marriages deemed lawful by certain individual states.

      iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

         Response: Yes.

      iv. **Are you committed to upholding this precedent?**

         Response: Yes.

   b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

      i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.

Response: Yes. The quoted language is binding legal authority, as is the rest of the Court's opinion.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. I commit to giving all portions of the Court's opinion full force and effect.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The quoted language is binding legal authority, as is the rest of the Court's opinion.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. I commit to giving all portions of the Court's opinion full force and effect.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The quoted language is binding legal authority, as is the rest of the Court's opinion.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Response: Yes. I commit to giving all portions of the Court's opinion full force and effect.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic**

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[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).

relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Yes. The quoted language is binding legal authority, as is the rest of the Court's opinion.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Response: Yes. I commit to giving all portions of the Court's opinion full force and effect.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If confirmed, I would first consider the plain meaning of the statutory language at issue. If the language is clear and unambiguous my inquiry would cease. If not, I would seek guidance from closely-related legal authority promulgated by the United States Supreme Court and the Eleventh Circuit Court of Appeals. These principles also guide my service as a state trial judge.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the decision without reservation.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Duly enacted congressional legislation is presumptively constitutional. Enactments of Congress should be left undisturbed unless they clearly run afoul of the Constitution or in instances where Congress clearly exceeds its constitutional authority.

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. If confirmed, I will not rely on foreign law nor will I be guided by the views of the world community.

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[5] *Id.* (internal citations omitted).

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: As a combat-decorated Marine, a judge advocate in the United States Navy and a sitting Circuit Court judge in the State of Florida, I believe I have a track record of faithfully upholding the Constitution of the United States. It is my hope that my track record would allay any concerns.

12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: As a state trial judge, I have a track record of neutral detachment in all the matters I have had the privilege of presiding over. Inserting one's personal views into the decision making process denies litigants both fairness and consistency, thereby interfering with the effective and efficient administration of justice.

13. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will be engaged, active and available in managing every aspect of any docket I have the privilege of presiding over. When arriving in Putnam County, Florida to serve as a state trial judge, the felony criminal caseload in Putnam County was the highest in the entire circuit, nearly double the next highest caseload and more than three times the lowest caseload. Two years subsequent to my being assigned to this challenging docket, the Putnam County caseload is now consistently the lowest in the circuit. That is a model I will strive to replicate.

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. A docket will move at the pace a judge requires. My experiences managing a congested caseload have enabled me to find the balance between efficiency and effectiveness. If confirmed, I will work diligently to create a positive work environment with clearly established expectations that will foster and promote the effective and efficient administration of justice.

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 carefully review the evidence, arguments and legal authority presented by all litigating parties. I then consider those submissions and conduct additional legal research when necessary. My research focuses on decisions promulgated by the Fifth District Court of Appeal and the Supreme Court of Florida. I strive to craft orders and opinions that offer

transparency and clarity. In the pursuit of closure and finality parties must understand not only the decision, but the rationale in support thereof.

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". You have indicated that you are a member of the AAJ.**

    a. **Will you please explain your interest in and your work for the AAJ?**

    Response: I am not nor have I ever been a member or otherwise associated with the AAJ.

    b. **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.

    c. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

    Response: No.

17. **Please describe with particularity the process by which these questions were answered.**

    Response: I received the questions via e-mail on Wednesday, April 9, 2014. I prepared responses over the course of several days then forwarded my responses to the Office of Legal Policy on April 13, 2014. On April 22, 2014, I finalized my responses and authorized transmittal to the Committee.

18. **Do these answers reflect your true and personal views?**

    Response: Yes.

Questions for the Record
Senator Ted Cruz

Carlos Mendoza,
Nominee: U.S. District Judge for the Middle District of Florida

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: As a trial court judge my judicial philosophy is guided by patience, impartiality and respect for the rule of law. If confirmed as a federal judge, I will continue applying those principles in maintaining the efficient and effective administration of the judicial process. I am unfamiliar as to the specific judicial philosophies of the Supreme Court justices from the Warren, Berger and Rehnquist Courts, in order to analogize their philosophies to my own.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: Yes. The Supreme Court has looked to original public meaning to interpret the Constitution in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed I will abide by the *Heller* decision and all decisions promulgated by the United States Supreme Court and the Eleventh Circuit Court of Appeals.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed, I will not overrule binding 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: A hallmark of our system of justice is the strict adherence to binding legal authority. If confirmed, I will not abandon my impartial role by injecting personal views into the decision making process. I will follow the *Garcia* decision and all decisions by the United States Supreme Court and the Eleventh Circuit Court of Appeals, regardless of whether I agree or disagree.

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 been critical of Congress' authority under the Commerce Clause to regulate certain types of non-economic activity. In *United States v. Lopez,* 514 U.S. 549 (1995), for example, the Court defined three broad categories of activity Congress could lawfully regulate under the Commerce Clause and found the federal law at issue in that case to be unconstitutional in part because it regulated non-economic activity. If confirmed, I would strictly adhere to this 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 come from the United States Constitution or from Congress. Disputes arising over the exercise of presidential executive authority are properly resolved by the judiciary consistent with Justice Jackson's concurring opinion in *Youngstown Sheet and Tube Company v. Sawyer*, 343 U.S. 579 (1952), which has subsequently been adopted by the Supreme Court in *Medellin v. Texas*, 552 U.S. 491, 524-25 (2008).

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: A right is fundamental through the prism of the substantive due process doctrine when the right is "objectively, deeply rooted in this Nation's history and tradition, . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted). The Supreme Court further requires "a careful description of the asserted fundamental liberty interest" in substantive due process cases. *Id.* If confirmed, I will follow this and all binding legal authority.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The United States Supreme Court opined that legislative classifications based on race, alienage, national origin, gender or illegitimacy require a heightened scrutiny analysis under the Equal Protection Clause. "Similar oversight by the courts is due when state laws impinge on personal rights protected by the Constitution." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1995). If confirmed, I will follow this and all binding legal authority.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: The quote is a prediction by the Supreme Court that racial preferences "will no longer be necessary to further the interest approved today." *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003). If confirmed, I will strictly follow precedent and set any personal beliefs and expectations aside.

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RECEIVED FEB 21 2014

VIA EMAIL AND FIRST-CLASS MAIL

February 6, 2014

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 Beth Francine Bloom to the United States District Court for the Southern District of Florida***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Beth Francine Bloom who has been nominated for a position on the United States District Court for the Southern District of Florida. The Committee is of the opinion that Judge Bloom is Unanimously Qualified for this position.

A copy of this letter has been provided to Judge Bloom.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Beth Francine Bloom (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 February 6, 2014.

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VIA EMAIL AND FIRST-CLASS MAIL

February 6, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: ***Nomination of Paul Gregory Byron to the United States District Court for the Middle District of Florida***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Paul Gregory Byron who has been nominated for a position on the United States District Court for the Middle District of Florida. A substantial majority of the Committee is of the opinion that Mr. Byron is Qualified for this position and a minority of the Committee is of the opinion that Mr. Byron is Not Qualified for this position.

A copy of this letter has been provided to Mr. Byron.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: Paul Gregory Byron, 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 February 6, 2014.

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1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

STAFF COUNSEL
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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

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Please respond to:

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Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

VIA EMAIL AND FIRST-CLASS MAIL

February 6, 2014

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 Darrin Phillip Gayles to the United States District Court for the Southern District of Florida***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Darrin Phillip Gayles who has been nominated for a position on the United States District Court for the Southern District of Florida. A majority of the Committee is of the opinion that Judge Gayles is Qualified for this position and a minority of the Committee is of the opinion that Judge Gayles is Well Qualified for this position.

A copy of this letter has been provided to Judge Gayles.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Darrin Phillip Gayles (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 February 6, 2014.

CAROL FRANCES KEYS
ATTORNEY AT LAW

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NORTH MIAMI, FLORIDA 33181

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March 31, 2014

Senator Patrick Leahy
United States Senate
437 Russell Senate Office Building
Washington DC, 20510

Dear Senator Leahy,

I am writing to support the nomination of Circuit Judge Darrin Gayles to the United States District Court for the Southern District of Florida. Judge Gayles' appointment would bring excellence to that court.

I came to know Judge Gayles in 2004 when he was appointed to the County Court by former Governor Jeb Bush. Over the past nine years, in both the County and Circuit Courts, Judge Gayles has earned a reputation as a judge who is intelligent, fair, hard-working, and decisive. The quality of his judicial work is revealed in his stellar bar poll ratings. He also gives much of his time to the South Florida community through his volunteer work with several civic and charitable organizations, including 100 Black Men of South Florida, 5000 Role Models of Excellence, and Big Brothers/Big Sisters of Greater Miami. Judge Gayles has also mentored countless students in our community. He is a fine example of what we expect from our public servants.

As a lawyer myself, I understand the need to have well-qualified judges. I have no doubt that Judge Gayles will bring to the Federal bench the same qualities that have served him well in the Florida State courts if given the opportunity.

Warmest regards,

Carol F. Keys, Esq.
Councilwoman, City of North Miami District 2

WILKIE D. FERGUSON, JR. BAR ASSOCIATION

www.wdfjba.org P.O. Box 15487, Miami, FL 33101-5487 wdfjba2@gmail.com

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March 31, 2014

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Senator Patrick Leahy, Chair
Senate Judiciary Committee
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

Re: Recommendation of Hon. Darrin P. Gayles to Serve as Federal District Court Judge for United States District Court for the Southern District of Florida

Dear Senator Leahy:

The Wilkie D. Ferguson Jr. Bar Association, formerly known as the Black Lawyers Association, was formed in 1977 when a group of lawyers sought to remove the barriers to full inclusion of African-Americans into the Miami-Dade legal community. The founding members realized that change of this magnitude could only be accomplished through collective effort. Through the years, the Wilkie D. Ferguson Jr. Bar Association has had a profound impact on the legal, civic and political landscape of Miami-Dade County. We are committed to the constructive development of our members and the development of opportunities to ensure that our judiciary and legal community understands, appreciates and is responsive to the concerns of the diverse community in which we live and serve. We wish to take this opportunity to share our thoughts and recommendation concerning sitting Miami-Dade Circuit Court Judge Darrin Gayles, an applicant for the vacant position of Federal District Court Judge.

To this end, it is important to note:

- The Honorable Wilkie D. Ferguson Jr. was the last African American Federal District Court Judge appointed by a Democratic President. He was appointed in 1993 by President Clinton.
- Currently, there are only two African American Federal District Court Judges presiding in the Southern District of Florida. They were both appointed by a Republican President. There are currently 24 active and senior judges in the Southern District of Florida. They include: 14 White males; 4 White females; 3 Hispanic males; 1 Hispanic female; 1 Black male; 1 Black female.

During the years that Judge Gayles has served on the bench, many of our members have had the pleasure to know and appear before Judge Gayles and can personally attest that he has the requisite temperament, intellect, work ethic, youth and integrity to be a superior choice for the federal judiciary. As a lawyer and on the bench, Judge Gayles has extensive trial experience, having tried more than 150 cases before a jury, a distinction which has earned him a wide spread reputation among the Florida Bar as a professional who has developed a mastery of jurisprudence and the art of a trial. As a trial attorney, Judge Gayles has played a significant role in cases of legal significance to our community and bar, which have involved complex issues pertaining to the appropriate use of criminal informants, the application of the federal sentencing guidelines, watershed immigration and narcotics decisions and organized consumer fraud operations.

Judge Gayles has consistently enjoyed a bar approval rating of exceptionally qualified/qualified in excess of ninety-five (95) percent. Judge Gayles is fair and his judicial temperament is favorable. Judge Gayles works tirelessly to ensure that the disposition rendered on a matter before him necessarily conforms to the applicable law and strikes an appropriate balance of the equities presented. To that end, Judge Gayles listens actively, and without judgment; he remains respectful of the parties and is therefore fully prepared to address the issues before him. Judge Gayles is organized, thorough and orderly. What is most striking, however, is Judge Gayles' passion for the rule of law and the ends of justice. Lawyers, both seasoned and unseasoned, who have had the occasion to appear before Judge Gayles easily discern and appreciate his ability to control the proceeding, understand the facts, decipher complex legal issues and apply the law in manner which upholds the public trust and confidence in our justice system.

Judge Gayles is also a dedicated community servant who indiscriminately gives of his talents and time to vulnerable and deserving constituencies through his involvement with the 100 Black Men of South Florida, 5000 Role Models of Excellence Project, Big Brothers/Big Sisters, and Success for Kids, Inc. (Advisory Board). Judge Gayles plays an active role in the Wilkie D. Ferguson, Jr Bar Association, the National Bar Association Judicial Council and the 11th Judicial Circuit Professionalism Committee where he leverages his involvement to avidly support the growth and professional development of new attorneys and passionately advocate for increased civility and professionalism among his legal peers.

It therefore comes as no surprise that Judge Gayles has been recognized extensively for role as an outstanding legal community leader and his commitment to service. His notable distinctions include, Legacy 50: South Florida's Most Powerful Black Business Leaders (2013); Outstanding Public Service Award (2008), The National Black Justice Coalition; 2007 Mentor of the Year Award, St. Thomas University Black Law Students Association; "South Florida's Most Influential Black Professionals Under 40," Success South Florida Magazine (2006); and the Dedicated Service Award, Big Brothers/Big Sisters of Greater Miami (1999). Judge Gayles is a remarkable professional whom the Wilkie D. Ferguson, Jr. Bar Association believes represents a clear and sound choice for the federal judiciary.

We offer our unqualified support for Judge Gayles because he works very hard, has a deep intellectual curiosity, conscientiously explores the legal and practical issues in a case and is deeply interested in the search for the truth. Please do not hesitate to contact us should you require further information regarding this outstanding candidate.

Kindest regards,

Yolanda P. Strader, President
Wilkie D. Ferguson Jr., Bar Association

cc: Leigh-Ann Buchanan, President-Elect
Wilkie D. Ferguson Jr., Bar Association

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VIA ELECTRONIC MAIL

March 31, 2014

Senator Patrick Leahy
United States Senate
Senate Judiciary Committee
437 Russell Senate Office Building
Washington, DC 20510

Senator Chuck Grassley
United States Senate
Senate Judiciary Committee
135 Hart Senate Office Building
Washington, DC 20510-1501

Re: Judge Darrin Gayles, Presidential Nominee to the United States District Court for the Southern District of Florida

Dear Chair and Ranking Member:

My name is Rebekah J. Poston. I am a member in good standing of The Florida Bar. I am an equity partner in the international law firm of Squire Sanders (US) LLP. I recently completed my service as one of the Chairs of The Florida Bar Grievance Committees. My past experiences include serving the United States Department of Justice as an Assistant U.S. Attorney in Miami and as a Special Attorney with the Organized Crime and Racketeering Section in Cleveland, Ohio. I was also an Assistant Miami-Dade County State Attorney under Ms. Janet Reno. Enough about me, let me write now about my good friend and colleague, Darrin Gayles. I am ecstatic to write to you about Darrin. I have actively promoted Darrin's judicial aspirations for many years.

I first met Darrin when he was an Assistant U.S. Attorney prosecuting a client of mine in Federal Court. Darrin and I began a great professional relationship with that introduction, which continues to this day. I have worked with Darrin as a party opponent in Federal criminal court, appeared before him many times when he sat on both the Miami-Dade County criminal and circuit court benches, and observed him in professional social settings. I am also aware of the leadership positions he has held and the civic contributions he has made and continues to make. I will not repeat them as they are fully set forth in his resume.

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Squire Sanders (US) LLP is part of the international legal practice Squire Sanders which operates worldwide through a number of separate legal entities.

Please visit squiresanders.com for more information.

What I do want to say in support of his confirmation is this. Darrin possesses all the personal and professional attributes we should be looking for in our Federal bench. He has civil and criminal experience, both in the state and federal systems, both as a party and a judge. When he was a federal prosecutor, he was a zealous advocate for the United States, but fair and a man of his word. He is smart and extremely capable of getting to the issues in a case, asking pointed questions of the advocates before him, and he is always prepared on the applicable law. Very importantly, he maintains a professional decorum in his courtroom and shows respect and tolerance for the parties before him, sometimes in very trying circumstances.

Darrin is a man of the people. His experiences in handling sensitive and personal issues such as deportation, political asylum, domestic violence, mental competency and civil involuntary commitment hearings related to mental health and drug and alcohol addiction give him an in depth and broad base of experience that will serve him well in his federal cases, as criminal and immigration cases so often embody these types of issues.

He is equally adept at analyzing complicated white collar issues and evaluating important standards of probable cause and due process. I have no doubt but that these skills and capabilities will carry over to any civil case over which he presides.

His associations and memberships (e.g. 5000 Role Models of Excellence, Big Brothers/Big Sisters of Greater Miami, 100 Black Men of South Florida, Inc., and Cuban-American Bar Association) attest to his thought and commitment to diversity and leading by example, both as a person and in his profession.

By now you must see that I am a great fan and supporter of Darrin's. We need racial diversity on our Federal bench. We need qualified persons on our Federal bench. We need smart, personal, and well-rounded persons on our Federal bench. We need experience on our Federal bench. Darrin has all of these attributes. He will continue to be a great judge if confirmed.

It is with great pleasure and pride that I strongly recommend to the Senate Judiciary Committee for confirmation to the United States District Court for the Southern District of Florida bench, Judge Darrin Gayles.

Very truly yours,

Squire Sanders (US) LLP

Rebekah J. Poston

cc: Judge Darrin Gayles

RAUL J. CHACÓN JR.
MOBILE: (305) 801-5374
rchacon@chartwelllaw.com

Reply To: Miami Office
200 S. Biscayne Blvd., Suite 300
Miami, FL 33131
Phone: (305) 372-9044
Facsimile: (305) 372-5044

March 31, 2014

US Senator Patrick Leahy
United States Senate
Senate Judiciary Committee
437 Russell Senate Office Building
Washington, DC 20510-1501

Re: Appointment of Judge Darrin Gayles to the Federal Beach US District Judge for the Southern District of Florida

Dear Senator Leahy:

I write in support of Judge Darrin Gayles. I sincerely believe that Judge Gayles will be a great addition to the Federal bench as a US District Judge for the Southern District of Florida. In that regard, I offer the following for your consideration.

I have known Judge Gayles since 1993 when we both started as Assistant State Attorneys at the Miami-Dade County State Attorney's Office. Our class of 30 prosecutors was recognized for having the highest conviction rate at that time for DUI prosecutions. I was blessed to have many good attorneys in my class, and can say that Judge Gayles was one of the best.

While I left the Miami-Dade State Attorney's Office to pursue a career in private practice as an admiralty/maritime attorney, Judge Gayles continued his legal career in public office. He spent two years as an Assistant District Counsel for the United States Department of Justice Immigration and Naturalization Service (INS), followed by five years as an Assistant United States Attorney at the United States Attorney's Office for the Southern District of Florida. Judge Gayles was appointed by former Florida Governor Jeb Bush in 2004 to the 11th Judicial Circuit of Florida as a County Court Judge, and then in 2010 was appointed by former Florida Governor Charlie Christ as a Circuit Court Judge. Judge Gayles ran for re-election in 2006 as a County Court Judge, and in 2012 as a Circuit Court Judge. I was privileged to have been asked by him to chair both of his re-

election/retainment campaign committees, and as a testament to his qualities as a Judge he was retained unopposed in both elections.

After leaving the State Attorney's Office, my practice has focused on complex admiralty/maritime matters, which I have been litigating since 1997. The majority of my admiralty/maritime cases are litigated in Federal Court. I believe this gives me some insight into the qualities attorneys who practice in the Federal system seek of their jurists. Judge Gayles has the experience in the Federal Court system, the experience as a Judge, the intellect and most importantly the demeanor to be a Judge on the Federal bench. I expect that like in the State Court system he will be highly respected by those who practice before him in the Federal Court system. His qualities are the same qualities that I have come to expect and rely upon from our Federal bench, one which I believe Judge Gayles would well serve with honor and distinction.

Because of the foregoing, and other reasons too numerous to list here, I sincerely believe Judge Gayles is the ideal candidate for appointment to be a US District Court Judge.

Should you have any questions regarding any of the foregoing, please do not hesitate to contact me.

Sincerely,

THE CHARTWELL LAW OFFICES, LLP

Raúl J. Chacón Jr.

RJC/fa

WILKIE D. FERGUSON, JR. BAR ASSOCIATION

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March 31, 2014

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Senator Patrick Leahy, Chair
Senate Judiciary Committee
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

Re: Recommendation of Hon. Darrin P. Gayles to Serve as Federal District Court Judge for United States District Court for the Southern District of Florida

Dear Senator Leahy:

The Wilkie D. Ferguson Jr. Bar Association, formerly known as the Black Lawyers Association, was formed in 1977 when a group of lawyers sought to remove the barriers to full inclusion of African-Americans into the Miami-Dade legal community. The founding members realized that change of this magnitude could only be accomplished through collective effort. Through the years, the Wilkie D. Ferguson Jr. Bar Association has had a profound impact on the legal, civic and political landscape of Miami-Dade County. We are committed to the constructive development of our members and the development of opportunities to ensure that our judiciary and legal community understands, appreciates and is responsive to the concerns of the diverse community in which we live and serve. We wish to take this opportunity to share our thoughts and recommendation concerning sitting Miami-Dade Circuit Court Judge Darrin Gayles, an applicant for the vacant position of Federal District Court Judge.

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Kindest regards,

Yolanda P. Strader, President
Wilkie D. Ferguson Jr., Bar Association

cc: Leigh-Ann Buchanan, President-Elect
Wilkie D. Ferguson Jr., Bar Association

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April 1, 2014

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The Honorable Patrick J. Leahy
Chair
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
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Confirmation of Darrin P. Gayles

Dear Chair Leahy and Ranking Member Grassley:

On behalf of the National Bar Association, I write to express our strong unequivocal and enthusiastic support for the Honorable Darrin P. Gayles confirmation as a judge on the United States District Court for the Southern District of Florida.

I serve as the 71st President of the National Bar Association ("National Bar" or "NBA"). The Association is the nation's oldest and largest national network of predominantly African American attorneys and judges. It represents approximately 59,000 lawyers, judges, law professors and law students and has over 80 affiliate chapters throughout the United States and around the world.

Judge Darrin P. Gayles is extraordinarily qualified for the United States District Court. A distinguished jurist, prosecutor and public servant, the nominee merits an expeditious United States Senate Confirmation hearing and vote.

The National Bar's Standing Committee on Judicial Selection conducted our constitutionally-mandated examination of the jurist's background (professional and personal), reputation for ethical comportment, judicial temperament, and commitment to civil and human rights. After the Standing Committee's exhaustive examination of the nominee's record, the National Bar's Board of Governors voted unanimously to endorse Judge Gayles.

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www.nationalbar.org

NATIONAL BAR ASSOCIATION

Judge Gayles is exceptionally qualified for the Federal Bench. He is a highly experienced jurist, having served on the Florida Bench for ten years. Currently, Judge Gayles serves as a Circuit Judge on the Eleventh Judicial Circuit of Florida. He has held this position since 2011. Prior to that, the nominee served as a County Judge on the same Circuit from 2004-2011.

Judge Gayles possesses a broad and extensive command of the law, a sharp intellect, and unflinching dedication to insure justice for all. His work ethic is exemplary. The nominee's work days are lengthy and disciplined. There would be no need for on the job training.

Moreover, Judge Gayles brings to the federal bench years of significant prosecutorial experience. From 1999 to 2004, the nominee was an Assistant United States Attorney for the Southern District of Florida. Before that Judge Gayles served as an Assistant District Counsel with the U.S. Immigration and Naturalization Service from 1197 to 1999. Judge Gayles began his legal career as an Assistant State Attorney in the Miami-Dade State Attorney's Office from 1993 to 1997. Before entering public service, the nominee obtained his legal training at the George Washington University School of Law, where he earned his J.D. in 1993. The jurist earned a B.A. from Howard University in 1990.

Judge Gayles is a member of the National Bar Association's Judicial Council. Therefore, our members have had many opportunities to observe him. The nominee has earned our trust, confidence, respect and affection. Judge Gayles adheres to the highest standards of juridical and professional ethics. He judges all matters before him fairly and impartially. Moreover, Judge Gayles exhibits an appropriate judicial temperament. His courtroom and general demeanor is civil, courteous and patient. The nominee is principled. He is soft spoken, but firm. We know that Judge Gayles has a demonstrated commitment to civil and human rights.

For the foregoing reasons, the National Bar Association strongly urges the United States Senate to confirm the Honorable Judge Darrin P. Gayles to serve on the United States District Court for the Southern District of Florida. Because Judge Gayles has been nominated to fill a judicial emergency, we urge the Senate to act with great urgency.

Sincerely,

Patricia Rosier

Patricia Rosier, Esq.
President, National Bar Association

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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
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Please respond to:
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VIA EMAIL AND FIRST-CLASS MAIL

February 6, 2014

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 Carlos Eduardo Mendoza to the United States District Court for the Middle District of Florida***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Carlos Eduardo Mendoza who has been nominated for a position on the United States District Court for the Middle District of Florida. The Committee is of the opinion that Judge Mendoza is Unanimously Qualified for this position.

A copy of this letter has been provided to Judge Mendoza.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Carlos Eduardo Mendoza (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 February 6, 2014.

Tuesday, April 1, 2014
Senate Judiciary Committee Hearing
Senator Bill Nelson of Florida

Mr. Chairman and Ranking Member Grassley,

Today is a great day for Florida. We are moving one step closer to filling four judicial vacancies on the federal bench – two in the Middle District of Florida and two in the Southern District of Florida – and I want to express my appreciation to the Judiciary Committee for holding this hearing.

In my state, we enjoy a proud tradition of strong bipartisan support for judicial nominees, dating back to Senator Graham and Senator Mack. And in that tradition, I would like to say a few words about the four Florida district court nominees that you will consider today: Judge Beth Bloom, Judge Darrin Gayles, Attorney Paul Byron, and Judge Carlos Mendoza.

Judge Beth Bloom is nominated to be a United States District Judge for the Southern District of Florida. Judge Bloom earned her associates' degree from Broward Community College and her undergraduate degree from the University of Florida, before graduating from the University of Miami School of Law. She began her legal career practicing general litigation from 1988 to 1994. Judge Bloom then went on to become County Court Judge for the Eleventh Judicial Circuit for two years. She was subsequently elected as a County Court judge for Miami-Dade County in 1995, where she served until she was appointed to be a Circuit Court Judge for the Eleventh Judicial Circuit in 2010. She is an active member of the Dade County Bar Association, the Florida Association of Women Lawyers Miami-Dade Chapter, and the University of Miami Law Alumni Association. Judge Bloom is accompanied today by her husband Lyle, sons Jacob and Oliver and daughter Emily along with two family friends, Laurie Flink and Judge Carroll Kelly.

Judge Darrin Gayles is also nominated to be a United States District Judge for the Southern District of Florida. Judge Gayles earned his Bachelor's degree from Howard University and his juris doctor at George Washington University. From 1993 to 1997, he served as a prosecutor in Miami-Dade County. Judge Gayles went on to become an Assistant District Counsel for the United States Immigration and Naturalization Service from 1997 to 1999, representing the United States in cases of political asylum and removal, as well as immigration and deportation cases. He was subsequently appointed as a County Judge for Miami-Dade County. In 2010, he became a Circuit Court Judge for the Eleventh Judicial Circuit. He is a member of the National Bar Association Judicial Council, the Dade County Bar Association, and Big Brothers/Big Sisters of Greater Miami. Judge Gayles is joined today by his partner, Raymond, sister Monica, nephews James and Ryan, uncle Terryl, aunt Bernice, his mother, Mrs. Janie Banks and his grandmother, Mrs. Nettie Banks.

Attorney Paul G. Byron is nominated to be a United States District Judge for the Middle District of Florida. Attorney Byron earned his associates degree from Miami Dade College, his Bachelor's degree at the University of Michigan, and received his law degree from Louisiana State University. He served for four years in the United States Army on active duty in the Judge Advocate General Corps, followed by six years of inactive reserve service after which he received an Honorable Discharge. From 1991 through 2001, Mr. Byron served as an Assistant United States Attorney in the Middle District of Florida Orlando Division as a prosecutor for organized crime, healthcare fraud, and other white collar crimes. For the following two years he served at the International Criminal Tribunal for the former Yugoslavia. He then worked for the United Sates Department of Justice from 2004 to 2005 in the International Division of Asset Forfeiture and Money Laundering, before becoming a partner at the private practice of Overchuck and Byron in Orlando, Florida. Attorney Byron is an active member of the Orange County Bar Association and a founding member of the Hunter Creek Charter School. He is joined today by his wife Suzanne, daughters Alex and Taylor, and son David and his fiancée Morgan Conn.

Finally, **Judge Carlos Mendoza** has also been nominated to serve as United States District Judge for the Middle District of Florida. Upon graduating from high school, Judge Mendoza joined the U.S. Marine Corps where he served in combat operations during Operation Desert Shield and Operation Desert Storm. Judge Mendoza completed both his undergraduate and law degrees at West Virginia University, where he graduated *magna cum laude* and Order of the Barristers. From 1997 to 2005, he served in the Judge Advocate General's Corps as an attorney for the United States Navy in Norfolk, Virginia. After this, Judge Mendoza was appointed as an Assistant United States Attorney for the Eastern District of Virginia as a federal prosecutor over all criminal offenses brought against civilians on military installations. He then served for three years as prosecutor for the Seventh Judicial District in St. Augustine, Florida. In 2008, he became an Assistant City Attorney. In 2011, he was appointed to be a Circuit Judge for the Seventh Judicial Circuit and an Administrative Judge for Putnam County. He is a member of the Putnam County Bar Association and the Florida Conference of Circuit Judges. Judge Mendoza is accompanied today by his wife April, daughter Maddie and son Jackson, and friends Matthew Kline and Eric Call.

Thank you Mr. Chairman.

NOMINATIONS OF HON. JULIE E. CARNES, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT; JILL A. PRYOR, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT; LESLIE JOYCE ABRAMS, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA; HON. MICHAEL P. BOGGS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; MARK HOWARD COHEN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; LEIGH MARTIN MAY, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; AND HON. ELEANOR LOUISE ROSS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

TUESDAY, MAY 13, 2014

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

The Committee met, pursuant to notice, at 9:30 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Richard Blumenthal, presiding.

Present: Senators Blumenthal, Feinstein, Durbin, Klobuchar, Franken, Coons, Hirono, Grassley, Lee, and Flake.

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

Senator BLUMENTHAL. I am very pleased to call this hearing to order. I want to welcome the Ranking Member, Senator Grassley, and thank Senator Leahy for giving me this opportunity to chair this very, very important hearing.

In my view as a lawyer and a litigator, the U.S. Senate has few responsibilities more important than the confirmation of judicial nominees. They are the voice and face of justice in this country.

Whether at the district court or the court of appeals level, they practically and really are the ones who determine the quality of our courts, our justice system, and what most Americans see is their face and voice when they seek justice in our courts. And as one who has practiced before many judges, I have the highest respect for the work, the very hard work that they do, the sacrifices they make, the service they provide to our country and, likewise, that their families provide.

So I want to welcome all of the nominees here today, including your families, who are part of your team, each of your teams, and contribute mightily to the work that you will do. And I am particularly honored today to welcome two of our colleagues, two of our most able and well regarded colleagues, Senators Isakson and Chambliss.

And if you have an opening statement, I would be pleased to call on you and then go to our two colleagues.

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

Senator GRASSLEY. Thank you. I just shook hands with all the nominees. I want to congratulate you once again. And I want to also congratulate your family and friends, who obviously are proud of your advancement today.

Today we are going to hear from seven nominees who have been nominated to serve in courts in Georgia: two appellate court nominees and five district court nominees. Today's hearing is a product of very long deliberations between the White House, the Georgia Senators, and this Committee. I am happy to see this bipartisan solution to the vacancies in Georgia, and I am looking forward to hearing from today's nominees.

I would note that one Member of the House of Representatives requested to testify in opposition today, and the Chairman did not grant that request. The Chairman's decision regarding outside witnesses in opposition to judicial nominees for lower courts is very consistent with past Judiciary Committee practice.

I would also note that several outside liberal interest groups have already weighed in on and urged Senators to oppose two of today's nominees.

Now, I would hope that my Democrat colleagues would not subject these nominees to any litmus test, and instead I would hope my colleagues would give these nominees the same benefit of the doubts and give their home State Senators the same deference that Republicans so often provide for President Obama's nominees.

As Senators, nearly every nominee who comes through our Committee has taken some position that we may disagree with. That is why home State support is so important, and as I have said, all these nominees have the support of both the President of the United States and their home State Senators.

I have given great deference to the home State Senators' support when reaching decisions on whether to support nominees. I believe home State support is important in the process, including the Judiciary Committee, as well as the full Senate. In fact, very soon the full Senate will consider six district court nominees from Arizona. Even though I have some concerns about several of those nominees,

I plan to support them in part out of deference to home State Senators who recommended them. I would hope that my colleagues on the other side would show the same deference with respect to the nominees that we are going to hear today.

So, once again, I welcome the nominees and their families today and look forward to their testimony and their answers to our questions. Thank you.

Senator BLUMENTHAL. Thank you very much, Senator Grassley.

Senator Chambliss, welcome, and thank you so much for being here. It means a lot to us, and I am sure to the nominees that you and Senator Isakson are here today for. Thanks.

PRESENTATION OF HON. JULIE E. CARNES, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT; JILL A. PRYOR, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT; LESLIE JOYCE ABRAMS, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA; HON. MICHAEL P. BOGGS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; MARK HOWARD COHEN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; LEIGH MARTIN MAY, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; AND HON. ELEANOR LOUISE ROSS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA, BY HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator CHAMBLISS. Well, thank you very much, Senator Blumenthal, and to you and Ranking Member Grassley and other Members of the Committee, particularly Chairman Leahy, with whom Senator Isakson and I have worked so closely together to reach this point, not just the point of the hearing but to reach the point of the nominations, I thank you.

We are here today to consider the nominations of Julie Carnes and Jill Pryor to be circuit judges for the Eleventh Circuit; Leslie Abrams to be a district court judge for my home district, Georgia's Middle District; and Michael Boggs, Mark Cohen, Leigh May, and Eleanor Ross to be district court judges for Georgia's Northern District.

Johnny and I, Senator Isakson and I have a committee of six very distinguished lawyers from around the State who are our judicial nomination review committee, and we have one simple requirement of those six lawyers, and that is, when considering judicial nominees, send us excellent lawyers. In this case today, we have got seven excellent lawyers to be presented to the Committee for ultimately, hopefully, confirmation to the Eleventh Circuit as well as to two of our districts in Georgia.

Now, they will introduce their family, but these seven individuals are so highly thought of by lawyers in Georgia that today there are two individuals here, although the last I heard they were stuck in traffic—I hope they are here by now. But there are two individuals who represent the epitome of the legal justice system in Georgia who on their own have spent their time and spent their money to come show their support for all seven of these individuals, and that is, the Chief Justice of the Georgia Supreme Court, Justice Hugh

Thompson; and also the Chief Judge of the Georgia Court of Appeals, Judge Herbert Phipps, is here to show support.

It is my pleasure to introduce these Georgians, the seven Georgians, to the Committee today. We have before us a very diverse and highly qualified group of legal minds from all across our States. Georgia and the Eleventh Circuit will be well served by both the breadth and depth of experience of these individuals. Their full biographies are well known to the Members of the Committee, so I will not go into extensive detail. But I do want to take a moment just to briefly recognize each of these nominees.

Judge Julie Carnes has been a Federal district judge for the Northern District of Georgia since 1991, and she has served as chief judge since 2009.

Jill Pryor has been in private practice in Atlanta for nearly 25 years. During that time she has played a pivotal role in some of the largest and most complex cases in Georgia history.

Leslie Abrams has been an Assistant U.S. Attorney in Atlanta since 2010. Her experience both as a Federal prosecutor and from her time in private practice will serve her well on the bench.

Judge Michael Boggs has served on the bench since 2004, first as a superior court judge, which is our highest trial court level, and as a judge on Georgia's court of appeals since 2012. He was also co-chair of Georgia's Criminal Justice Reform Council in 2012 and 2013. I found out yesterday Judge Boggs has actually disposed of in excess of 14,000 cases while on the bench.

Mark Cohen's legal career actually began clerking for a Federal judge. He then went on to work with both the Georgia Attorney General's and the Governor's offices before entering private practice in 1999.

After a Federal clerkship of her own, Leigh May entered private practice in 2000, and she has been accumulating accolades ever since. She has been repeatedly recognized as an outstanding lawyer by her peers.

Finally, Judge Eleanor Ross has been a State court judge since 2011 where she has an outstanding record. Prior to her time on the bench, she worked for more than 15 years as a prosecutor.

Each and every one of these individuals would be an asset to the Federal bench no matter where they sat. But given the growing caseloads for judges on the Eleventh Circuit and the Northern and Middle Districts, their confirmations are particularly important.

Finally, I would like to take a moment to thank the President, his counsel, Kathy Ruemmler, and the rest of his staff for going above and beyond in this process. The collaborative effort here is an example of what we can accomplish when we work together, and I am greatly appreciative of the time they put in to ensure these vacancies are filled with such high-caliber individuals.

And with respect particularly to Kathy Ruemmler, she has served the President well as his counsel. Unfortunately, she is leaving the Office of Counsel to the President at the end of this week, and we will certainly miss Kathy but wish her well in her future private endeavors.

So, Mr. Chairman, thank you very much for letting us be here this morning to introduce this outstanding panel of seven Georgia lawyers to be considered for confirmation as Federal judges.

Senator BLUMENTHAL. Thank you, Senator, for those excellent remarks.

Senator Isakson.

PRESENTATION OF HON. JULIE E. CARNES, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT; JILL A. PRYOR, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT; LESLIE JOYCE ABRAMS, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA; HON. MICHAEL P. BOGGS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; MARK HOWARD COHEN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; LEIGH MARTIN MAY, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; AND HON. ELEANOR LOUISE ROSS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA, BY HON. JOHNNY ISAKSON, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator ISAKSON. Chairman Blumenthal, Ranking Member Grassley, Senator Franken, Senator Klobuchar, it is an honor for me to be before the Judiciary Committee today. I associate myself with all the remarks made by Senator Chambliss. We are presenting to you today seven very qualified lawyers to be on the bench of the circuit court and the district court of our State of Georgia: Julie Carnes and Jill Pryor to the circuit court; Leslie Abrams, Mike Boggs, Mark Cohen, Leigh May, and Eleanor Ross to the district court.

Now, I am not a lawyer, Mr. Chairman, but I ran a company for 33 years, and I have been in court a few times. And I know what I like to look for in a judge, and that is, somebody that is going to call it like they see it; they are going to call it down the middle. They are going to be fair, they are going to be equitable, and they are going to be respected. I can submit to you that, without reservation or question, all seven of these individuals meet every one of those tasks.

As Senator Chambliss has said, he and I have a joint committee of six lawyers from around the State that vet all of the potential nominees for the court appointments that we have to offer and we will confirm. All six have given these their highest recommendation in the vetting process and recommended them without reservation.

I also want to thank the President of the United States. We have had a process that began 3 years ago to fill what then were two vacancies, now are seven vacancies in Georgia. Without hesitation or reservation, President Obama has been inclusive of Senator Chambliss and myself and our committee, and Kathy Ruemmler has done a steadfastly wonderful job to see to it that the very best nominees from our State come before you today to be introduced.

I would not single one of them out because, as you can tell, they are all exceptional, but I have to add one note of personal privilege. Thirty-seven years ago, I served my first year in elected office in Georgia as a member of the Georgia House of Representatives. Back on the back row of the Georgia Legislature was a guy named Charlie Carnes. He was called "the head of the Saw Mill Gang," which were seven members that sat at the back of the room and

made it tough on any of us arguing any case before the Georgia Legislature.

His daughter, Julie, is here today, and I am confident that Charlie is looking down with great pride of a father in a wonderful daughter who has had a distinguished career and I am proud to call my friend, and I am proud to call Charlie my mentor.

So it is a privilege for me to introduce to you these seven distinguished nominees for the bench in Georgia. We would appreciate your looking favorably upon their confirmation, and we thank you for your time today.

Senator BLUMENTHAL. Thanks, Senator Isakson. Thank you both for your insights and wisdom about these nominees. And I know you have tremendously busy schedules, so just to tell everyone here you may not be able to stay for the remainder of the hearing, but we really very much appreciate your contributing as you have this morning. Thanks so much.

I will now ask the first panel to please come forward: Julie Carnes and Jill Pryor. The Committee welcomes you. They are nominees to serve as circuit judges for the Eleventh Circuit.

Julie Carnes has served as a judge on the United States District Court for the Northern District of Georgia since 1992 and as chief judge since 2009.

And Jill Pryor has been an attorney at Bondurant, Mixson and Elmore—I hope I got the pronunciation right—since 1989, serving as a partner since 1997.

Our custom here is to swear you in first, so I am glad you are standing. Do you affirm that the testimony that you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge CARNES. I do.

Ms. PRYOR. I do.

Senator BLUMENTHAL. Thank you.

If you have a short opening statement, we would welcome you to give it.

Judge CARNES. Starting with me, Senator.

Senator BLUMENTHAL. Judge Carnes.

Judge CARNES. All right. Certainly.

STATEMENT OF HON. JULIE E. CARNES, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

Judge CARNES. First, I would like to thank President Obama for this high honor that he has conferred on me. I am deeply appreciative of the President for the trust he has placed in me.

Second, I would like to thank our Georgia Senators, Senators Chambliss and Isakson. I know that but for their recommendation of me to the President and their enthusiastic support, this would not have come to pass.

And, last, I would like to thank you, Senator Blumenthal, and you, Senator Grassley, for both presiding and serving as Ranking Member, respectively, and to all the other Senators who are joining us. It is a great honor just to appear before this body.

I think I can speak confidently for all seven of us that we recognize this is a large group of people to have at a hearing, and I know there must have been some logistic challenges for you all to

put this group together. So we are appreciative for the opportunity for the hearing.

Now I would like to introduce the family members that I have present with me today.

First, my husband, Steve Cowen, who is behind me. Steve is a very respected lawyer in Atlanta. He is the smartest, wisest lawyer I have ever dealt with, and he is a man who has made a lot of personal and professional sacrifices through the years in support of my career, for which I am always grateful.

My daughter, Kelly, I think is behind me. Kelly is an Assistant Attorney General for the State of Georgia, a lawyer.

My step-daughter, Susanna Cowen, and her husband, Ross McSweeney, are here, back there somewhere. You will not be surprised they are also lawyers. Both are lawyers. They live here in DC. But I guess the headline news for them recently is that Susie gave birth in November to twins, Felix and Orla, and made us grandparents for the first time. So that has been a happy occasion.

There are three people not here who I would like to acknowledge: my son, Jeff Campanella, is pursuing an acting career in L.A. He would certainly want to be here with you, Senator Franken, to meet you. That would have been a wonderful honor.

[Laughter.]

Senator FRANKEN. Why?

[Laughter.]

Judge CARNES. In the hopes you could find a job for him.

Senator BLUMENTHAL. Your first mistake was giving Senator Franken the floor.

[Laughter.]

Judge CARNES. And, second, the two people that have meant the most to me in my life and are responsible directly and indirectly for every good thing that ever happened to me, and that would be my mother and my father. My mother, Mary Carnes, celebrated her 87th birthday last week but due to health reasons could not be here.

My father, you heard Senator Isakson speak of him. He had a remarkable life. He was the youngest of 13 children, grew up in a very poor farming family in north Georgia, signed up for the Navy in World War II and in the Korean War, came back and used the GI bill to finish his education, going to school for 9 years at night to get a college and law degree, and ultimately running for the legislature and then becoming chief judge of his court for 17 years. And he was a very esteemed and beloved figure in Georgia legal circles, was a great mentor to me, and was the most patriotic man I have ever met. He would just be thrilled that this happened.

And so with that, I appreciate your indulgence, and I am happy to answer any questions, Senator.

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

Senator BLUMENTHAL. Thank you, Judge Carnes.

Ms. Pryor.

STATEMENT OF JILL A. PRYOR, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

Ms. PRYOR. Good morning, Senator Blumenthal, Ranking Member Grassley, Senators Durbin, Klobuchar, and Franken. I thank you and the other Members of the Senate Judiciary Committee, Chairman Leahy and the others, for considering my nomination. Appearing here today is the greatest honor of my life. I say that honestly.

It is also a great privilege to be here with Chief Judge Carnes. She has been a mentor and a role model to me and countless other women lawyers in the State of Georgia.

I would like to thank Senators Isakson and Chambliss for their generous introductions and also for working hard with President Obama, whom, of course, I would also like to thank, in the spirit of cooperation to fill the judicial vacancies in the State of Georgia.

With me here today are some of my family members: My husband of nearly 20 years, Edward Krugman, who is also my law partner and one of the finest lawyers I have ever encountered.

My 16-year-old son, Pryor Krugman, is here. He is a student at the Paideia School in Atlanta, and I am very pleased that he is here.

Also, my friend, Julie Reiley, who was my roommate my very first year in law school, and has been a friend ever since.

I have a daughter, Leila Krugman, who unfortunately is at home in Atlanta. She came down with a little bit of a bug over the weekend. But I have to say, at the age of 13 years old, she would probably rather go to school than have to spend a couple of days with her parents. So we are probably fortunate that she is not here today.

I also have people——

[Laughter.]

Ms. PRYOR. She is very well behaved, though. It would have been the weekend that would have been tough.

I also have people watching from home: my parents, Jerry and Ginny Pryor. Without their loving guidance, I would not be here today, that is for sure. My aunt and uncle, Carol and Bob Madden; my sister, Suzanne Henderson; my sisters-in-law, Deucy Rachelson and Laura Venzall, and their families, and many other families and friends are watching and cheering me on today.

Twenty-five years ago, I had the privilege of clerking for Judge Edmondson on the Eleventh Circuit, and to commemorate my hearing today, Judge Edmondson gave me the gift of this vintage World War II eagle pin that I am wearing. Judge Edmondson is the person who first started me on the path with this tremendous institution, the Eleventh Circuit. I am very grateful to him for that and for his guidance over the years.

And, finally, I would like to extend my gratitude to Emmet Bondurant, Mickey Mixson, Jay Elmore, and all the partners, associates, and staff of my law firm, Bondurant Mixson and Elmore, who have generously supported me throughout this process. They are some of the finest professionals I have ever met, dedicated to their cases and their clients, and I cannot thank them enough for all of their support. Anything I have accomplished in my legal career, I owe the credit to them.

Thank you, and I am ready for your questions.

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

Senator BLUMENTHAL. Thank you both for those excellent opening statements.

Judge Carnes, I am interested, perhaps you could tell us what you think will be the greatest challenges in going from the district court to the court of appeals.

Judge CARNES. Well, I think it should be a pretty smooth transition. I will go for the positive parts before I get to the challenge. Most of the cases that they handle are cases I will have handled over the last two decades. And while district judges handle trials and hearings, we also issue a lot of opinions, so opinion writing is what appellate judges do, and I am familiar with that.

What I think will be the major difference is the process by which opinions are issued. As a district judge, we all write our opinions by ourselves, with no input or review from anyone else. On the court of appeals, of course, it is a different matter. You operate in panels of three, and that means that opinion writing, decision-making on the court of appeals is a collaborative process, and you have to work with other people.

And so that will be a difference for me. I hope—I think that I will be able to master that. I know most of the judges on the court. Ms. Pryor and I know each other and have a very cordial relationship, and I hope that will be a pretty easy transition.

Senator BLUMENTHAL. Have there been times during your service as a district court judge when you staunchly disagreed with the outcome and opinion of your court of appeals?

Judge CARNES. You mean with regard to one of my cases?

Senator BLUMENTHAL. Exactly.

Judge CARNES. "Staunchly" would be strong. No judge likes to be reversed, and sometimes if you are reversed, you look at it and say, well, you know, maybe there was a point there; maybe they had it righter than I had it. And sometimes you read it and think, well, no, I think I disagree. So you see it both ways. But I do not think I have ever had staunch disagreement with anything they have done.

Senator BLUMENTHAL. Ms. Pryor, what do you think for you will be the greatest transition challenges going from private practice to the judicial role?

Ms. PRYOR. Well, Senator, obviously, I have been an advocate for more than 25 years, so it will be a little different to assume the role of a judge. However, I have practiced appellate practice for all of those years, and I am familiar with the impact of decisions on the parties, the litigants who come before the court and the importance of well-reasoned, clear opinions that will guide the parties' actions and practicing lawyers in the future.

I have also had the opportunity, as I said, to serve as a law clerk on the Eleventh Circuit Court of Appeals.

So I think the difficulty, most of the difficulty, will be involved with the internal procedures and practices of the court, becoming familiar with those and learning how to be efficient in my work.

Senator BLUMENTHAL. Have you practiced a great deal before the court of appeals?

Ms. PRYOR. Yes, I have, sir, as well as the State court of appeals and Supreme Court.

Senator BLUMENTHAL. Thank you.

Senator Grassley.

Senator GRASSLEY. I am going to start with Ms. Carnes. You have had a distinguished career as Assistant U.S. Attorney, appellate practitioner, commissioner on the U.S. Sentencing Commission, and now as chief judge. I would ask you a few specific areas of your judicial practice. I am going to start with the scope of remedies available under Section 1983 when a constitutional violation occurs. I would first point you to *AT&T Wireless v. Atlanta*. This is one of those cases that you did not want to be reversed in, I assume. So let me ask you a few questions.

As an appellate judge, how would you decide what is the scope of remedies available under Section 1983?

Judge CARNES. And I think it was a long time ago, but I believe the case you are referring to is where AT&T had sued because a particular county was not giving them cell phone access or something. And they won on that point. I agree they won on that point. But AT&T went a little bit farther, and they sued under 1983 so that they could get attorneys' fees. And I ruled that while they could get their cell phone put up that they could not sue pursuant to 1983 because this was a very carefully regulated area by the Congress and 1983 did not come into play.

The Eleventh Circuit initially reversed me, but then the case was vacated, called for en banc. They never got to a point of an en banc hearing. AT&T went away, and I do believe the Supreme Court in the next couple of years issued an opinion that vindicated my original position.

Senator GRASSLEY. Okay. In another case, *Schwier v. Cox*, that the Eleventh Circuit reversed in 2003, that was involving 1983 remedies for violation of voting rights and the Privacy Act. I would like to have you talk about your views on the scope of remedies available for violation of privacy rights and voting rights.

Judge CARNES. Well, in that particular case, there had been no precedent in the circuit, and I actually relied on a Ninth Circuit case in holding that there was no private right of action for this particular alleged breach. The circuit disagreed with me, and, of course, in that case or any other case, I will follow their precedent in the future.

Senator GRASSLEY. And what about the voting rights issues?

Judge CARNES. Which case are you referring to, Senator?

Senator GRASSLEY. What?

Judge CARNES. Which case are you referring to?

Senator GRASSLEY. Well, I thought both privacy rights and voting rights were involved in the *Schwier* case.

Judge CARNES. Well, as I recall—again, it has been a long time, but it was whether or not the potential voter was required to give her Social Security number as a prerequisite to being allowed to vote.

Senator GRASSLEY. Thank you.

Now, a little more general question for you, and I am going to refer to Justice Breyer. He has described the law as "a conversation among judges, among professors, among law students, among mem-

bers of the bar." He provided this description in the context of his argument that it is sometimes appropriate for judges to look to sources other than the Constitution or Federal statutes when reaching a decision about what a law means.

First question of two that I will ask: Do you share Justice Breyer's views that judges should occasionally look for guidance from sources like law review articles or other scholarly comments? And maybe I better—just leave Justice Breyer out of that. Let me say, Do you share a view that judges should occasionally look for guidance from sources like law review articles or other scholarly commentary?

Judge CARNES. I do not think there is anything wrong with looking at a law review article for the purposes if they have collected a lot of cases and it shortens the research process. But to the extent that the statement is being made to indicate that a judge should try to be—or be influenced in the decisionmaking by what a law professor or someone has said, absolutely not. We rely on the cases, not the opinions of someone in academia.

Senator GRASSLEY. And my last question: Do you believe that it would be appropriate to rely on legislative history when deciding what a law means, assuming the law is not clear?

Judge CARNES. Well, I think for most judges, legislative history is the last thing you look to if nothing else is there to help you. And like a lot of judges, I am a little leery about it. I would never say never, but I think the theory or the concern is that legislative history is not something Congress enacted; it is something that staff members have written after the fact. And so all else would have to fail before I would look at the legislative history, and I look at it with great scrutiny.

Senator GRASSLEY. Thank you.

Now I am going to go to Ms. Pryor. During your legislative career, you have been involved with several challenges to Georgia's parole system. What has been your interest in parole issues?

Ms. PRYOR. Well, Senator, throughout my career as a lawyer, I have taken on pro bono cases, and in the parole cases you mention, particularly the *Sultenfuss* case, I was actually appointed by the Eleventh Circuit to represent an inmate who was proceeding pro se. And I think pro bono work is very important, and when the court calls upon me to do that work, I have always responded in the affirmative.

Senator GRASSLEY. Okay. So then your interest comes mostly when you were invited into that environment?

Ms. PRYOR. Yes, sir. I had no previous knowledge or experience with that issue.

Senator GRASSLEY. Is there anything about this experience that would influence your review of lower court sentencing decisions if confirmed as an appellate judge?

Ms. PRYOR. No, sir. I would apply precedent and follow the law.

Senator GRASSLEY. The next question might sound confrontational. It is a question I ask a lot of people that are involved in political activity. Over the course of your career, you have contributed to quite a few Democratic causes and politicians over the years. So I always seek assurances that these nominees can give me that you will be fair to all litigants who come before you,

and in particular those who represent or who advocate on behalf of causes that you may disagree with personally or politically.

Ms. PRYOR. Senator, my personal beliefs or political beliefs would not enter into any judicial decisionmaking that I might have. I was exercising my First Amendment rights in those situations. But, of course, as a judge and also as a nominee, I am prohibited from engaging in any such activity.

Senator GRASSLEY. Okay. Two more questions. If confirmed, what would be your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?

Ms. PRYOR. Well, the Constitution is an unchanged document, I believe. Obviously, we have to apply it to new situations and new technologies, but I do not believe that that changes the meaning of the Constitution itself.

Senator GRASSLEY. Last question: Do you believe that a judge's gender, ethnicity, or other demographic factors has any or should have any influence on the outcome of the case? And I would like to have you explain if it would have.

Ms. PRYOR. No, I do not.

Senator GRASSLEY. Okay. Thank you, Mr. Chairman. Thank you, both nominees.

Senator BLUMENTHAL. Thank you, Senator Grassley.

I want to enter in the record, if there is no objection, a statement from Senator Leahy and then go to Senator Durbin.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator DURBIN. Mr. Chairman, thank you. In the interest of time, I would just acknowledge that Judge Carnes, in testifying before the House Judiciary Committee 5 years ago, raised an issue relative to mandatory minimum sentencing and what you described as the "blunt and inflexible tools" of that law. And I would just note that we have passed out of this Committee, now pending on the floor, the Smarter Sentencing Act, which is going to address that not just for you but for all Federal judges in the future. So I thank you for that testimony, and I would yield back to the Chair.

Senator BLUMENTHAL. Thank you, Senator Durbin.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Congratulations to you both. Judge Carnes, congratulations on being a grandparent.

Judge CARNES. Thank you.

Senator FRANKEN. It is a big deal. And, also, I am sorry that your son has chosen to be an actor.

[Laughter.]

Senator FRANKEN. That almost never turns out well.

[Laughter.]

Judge CARNES. Maybe he will listen to you more than to us.

Senator FRANKEN. No. I hope he has a great career.

You talked both about being reversed and being reversed I guess from the standpoint of being a district judge by a circuit court judge. But there are going to be reversals, too, when you are on the circuit court, or there may be. And, you know, you also both talked about judging in your job, remaining true to precedent.

I am not a lawyer. When I first got here, the fifth day I was here we had the Sotomayor confirmation hearing, on my fifth day. And I was kind of a little bit confused by one thing, which is that it seemed that Judge Sotomayor, who had been on the circuit court, had been taken to task for two decisions that she made that were overturned by the Supreme Court. One was on hiring firefighters and the promotions, I guess, of firefighters in New Haven and using race as part of that. And she voted one way, and it was decided that way. And then the Supreme Court reversed that decision. But it seemed to me that she had been observing stare decisis and that she had been ruling according to precedent.

Then there was another one on the Second Amendment, and the same thing was the case. But she was very much taken to task by Senators on the other side.

If you are reversed by the Supreme Court but you had observed stare decisis, what is your feeling about that?

Judge CARNES. Well, I think on the court of appeals you really have no choice but to do that. If I am sitting on a case and there has been precedent in the Eleventh Circuit, I am required to abide by that precedent. I have no other alternative, except there is a provision for en banc. So if on the appellate court a judge believes that the precedent on which she is relying has fallen into disuse or it is confusing, it is not creating clear standards for the litigants or there are conflicting opinions, then you can request an en banc and have the full court decide. But absent that, if a judge is relying on precedent, I do not think that judge can be faulted for that.

Senator FRANKEN. That is kind of what I thought, too. And, Ms. Pryor, you said you were going to rule according to precedent, right?

Ms. PRYOR. Yes, Senator.

Senator FRANKEN. So when a situation comes up when there is a question like, okay, this is something that is pretty ripe, but there is really no cause for me to go en banc, then that is the proper way to go, right, is to rule according to what has already been decided by the Supreme Court or by the court itself?

Ms. PRYOR. Yes, Senator Franken.

Senator FRANKEN. Okay. That is what I agree with, and that is what I thought then, and it is what I think now. Congratulations again to both of you for your nomination, and thank you, Mr. Chairman.

Senator BLUMENTHAL. Thanks, Senator Franken.

That is all of our questions for you this morning. We thank you again for being here as well as your families and wish you well. The positions that you are hopefully going to occupy are positions of immense trust and importance to our justice system. Again, thank you for your willingness to serve. Thank you.

Judge CARNES. Thank you.

Ms. PRYOR. Thank you, Senator.

Judge CARNES. Thank you all.

Senator BLUMENTHAL. We will go on now to our next panel, if they would come forward.

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

Ms. ABRAMS. I do.
Judge BOGGS. I do.
Mr. COHEN. I do.
Ms. MAY. I do.
Judge ROSS. I do.
Senator BLUMENTHAL. Thank you. Please be seated, and I invite each of you to provide an opening statement.

STATEMENT OF LESLIE JOYCE ABRAMS, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA

Ms. ABRAMS. Thank you, Chairman Blumenthal, Ranking Member Grassley, Senator Durbin, and Senator Franken. Thank you all for being here, for calling this hearing, and for hearing from us today. I would also like to thank President Obama for this nomination and for the faith that he has put in me.

Now I would like to recognize several people who are here with me, both family and friends.

First, two people who are simply the best thing that have ever happened to me and who have never missed a parent-teacher conference, a recital, or anything that has been important to me, my parents Reverend Robert and Carolyn Abrams, who are seated right behind me. My parents are both ordained elders in the United Methodist Church.

Also with me is one of my college roommates from Brown University, Tiffany Thompson, and her mother, Mrs. Thompson, who I lovingly refer to as "my fairy godmother."

Two of my best friends and study group members from Yale Law School who are part of a group of friends that still get together every year, and we called ourselves the "Law School Ladies," Becky Monroe and Kristi Graunke. And two of my compatriots from my time at Skadden Arps Slate Meagher and Flom here in DC, Keba Marshall and Avia Trower.

I also have watching via live streaming my five brothers and sisters—Dr. Andrea Abrams, the Honorable Stacy Abrams, Richard Louis Abrams, Walter Abrams, and Dr. Jeanine Abrams McLean—as well as my grandmother, Wilter Mae Abrams.

I would also just like to thank my U.S. Attorney's Office family, my Skadden family, and my family from Central United Methodist Church, as well as the judge that I clerked for, United States District Court Judge Marvin J. Garbis.

Thank you.

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

Senator BLUMENTHAL. Judge Boggs.

STATEMENT OF HON. MICHAEL P. BOGGS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

Judge BOGGS. Thank you, Senator Blumenthal, Ranking Member Grassley, Members of the Committee for the opportunity to be here today. I would like to also thank Chairman Leahy and his staff for arranging for this meeting. I am very proud and appreciative to the President for nominating me. I also want to thank Senator Chambliss and Senator Isakson for the warm introduction and for their support throughout this process.

I have with me today my wife of 15 years on Thursday, although I am not sure a trip to DC was what she had in mind for an anniversary gift, but we will celebrate our anniversary on Thursday, and my wife, Heather, is a kindergarten teacher in the public school systems in Georgia, and I am really proud of what she does to improve the lives of so many young children in our State. She was the Teacher of the Year last year for our school district, and I get quite a bit of encouragement from her and what she does.

I am also honored to have two special guests from the judiciary in Georgia with me today. Seated behind me is Chief Justice Hugh Thompson of the Georgia Supreme Court and also Chief Judge Herb Phipps of the Georgia Court of Appeals, the court on which I currently serve. And I am really honored. These are both mentors of mine and both very astute members of the judiciary and well-respected members of the judiciary in our State.

I am also honored to have two very good friends. Richard Hyde, the chief investigator with the Georgia Judicial Qualifications Commission, is here with me today, as well as a friend of now probably 30 years from when I was first legislative aide to a Democrat Congressman from Georgia straight out of law school, my good friend Pete Robinson, who is a lawyer with the law firm of Troutman Sanders in Atlanta and also in DC.

My parents passed when I was—my father approximately 30 years ago when I was 21. My mother passed a couple of years ago, but everything I have ever accomplished I am confident is because of the things that they taught me in the time I had with them.

I have two wonderful in-laws, my wife's parents, Dr. Porky and Becky Haynes, and I know they are very proud and very excited for me on this occasion.

I am honored to be here, Mr. Chairman, and I want to thank the many people that have helped me: my judge family on the court of appeals, I know many of them, including my staff, are watching via Webcast, and I am so very appreciative for their support.

And with that, Mr. Chairman, I appreciate the opportunity to introduce my friends and family, and I welcome any questions.

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

Senator BLUMENTHAL. Thanks, Judge Boggs.

Mr. Cohen.

STATEMENT OF MARK HOWARD COHEN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

Mr. COHEN. Thank you, Senator Blumenthal, Senator Grassley, and also thanks to Chairman Leahy and the rest of the Members of the Committee for making this Georgia Day at the Senate Judiciary Committee. We really do appreciate it.

I want to thank President Obama for giving me the greatest honor that I have ever had in 34 years of practicing law—this nomination.

I want to thank Senators Chambliss and Isakson for their warm remarks and also for their support throughout this process.

There are several people I would like to introduce today. First and foremost, sitting behind me is my wife, my best friend, and the love of my life, Bonnie Cohen. Bonnie was a legal secretary for over

35 years, and despite having to work for lawyers her entire adult life, she agreed to marry me. And for that I will be forever grateful. I would not be sitting here today without her love and support, and we celebrate our 17th wedding anniversary next week.

Also here today are two people who are like family members to Bonnie and me: Judge Stephanie Manis and Bob Manis. Judge Manis and I worked together at the Georgia Attorney General's Office for many years. She has been a mentor, a friend, and a role model, and someone whose career has been an inspiration to me throughout my professional career.

Here today also with me are two young partners from my law firm, Troutman Sanders: Jaime Theriot and Kevin Meeks. Jaime and Kevin have worked with me on every major piece of litigation that I have handled at the firm. They are two of the finest young lawyers it has been my privilege to work with during my legal career. And I would not be sitting here without their support.

Also here also for me as well as Judge Boggs is Pete Robinson, who is the managing partner of our Atlanta office, a former Democratic Majority Leader in the State Senate and a long-time friend. And two former colleagues of mine at the law firm who now work in Washington. Bill Arnold and Trenton Ward are also here, and I appreciate their attendance.

There are a lot of people watching on the Web who are friends and colleagues of mine. I want to particularly mention one very special one, and that is one of the most beloved Georgia attorneys, Norman Underwood. When I came to Troutman Sanders 15 years ago, Norman became my mentor. He took me under his wing, and he made me a better lawyer. And if I am fortunate enough to be confirmed by this august body, I will be privileged to say that I got to practice law with Norman Underwood.

And, finally, I would like to recognize my parents, Vivian and Irving Cohen. My parents were born in Brooklyn, New York. They are children of immigrants. They are children of the Great Depression. And because of their family situation, they were unable to achieve the education that they provided for their only son. My father enlisted in the United States Army during World War II. He was a disabled veteran, and he ran a small business. My mom was a secretary and worked in the home. Together, because of their support and sacrifice, I was able to go to college and law school and lead the life that led me to this moment before you today. I know if they were here they would be very proud.

And with that, I welcome any of your questions.

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

Senator BLUMENTHAL. Thank you, Mr. Cohen.

Ms. May.

STATEMENT OF LEIGH MARTIN MAY, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

Ms. MAY. Thank you, Senator Blumenthal, Ranking Member Grassley, and the rest of the Senate Judiciary Committee. Thank you for holding this hearing, and I am honored to be here today to answer your questions. I also want to thank Senators Chambliss

and Isakson for their kind introduction and for their support throughout this process.

I would like to thank President Obama for the great honor that he has given me in this nomination. It is something that I am very proud of, and it is the highest honor that I can think of achieving.

I have quite a crowd of family here today, so I will try to go quickly.

My husband, Gil May, is here. He is an architect in Atlanta, the love of my life, and the person that has been there for me every day throughout this process.

I also have with me my 7-year-old son, Griffin May. He is a first grader at the Paideia School in Atlanta, Georgia, and has thoroughly enjoyed his trip to DC, especially the chance to get to go up in the Washington Monument yesterday as it reopened. So it has been a very special trip for him.

My mother, Beatrice Williams, is here. She is in her final year as a first-grade teacher in Decatur County, Georgia. She has had a long career in public education and is very excited about her upcoming retirement.

My in-laws are here, Dr. Jerrell and Lauren May, and they also have both retired from public education, and I am very happy to have them here today.

I have my brother, sister-in-law, niece, and nephew. Stephen, Julie, Lucy, and Hollis May are here from Daphne, Alabama.

I also have my law partner, Joel Wooten, and a daughter of one of my other law partners, Sandra Lynne Fryhofer, that are here for me today. I really have appreciated the support of my law firm, Butler Wooten and Fryhofer, that the partners and the other staff and attorneys in the firm have given me, and I am very proud to have Joel and Sandra Lynne here with me today.

Thank you very much.

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

Senator BLUMENTHAL. Thanks very much, Ms. May.

Judge Ross.

STATEMENT OF HON. ELEANOR LOUISE ROSS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

Judge ROSS. Thank you, Chairman Blumenthal, Ranking Member Grassley. I would like to thank the entire Senate Judiciary Committee. Thank you to Senators Chambliss and Isakson for the warm introduction as well as the bipartisan efforts throughout this process. Thank you also, President Barack Obama, for the honor of this nomination.

I, too, have some very special people with me. First, my husband of 13 years, fellow attorney Brian Ross, who is seated behind me. He is my rock and source of inspiration in all of my professional and personal endeavors.

Our two daughters, 12-year-old 6th grader Briana Valerie Ross and 10-year-old 5th grader Leeann Danielle Ross. They graciously made the sacrifice to miss a day of school to attend. I thank them and their teachers for allowing them to do so with the understanding that they will be making up missed school work.

Speaking of teachers, I also have behind me my mother, Otelia Barnwell, who is a retired public school teacher from right here, the D.C. Public School System.

Also, my siblings are present: my sister, Dr. Valerie Barnwell, and my brother, fellow attorney George Otis Barnwell.

My father, George Miller Barnwell, also was a teacher. He passed away when I was 8. He is with me here in spirit, as he always has been, and today I have with me a person who has served as a father figure for my entire life, that is, my uncle, Jim Clarke.

And I also have with me my two beautiful teenage nieces, Savannah and Arianne Barnwell.

I would also like to acknowledge my mother-in-law, Shirley Covington, who also is a retired public school teacher as well as principal. She could not make the trip to DC today, but she supports me from her home in Columbus.

And, finally, I would like to acknowledge my colleagues and my exceptional staff at the DeKalb State Court. They are keeping things running smoothly while I am here in Washington.

Thank you, and I welcome your questions.

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

Senator BLUMENTHAL. Thank you very, very much to all of you for your opening statements and, most important, for your records of public service. And I want to say again how important these hearings and this process are.

I want to welcome Chief Justice Thompson, Chief Judge Phipps. You honor us by your presence here today. Sorry you had a bit of difficulty getting here, but you were mentioned in absentia by Senators Isakson and Chambliss.

Like you, these individuals have performed a great deal of public service over the course of your careers already. The decisions we make here really will be to put you in a place where for many people seeking justice you will be the last person making a decision. Even though there may be a right of appeal to the court of appeals, you will be the source of justice for them. And so this decision for us is immensely important, and we are going to approach it, I think, with the close scrutiny that it deserves in every instance.

I would like to begin, Judge Boggs, with some questions to you, if I may. As I look through the responses to the Committee's questionnaire, I noted that there were no texts of remarks, no speech drafts, notes, anything in writing of that kind. Over the course of your very long career in public life, did you never deliver a prepared speech? Did you never submit, for example, to the Judiciary Committee when you served in the State legislature any prepared remarks?

Judge BOGGS. Well, thank you, Senator. It was not the practice of myself while I was serving for the 4 years in the General Assembly to speak regularly before committees. In fact, the only occasions I had to do that were on bills that I had authored. I never spoke to any Committee of the House or Senate on any bill that I did not author other than a bill I was asked to carry by the Secretary of State, which meant that I had to testify before the Senate on that matter.

It is not the practice of the General Assembly then and I do not think now that witnesses submit any written comments or testimony, and indeed that was not my practice. I typically spoke extemporaneously and generally spoke from the bills, the text of the bills that I was presenting.

Senator BLUMENTHAL. On some of the videos, I think, that are of your service in the legislature, you seemed to be reading from something. Did you keep none of those texts?

Judge BOGGS. I was reading from the text of the bills that I was presenting at the time. I was not speaking about support or—I was simply asking legislators to support the bill. But what I was reading from and what I always took to the well on those limited occasions was the text of the bill.

Senator BLUMENTHAL. And on the issue, for example, of women's reproductive rights, I know that you have spoken passionately about your views on that topic. On rights of women to seek reproductive health care, I know that you have stated your opposition to abortion. You prepared no remarks on any occasions that you delivered?

Judge BOGGS. Senator, to my knowledge, I have never given any public comments on my position on reproductive rights. I have cosponsored some bills in the General Assembly. To my knowledge, I also voted on a couple of amendments on the floor of the House that I did not author and had no authorship in. But to my knowledge, I have never given any speeches concerning reproductive rights.

I know this, Senator: I never authored any of those bills. Even the ones I cosponsored, I had no role in drafting that legislation.

Senator BLUMENTHAL. And I noticed also, as you well know, that on April 10, you supplemented your responses to the questionnaire to this Committee with additional materials, some of them dealing with the controversial issues that may be of interest to my colleagues. Can you assure us that there are no additional materials that are relevant to particularly questions 12c and 12d of the questionnaire?

Judge BOGGS. Yes, sir, Senator. I can assure you of that. I appreciate the Committee's indulgence and opportunity to submit additional submissions with respect to my original responses to questions 12c and 12d. I respectfully suggest that the effort that I went to to supply the information in my original questionnaire was quite exhaustive. I did all of the notable searches on Internet searches that were available. The newspapers that covered the area that I served as a legislator are not searchable by the public in any form other than by review of the hard copies.

In addition, I reviewed applications and questionnaires of nominees who had had prior legislative service and attempted to mirror what they had done with respect to their submissions. I did not note that any of those nominees had ever submitted a listing of bills that they had cosponsored. That is certainly a matter of public record, and I could have easily provided it. But with respect to question 12c, which asked for my public statements on matters of public policy, I did not view bills that I cosponsored, that I did not author, that I had no interest in other than cosponsoring, that I had nothing to do with the drafting of, to be my public statements.

And so in that regard, I did exhaust additional resources in order to provide this Committee with everything that was available. That meant going to Georgia Public Broadcasting, who at the time I served in the legislature made videos of legislative sessions. The information they had from 2001 to 2004 was old. It was on servers that were not searchable. It was in a format that was not searchable, that had to be decoded and put into a searchable format. It took me roughly 6 weeks of almost daily contact and personal visits to Georgia Public Broadcasting to retrieve the videos that I did supply.

With respect to question 12c, that dealt with public speeches I might have given while I was a legislator from 2001 to 2004. I have been a judge both on the trial court bench and the appellate court bench for 10 years. On advice of the State Bar of Georgia, I destroyed my files from my old law office, which would have possibly contained references of when I spoke to certain civic organizations, dates, and to whom I spoke. But because that information and media coverage of that was not available, I took 5 days, I traveled 250 miles to my home town, and I reviewed 515 newspapers, roughly 8,000 pages, personally, and then hired someone to review on the internal programming system of our daily newspaper their data in order to provide the additional submissions. And I am very appreciative for the opportunity to have done that.

Senator BLUMENTHAL. I appreciate that explanation. I would remind you, I know I do not need to remind you, that some of my colleagues, particularly on this side of the aisle, have found the failure to be completely forthcoming and frank with this Committee in terms of providing materials as a reason to disqualify, in fact, put in jeopardy the nomination of a judicial nominee. So I would urge you, if there are any other materials that are discernible in any way, that you provide them as quickly as possible.

Judge BOGGS. Absolutely, Senator.

Senator BLUMENTHAL. Let me go to some remarks and actions that you made in the course of your career, if I may. When you were a candidate for the Georgia Superior Court, you spoke at a candidate forum. You told the audience at that time, and I am quoting: "I am proud of my record. You do not have to guess where I stand. I oppose same-sex marriage." And you went on: "I have a record that tells you exactly what I stand for."

Wouldn't your co-authorship of those amendments in the Georgia Legislature dealing with reproductive rights and a woman's right to choose be indicative of how you will serve as a judge on the district court in Georgia if you are confirmed?

Judge BOGGS. Thank you, Senator, for the question. I did make the comments that you refer to. Later in that same speech, I referred to my respect for the separation of powers and the lawmaking authority that is vested in the legislature and that judges should not be policymakers. I have maintained that position for the entirety of my judicial career.

However, I agree that the comments that I made probably gave the wrong impression to the audience to whom I was speaking, particularly with respect to the job that I was seeking. I should have done a better job of delineating the roles, the different roles and the markedly different roles, between being a legislator and being

a judge. I was a legislator at the time I made those comments, but I was seeking the office of judge.

However, I think that my record, my 10-year record of disposing of roughly 14,000 cases demonstrates unequivocally that I have never allowed personal views I may have on an issue to affect how I analyze issues or how I decide cases.

Senator BLUMENTHAL. Have any of those cases dealt with reproductive rights or a woman's right to choose?

Judge BOGGS. I think on my time on the Georgia Court of Appeals I have dealt with one case on my panel. It was not a case that I authored, but one case that dealt with Georgia's current statute on a minor having to receive parental consent in order to receive an abortion. It was on appeal from a petition to a juvenile court. Other than that, no.

It is true that throughout my judicial career both as a trial court judge and an appellate court judge that I have rarely dealt with issues of those constitutional magnitude.

Senator BLUMENTHAL. So other than that one case, to know where you stand on that issue of reproductive rights or a woman's right to choose, we would have to go back to your actions in the Georgia State Legislature?

Judge BOGGS. I do not necessarily agree, Senator. I think that the best evidence of the type of judge I will be is the record of the type of judge I have been. I do not think that my legislative record that is over a decade old is indicative of what type of judge I might be on the Federal district court. I would point to my record as a trial judge, disposing of 14,000 cases, dealing with civil cases and criminal cases, ruling for plaintiffs, ruling for defendants, ruling for the State, ruling against the State. I think that is the best evidence of the type of judge I would be.

Senator BLUMENTHAL. Where do you stand now on reproductive rights or a woman's right to choose?

Judge BOGGS. Senator, my personal opinion on matters that might come before the court would be—it would be, I think, inappropriate and a violation of the Code of Judicial Conduct of Georgia that I currently am bound by to state any position on those matters. But I can state unequivocally that my personal position on that matter or any other issue is irrelevant to how I have decided cases for the past 10 years, how I have analyzed issues, and I am committed to following the rule of law, the doctrine of stare decisis, and always doing that if I am fortunate enough to be confirmed.

Senator BLUMENTHAL. And the Constitution's right to privacy included?

Judge BOGGS. Absolutely.

Senator BLUMENTHAL. In your response to questionnaires before this Committee, you said that you are a "strict constructionist." Is that your general philosophy?

Judge BOGGS. I think at the time I made those comments, which was upon my transferring from the superior court to the court of appeals, I made those comments to a reporter. What I intended to convey was my fidelity to the rule of law and my fidelity to the limited role of a judge in our democracy, and intended to convey my respect for the limited role of a judge, and that is to not decide cases based on public opinion, to not decide cases based on public

clamor, but to decide cases based on the faithfulness to the rule of law and the doctrine of stare decisis, which I believe my record demonstrates I have done.

Senator BLUMENTHAL. Normally, a strict constructionist is one who looks very specifically, and judges would say faithfully, to the text of the Constitution and the philosophy is to avoid going beyond what is actually written in the text of the Constitution. Is that a fair description of strict——

Judge BOGGS. It is my understanding of strict constructionism. Yes, sir, it is a form of constitutional interpretation and analysis.

Senator BLUMENTHAL. In 2004, you said that the right of privacy is not "in the context or in the text of the Constitution."

Judge BOGGS. I am not familiar with having said that, Senator. If you—I am happy to respond later if I can find out where that quote might come from. I am not familiar with having said that.

Senator BLUMENTHAL. Well, you said it in 2004. It was a while ago. But let me give you a chance to explain now.

Judge BOGGS. Sure.

Senator BLUMENTHAL. If the right of privacy is not specifically delineated or described in the text of the Constitution, is it still equally valid as the rule of law?

Judge BOGGS. Yes, sir, I believe that the easy answer to that question is that I would base every decision on rights of privacy, fundamental rights, and use a constitutional interpretation model that is based on precedents of the U.S. Supreme Court and the Eleventh Circuit.

Senator BLUMENTHAL. And so you would not permit or allow your view of the Constitution as a strict constructionist to interfere in any way with carrying out the rights of individuals, the rights of privacy to individuals who may come before your court?

Judge BOGGS. Absolutely not, Senator.

Senator BLUMENTHAL. Let me ask you about another part of your record relevant to this same issue. You supported legislation that would require doctors to report the number of abortions they perform. Would you tell us why you supported that legislation? Don't you think it was ill advised?

Judge BOGGS. Well, Senator, let me respond this way: The legislation that you refer to was an amendment made on the floor of the House of Representatives. It was not an amendment that I drafted. It was not an amendment that I was familiar with. It came up on the floor of the House in the routine of handling the business of the legislature for that day.

I supported measures like that and including that because those issues were very important to the people that I represented. My constituents as a State legislator were 38,000 citizens in one county in southeast Georgia for the first 2 years that I served. The district grew a little larger than that. But that district is a very conservative and a very pro-life constituency. I believed that it was the obligation of a legislator to vote—listen to and vote the will of their constituency. Those issues were very important to my constituents, and that is why I supported that floor amendment.

Senator BLUMENTHAL. That amendment came within a few years after and before attacks on doctors who provided abortion services.

Would you agree with me that it was a mistake to support that kind of amendment?

Judge BOGGS. In light of what I have subsequently learned, yes, sir, I do not think that it would be appropriate to be listing the names of doctors that perform abortions within what was then the Georgia Patient Right to Know Act, which dealt predominantly with litigation that doctors had been involved with and the ability of patients to see that information.

Senator BLUMENTHAL. Thank you. My time has expired, and I would turn to Ranking Member Grassley.

Senator GRASSLEY. It might surprise you, but I am going to ask you a lot of questions, and I am going to ask similar questions of what you did. I find no offense with your approach. And I hope the rest of you do not feel left out.

[Laughter.]

Senator GRASSLEY. You served the past 10 years as—again, to Judge Boggs, you served the past 10 years as an elected State court judge, and I think you verified that already.

Judge BOGGS. Yes, sir.

Senator GRASSLEY. In this election did you run under any particular party?

Judge BOGGS. No, sir. Georgia's judges are elected nonpartisan at the levels that I ran.

Senator GRASSLEY. Okay. So your role as a judge has been a nonpolitical, nonpartisan. Is that correct?

Judge BOGGS. Entirely. Yes, sir.

Senator GRASSLEY. In 2001, as you have already said, you were elected as a Democrat to the Georgia General Assembly, right?

Judge BOGGS. That is correct.

Senator GRASSLEY. You have been criticized by some groups for some of the policy positions you took as a legislator. For instance, as a legislator, you had a pro-life voting record. You supported traditional marriage. I would ask you a couple questions. First I am going to read something that you said during Senate Resolution 595. This resolution recognizes marriage as a union between a man and a woman. In the statement on the resolution, you said, "It is my opinion both as a Christian and as a lawyer and as a member of this House that it is our opportunity to stand up in support of this resolution."

So please explain what you meant by this statement.

Judge BOGGS. I clearly meant, Senator, that my personal opinion was at the time, over a decade ago, that I was in support of a proposed constitutional amendment that would have banned same-sex marriage. My position on that, Senator, may or may not have changed since that time, as many people's have over the last decade. Moreover, my position on that, as reflected by those personal comments in 2004, have never had any import whatsoever in how I decided cases or how I analyzed issues, both as a trial court judge and an appellate court judge.

Senator GRASSLEY. Is it fair to say that your Christian faith informed your policy positions as a legislator?

Judge BOGGS. Yes, sir.

Senator GRASSLEY. By contrast, how does your Christian faith affect you and your decisionmaking process as a judge?

Judge BOGGS. It never has interfered with my decisionmaking process whatsoever, Senator.

Senator GRASSLEY. Is there anything in your personal view, whether religious or otherwise, that would make it impossible for you to apply the law as a Federal judge, even if you personally disagreed with it?

Judge BOGGS. No, sir.

Senator GRASSLEY. You have also said, "While serving you at the Georgia House of Representatives, I was proud to represent you. I tried to base all my decisions on commonsense, conservative values that are based on the fact that I was raised in a Christian home, and that has given me true family values."

Again, do you hold any personal or religious views that would make it impossible for you to apply the law as a Federal judge even if you personally disagreed with it?

Judge BOGGS. Absolutely not, Senator.

Senator GRASSLEY. Further, as I mentioned, you have been criticized for your legislative record with respect to abortion. During your time in the legislature, you cosponsored bills that would help encourage women to consider adoption and a bill that required minors to be accompanied by a parent or guardian before getting an abortion.

Three questions in regard to that. There may be some concern that your personal views on abortion may influence your ability to follow precedent as a judge. What is your commitment to following precedent? I think you have made that very clear. I do not think you need to answer that.

Please describe what you see to be the differences in responsibility as a policymaker and a judge regarding the topic of abortion. I think you made that very clear in your answer to Senator Blumenthal.

Do you hold any views regarding abortion, religious or otherwise, that would make you unable to discharge your duties faithfully as a U.S. district judge?

Judge BOGGS. No, sir, I do not.

Senator GRASSLEY. You have many years of experience as a judge. Have there been any times where you decided a case based on your policy preferences or desired outcome rather than following the law or applicable precedent?

Judge BOGGS. That has never happened, Senator, and you have my commitment that, if I am fortunate enough to be confirmed, that would never happen.

Senator GRASSLEY. Mr. Cohen, you have been involved in litigation of the Georgia voter ID law. I have three questions in regard to that.

Can you describe who you were representing in these cases and how you came to be involved in them?

Mr. COHEN. Yes, Senator. Based on my experience in the Georgia Attorney General's Office, which was over 13 years, when I went into private practice, then Attorney General Thurbert Baker hired me to represent the State and its agencies in a variety of high-profile litigation. That varied from defending the University of Georgia's affirmative action program to defending a redistricting plan

passed by a predominantly Democratic General Assembly to defending Georgia's photo ID law.

In all of those cases, I was never involved in the enactment of any of those policies or legislation. I never was a lobbyist for any group either advocating for or against the legislation. I was hired just like any other lawyer is hired, and that is, to represent their client and advocate their position in court.

Senator GRASSLEY. If you were confirmed, how would your experience with voter ID laws influence your decisionmaking process as a judge if a voter ID case were to come before you?

Mr. COHEN. It would not make any—it would not implicate my decisionmaking at all. I would be bound by the decisions of the U.S. Supreme Court, which in this case is the *Crawford v. Marion County* case in the Eleventh Circuit Court of Appeals in resolving that issue.

Senator GRASSLEY. Some have claimed that voter ID laws generally—and these would be like laws you have defended—exist "for no other reason than to deny African Americans the right to vote." Do you agree with that statement?

Mr. COHEN. I think the case law in this area has come down, depending on the State it was brought in, in different ways. In Georgia, the evidence that was presented in our case did not lead the court to conclude that there was a denial of the right to vote. I am aware that in other States, because of different factual circumstances that were presented in those States and sometimes different statutes and different State constitutional provisions, the decision came out differently.

So I think in any case involving a challenge to a photo ID law, it depends on the facts that are presented and the specific statute that is being reviewed.

Senator GRASSLEY. You already made reference to affirmative action cases you have been involved in. In *Johnson v. Board of Regents*, a class of students who were denied admission challenged the university system awarding points to applicants based on diversity. You defended the university's point system. The Eleventh Circuit found that the university's system was not narrowly tailored and, hence, unconstitutional.

Tell us about the case and your role in it. Who were you representing?

Mr. COHEN. I was representing the Board of Regents at the University of Georgia, again, hired by Attorney General Thurbert Baker. At that time that was before the Supreme Court's decisions in *Grutter* and *Gratz*. So the University of Georgia was implementing a points program very much like the University of Michigan was in its undergraduate institution. Both cases kind of were appealed at the same time. The Michigan case got to the U.S. Supreme Court, and our case was settled before that time.

Senator GRASSLEY. If confirmed, this ruling will be binding precedent over your court. What assurances can you give this Committee that you will follow it and any other precedent even if you may not personally agree with it?

Mr. COHEN. Well, Senator, as a district judge, an Article III judge, I am bound by the decisions of the U.S. Supreme Court, and in the issue of affirmative action in higher education, that would

currently be the *Fisher* case, the *Gratz* case, the *Grutter* case, and any other decision that might be issued.

Senator GRASSLEY. Ms. Abrams, I am going to quote, as I often do, Justice Scalia on living Constitution theory, who said: "The risk of assessing evolving standards is that it is all too easy to believe that evolution has culminated in one's own views."

Do you believe that—forget that Scalia said that. Just think of the concept.

[Laughter.]

Senator GRASSLEY. Well, I respect Justice Scalia, but I do not want him to be the focal point here.

Do you believe that judges should consider evolving standards when interpreting the Constitution?

Ms. ABRAMS. Thank you, Senator. I believe that a judge, and particularly a district court judge, is bound by the rule of law, bound by precedent, and in my case it would be the precedent—if I am so fortunate as to be confirmed, it would be the precedent of the Supreme Court and the precedent of the Eleventh Circuit, and that, and nothing else, would guide my decisions.

Senator GRASSLEY. Do you believe it is ever appropriate for a Federal judge to incorporate his or her own views when interpreting the Constitution?

Ms. ABRAMS. No, Your—no, Senator.

Senator GRASSLEY. Because there was a split in the ABA rating of you, while a majority of the Standing Committee on the Judiciary rated you a qualified, a minority found the opposite. And the attachments you provided in response to questions to your Senate questionnaire provided very little in the way of examples of legal writing. Is there anything further that you could share with the Committee to ease any doubts that may exist about whether your experience has prepared you for a lifetime appointment?

Ms. ABRAMS. Thank you again, Senator. I have practiced both, in Federal court, civil law as well as criminal law. And in that capacity, I have had a strong motions practice, both written and oral, and appellate practice. In my last almost 4 years at the U.S. Attorney's Office, I have handled criminal cases from their very inception through sentencing, including trials, both jury trials and the equivalent of bench trials. I also handled my own habeas motions and have argued before the Eleventh Circuit Court of Appeals.

In addition, after graduation from Yale Law School, I served as a clerk to a district judge, and I believe that firsthand experience has made me—helped me understand what the day-to-day obligations of a district court judge. While I understand that there will, in fact, be a steep learning curve, I have spoken to all of the judges of the Middle District of Georgia who I will work with if I am so fortunate as to be confirmed. And I know that they will support me in getting up to speed, and I think that my ability to study—and I have studied all of the rules and the bench book—and my hard work, my hard work ethic will help me do my duty as a district court judge if I am confirmed.

Senator GRASSLEY. I am going to yield. I am going to assume you two will not be here. Go ahead.

Senator BLUMENTHAL. Thank you, Senator Grassley.

Just for the information of my colleagues, we are scheduled to have a vote I think at 11:10. I am going to turn the gavel over to Senator Franken when that happens, and he and I will trade places, and we will continue the hearing.

I am going to turn to Senator Durbin now, but before I do, Judge Boggs, you mentioned a case that was decided while you were a judge, perhaps on the Georgia appellate court, dealing with the State's parental notification. I am not aware of that case. Could you provide the name and the opinion, if there was one, to the Committee?

Judge BOGGS. I may have misspoken. What I was referring to was that the parental notification law has been the law in Georgia since 1987, well before I became a legislator. My actions in the General Assembly—I am not sure of the year, but between 2001 and 2004—to amend that bill in two specific ways was to amend current statute. I do not know of any case—the case that you are referring to would be the one that was on my panel at the court of appeals?

Senator BLUMENTHAL. Yes.

Judge BOGGS. Oh, absolutely. Certainly, Senator.

Senator BLUMENTHAL. If you could provide the name and the opinion, if there was one, and any other details about that case.

Judge BOGGS. Certainly.

Senator BLUMENTHAL. Appreciate it. Thank you.

Senator Grassley.

Senator GRASSLEY. I am going to submit questions in writing.

Senator BLUMENTHAL. And we will have—the record will stay open for all of us for a week after this hearing to submit questions in writing, but that one in particular, if you could respond to, I would appreciate it. Thank you.

Judge BOGGS. Yes. Thank you, Senator.

Senator BLUMENTHAL. Thank you.

[The information referred to appear as submissions for the record.]

Senator BLUMENTHAL. Senator Durbin.

Senator DURBIN. Thank you, Mr. Chairman. And at the outset let me say to all nominees, thank you for being here today, and special thanks should be given to your two Senators, Senators Isakson and Chambliss, who have worked very hard for this moment and have buttonholed each and every one of us about your nominations. They think very highly of you, and that commends all of you to our consideration, positive consideration.

I do have a few questions, Judge Boggs, I would like to ask you because you appear to have served in the Georgia General Assembly at a very controversial moment when your State was debating its State flag. And the question was whether or not the flag would be changed and no longer display the Confederate X battle symbol.

You were embroiled in that debate, and I ask you this question: Do you believe that Confederate flag issue had anything to do with the issue of race?

Judge BOGGS. You know, when that flag was passed in 1956, Senator, there was no legislative history. I was not a flag historian then, nor am I now. But in looking back on that issue and preparing for today, I know that some argue that race, particularly

the—it was passed in reaction to the *Brown* decision from the U.S. Supreme Court in 1956. I have no reason to dispute that, although there are arguments on the other side as well as to what the motivation was for the bill originally.

Senator DURBIN. Beyond the motivation for the original form of the flag, when you were serving in the General Assembly and the debate was underway, and I believe overwhelmingly the African American legislators opposed that symbol in the flag, did that lead you to believe that that debate had anything to do with the issue of race in your time?

Judge BOGGS. Yes, sir.

Senator DURBIN. And what was your feeling?

Judge BOGGS. I was offended by the flag, Senator. At the time that I made that vote in 2001, I was a freshman legislator. I was in my 17th day of service. I was very respectful of the opinions that a majority of the African American community in my State had toward that flag. It was not only a symbol of a reminder of the Civil War and a horrific tragedy and horrible time in American history, a reminder of the institution of slavery, but it was also, I think, even more predominant, the more contemporary uses of that flag by organizations that espoused hate, that espoused oppression, that spouted over racism.

I found that one of the most challenging things of being a legislator was deciding when to vote the will of my constituents and when to vote the will of myself and my own conscience. It was something that I have known other legislators to struggle with. I struggled with it regularly, on that issue particularly. The overwhelming majority of the constituents in my one county that I represented, which likewise contained a minority population that I was not ignorant of, overwhelmingly, though, those constituents desired that Georgians be permitted an opportunity to vote on whether Georgia changed the flag, and that is why I cast the vote the way I did. However, I am glad the vote—I am glad the flag was changed. It reflected something that I thought Georgia could do better with, quite frankly, Senator.

Senator DURBIN. Since you understood that the debate in your time dealt with issues that at least brought up echoes of race problems and slavery, let me ask you this: When a new compromise design was proposed in 2003 that removed the Confederate X but echoed the Confederate Stars and Bars flag, this design was supported by African American Democrats, and you voted against it. Why?

Judge BOGGS. Yes, sir. For the same reasons. The overwhelming majority of my constituents wanted a choice between the 1956 flag and the current flag. Intervening between the vote you just mentioned and my original vote was yet another opportunity to vote for a referendum on the flag, and I voted for that one. That would have afforded Georgians an opportunity to vote.

However, I reiterate with the utmost respect, looking back on that vote, at the time I cast that vote, it was a very difficult decision to decide whether to vote my conscience, which was reflective of the will of the people in my community—I am sorry, the will of the constituents in my community or vote my own conscience. Terribly agonizing. I could not have been more respectful of the opin-

ions of the people that desired that that flag change. And I am glad the flag did change.

Senator DURBIN. Judge Boggs, each year for over 10 years, a Congressman from your State, John Lewis, organizes a civil rights pilgrimage, inviting members of both political parties to come down and to personally witness some of the scenes of the civil rights struggles of the 1960s. And I was honored to be invited 1 year, and as fate would have it, walked over the bridge at Selma with Congressman Lewis in the early morning Sunday hours, and he pointed out the spot where he was beaten unconscious and clubbed down by troopers on that march to Selma, Alabama. And he said that—from Selma, Alabama. And he said to me, "You know, there are many people who are acknowledged as heroes, and I should not be one of them." He said, "I was just here doing what I thought was right."

But there was one in particular who hardly ever gets credit, and his name is Frank Johnson. Frank Johnson was a U.S. Federal district court judge, the position that you five aspire to, in the Middle District of Alabama. He not only ruled that the statue that allowed putting Rosa Parks in the back of the bus was wrong, he went on to rule that that Selma march would be allowed. For that, his mother's home was firebombed. He was basically invited away from polite society in his part of Alabama, but became an icon to many of us in terms of courage on the bench.

I understand the role of a legislator and a politician, trying to measure your constituents and what they want against what you believe is right. And sometimes, sadly, they come in conflict.

Obviously, Judge Johnson decided, sitting on that Federal court, that even though he would be ostracized by many of his friends, he would do what he felt was right.

I have asked you a lot of questions about when you were a State representative, and you have basically said, "I have reflected the way my people felt." So now how do you view that issue of race when you have an opportunity to serve on the district court here?

Judge BOGGS. Thank you, Senator, for the question. First let me say I have the utmost respect for Congressman Lewis. I know him. I respect his career. While I know he might have been critical of me during this process, I do not take any affront to that. I deserve that criticism based on that vote. I have nothing but the utmost respect for Congressman Lewis and for all of those, including my colleague that sits behind me, Judge Herb Phipps, who fought through years and decades of racism and oppression and became the second juvenile court—African American juvenile court judge in our State.

So my vote was never intended to be disrespectful. It was never intended to fail to acknowledge the sacrifices that an enormous number of people made, from Dr. King to others, for the struggle that ultimately succeeded in equality. My vote was never intended to reflect that.

I believe as a judge that everyone that comes before me should be treated equally. I believe that my record as both a trial court judge and as an appellate court judge reflects my faithfulness to that. I do not think anyone can disprove if someone is accusing someone of being a racist. How do you disprove that? I think the

best evidence I would have that the people that know me best do not believe that in me is that after that vote, I had a primary challenge in the Democratic primary, and every African American elected official in my community supported me, including the mayor, city and county commissioners. They grew up with me. I went to school with them or their children in the public school systems. They know me. They know that that vote was not indicative of any bias I hold toward anyone.

In that election I received 90 percent of the vote to be returned to the General Assembly for a second term. And these same groups and these same people overwhelmingly supported me with 80 percent of the vote when I ran for superior court judge, and I think that is the best evidence that I hold no bias, Senator.

Senator DURBIN. Thank you, Judge Boggs.

Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you, Senator Durbin.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thanks to all of you for your willingness to be here and your willingness to serve.

Ms. Abrams, let us start with you. I see most of your practice throughout your career has been in civil litigation. Is that right?

Ms. ABRAMS. Yes.

Senator LEE. Although less so in the U.S. Attorney's Office.

Ms. ABRAMS. Definitely.

Senator LEE. That has given you a good flavor for both of them, both of which will be important components of your caseload, should you be confirmed.

When you approach a civil case—and, you know, as you know, a lot of civil cases are decided on dispositive motions, and when they are not decided on dispositive motions, there is usually a dispositive motion that is made at some point or another.

When you review a dispositive motion, whether it is a motion to dismiss or a motion for summary judgment, is it appropriate for a judge to err on the side of granting or denying a dispositive motion? In other words, there are some judges occasionally that will say, at least privately, "I would rather err on the side of giving the plaintiff his or her day in court, a trial." Do you lean in either direction? In other words, is it just as bad to grant a dispositive motion where it is not warranted as it is to deny one where it is? Is either one worse than the other?

Ms. ABRAMS. Thank you, Senator. I do not believe that one is either worse than the other or that it would be appropriate for me to hold a belief as to that. I think that every case that comes before me, if I am confirmed, should get the same treatment, and that is, a fair and impartial application of the law to the facts of that particular case.

Senator LEE. Okay. So you would not have any predilection one way or another toward granting or denying them. You are going to call them as you see them based on the issues brought before you.

Ms. ABRAMS. Yes, Senator.

Senator LEE. I sometimes see a dangerous tendency in the courts in that sometimes we can end up with trial by attrition where those—you know, it is easier to deny a motion for summary judgment than it is to grant one in some ways. And in some ways it

involves less risk. You do not have to write a lengthy opinion when denying one. It is often easier to write the opinion. It is not immediately appealable in most circumstances, and so it is often easier to just say, well, I will deny this one and see what happens on appeal. Would you tend to agree with that?

Ms. ABRAMS. I think that that certainly does happen. I fortunately was trained by a judge who believed that we had to get it right, and when I was a clerk, I did, in fact, deny a number of motions that, in effect, ended cases. But that was because the law, the applicable law, dictated that that was how a case should be handled. And I hope that I learned enough from Judge Garbis and that I would, in fact, fairly and impartially apply the law to the facts of each case as it comes before me.

Senator LEE. Judge Garbis is still on the bench, right?

Ms. ABRAMS. Yes, he is.

Senator LEE. So Judge Garbis is still available if you ever need to——

Ms. ABRAMS. He most certainly is.

Senator LEE. That is good.

Judge Ross, you are already a judge. Do you agree with what Ms. Abrams has said? Do you disagree with any of this?

Judge ROSS. I agree with Ms. Abrams that I would have no predilection either way, and also I can say that having served as a State court judge, I have never ruled on a motion for summary judgment just at the point of being cautious.

Now, I have taken longer to rule on some of them than on other issues because, like Ms. Abrams said, I wanted to get it right. And I am fortunate enough to say that none of the rulings that I have rendered on motions for summary judgment have gotten reversed with the exception of one portion of one ruling based on attorneys' fees. And I did agree with the court of appeals that I should have analyzed it slightly differently.

Senator LEE. Okay. Ms. May, do you have any particular judicial philosophy? How would you describe or define your judicial philosophy?

Ms. MAY. Thank you, Senator Lee. My judicial philosophy would be to apply the law fairly and equally to all people, if I am confirmed as a district court judge, that would appear in front of me. I think it is very important for judges, as Ms. Abrams said, to get it right, and that means following the applicable Supreme Court and Eleventh Circuit precedent to the letter and not allowing my own personal opinions to get in the way of stare decisis and applying the applicable law.

I also think it is important for judges to treat both the parties and the attorneys with respect and to listen to all sides to an argument to make sure that as a judge I would understand the arguments of the parties; and also when issuing orders or ruling on specific issues, I also believe it is very important for a judge to be clear and let the parties know exactly what the ruling is so that they can apply that to the rest of the case and move forward.

Senator LEE. Thank you.

Judge Boggs, you commented a few minutes ago about your inclination as a legislator to try to figure out, you know, what your con-

stituents would prefer and that that can sometimes put a legislator in a difficult position.

Does any of that apply to you as a judge, either as a State judge or would it apply to you as a Federal judge if you were confirmed?

Judge BOGGS. Thank you, Senator. No, it does not apply, and that is a very comforting part about being a judge. I think I am more suited to be a judge than I was a legislator, quite honestly. There is a lot of comfort in the rule of law. There——

Senator LEE. Are you saying you would look good in the robe? [Laughter.]

Judge BOGGS. I am confident not.

You know, the gauging of public sentiment on any issue as a legislator is always difficult. The political implications of votes are difficult. The considerations that partisan politicians have to make day in and day out are difficult decisions.

The decisions judges make are likewise difficult, but the fortunate part about the faithfulness to the rule of law is you do not stick your finger in the wind every time you decide a case to decide what is popular and what is public will and what is the general direction of the public on this issue.

I am very comforted in knowing that if you are faithful to the rule of law, if you are faithful to apply precedent to every case, and you do not interject your personal opinions, while it is true you may make some unpopular decisions, popularity is not the test of whether justice has been done.

Senator LEE. Would that apply even when you are being asked to make a ruling that is going to be strongly against the public will? I mean, it is not just that it might not be the most popular ruling, but a ruling that, in the eyes of the public, might seem harsh, might seem unfair, might go against a very popular party before you, perhaps a very sympathetic plaintiff or defendant?

Judge BOGGS. Yes, Senator, I think indeed judges that are faithful to the law are going to make unpopular decisions on a regular basis. The comforting part about being a judge is that the law should prevail in each and every case. Sympathy for the party, empathy for the party has no role. The gender or role or sexual orientation of a party has no role in deciding how you issue a decision.

It is much more difficult when you are, I think, a partisan legislator to deal with those issues because, quite frankly, I think most of you all have districts in your States, your entire States, and I did as a legislator, where your entirety of your constituency do not always agree or rarely agree on everything. Fortunately, as a judge, you are not concerned with those issues.

Senator LEE. Okay. Thank you. I see my time has expired.

Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you, Senator Lee.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much. Thank you to all of the nominees. This is a very special day, and I can see you have a lot of happy family members back there.

I was going to ask some questions of Mr. Boggs. I know, Mr. Boggs, you were a judge—for how long?

Judge BOGGS. Ten years now, Senator.

Senator KLOBUCHAR. Ten years, okay. And obviously there is a lot of understandable questions about the positions that you took as a candidate and in the legislature on choice and civil rights and marriage equality. Did you rule on any of those cases when you were a judge, cases involving those issues?

Judge BOGGS. As a trial court judge in Georgia's highest level of trial courts, I did not have jurisdiction to rule on constitutional questions, if that is your question. As a judge on the intermediate appellate court in Georgia for the last 2½years, we have limited constitutional jurisdiction. Specifically, we only deal with the Constitution as applied and whether it was applied in an unconstitutional fashion. But jurisdiction in constitutional cases presides with our Supreme Court.

Senator KLOBUCHAR. Thank you. Could you talk about your oval judicial philosophy, how your personal views have shaped that philosophy?

Judge BOGGS. I do not know, Senator, that my personal views have shaped my philosophy. My experiential views as having been a judge for 10 years has shaped my philosophy. I try to emulate characteristics that I see in other judges that I value. My general judicial philosophy is that judges should be faithful to the law. They should be faithful to the doctrine of stare decisis. They should understand the limited role of the judiciary, and they should not be policymakers.

In addition, I think it is imperative that judges are continually treating every party that appears in front of them equally before the law. That builds public confidence in a fair and impartial judicial system, which I think is very important.

Senator KLOBUCHAR. And in your opinion, how strongly should judges bind themselves to the doctrine of stare decisis?

Judge BOGGS. Well, I think the doctrine of stare decisis should bind all judges. It bound me as a trial court judge. I was bound by the decisions of the court I now serve on and also the Supreme Court of Georgia. I think as an appellate court judge I am bound obviously by the decisions of the Supreme Court of Georgia. And if I am fortunate enough to be confirmed, I would be bound and follow all of the decisions of the Supreme Court, even on those issues that you discussed.

Senator KLOBUCHAR. Well, the Supreme Court ruled nearly 50 years ago in the *Griswold* and *Eisenstat* cases about privacy rights and access to contraception. Do you view these cases as settled law?

Judge BOGGS. I do, and I would follow that precedent if I were fortunate enough to be confirmed.

Senator KLOBUCHAR. I am concerned about this amendment. I know there is a lot of background here, and I have read it all, but one of the things that really stuck out to me as someone who is a former prosecutor dealing with public safety issues was the amendment that you supported in the Georgia State Legislature—and I think Senator Blumenthal had asked about this. I had to leave for another hearing, but I had some more questions on it—that would have required posting on the Internet about the number of medical procedures that doctors have performed having to do with terminating a pregnancy. I think there could clearly be public

safety implications for these doctors if you put all this detailed information about them online. And I think you can see it in other areas as well, and I think we have certainly seen lives being taken from these doctors that terminate pregnancies. And we do not put this kind of information online for other procedures in other medical areas.

My first question is if your views on this issue are still the same.

Judge BOGGS. Well, I would be hesitant to give you my views on that issue inasmuch as that may come before me as a judge, but I would tell you, as I did Senator Blumenthal, that that was a floor amendment. I did not have any idea it was coming. I did not have anything to do with the drafting of it. The author of that amendment on the floor of the House when he presented it did not discuss it with me ahead of time.

In retrospect, and particularly in light of what I have learned subsequently concerning the public safety issue, I should not have voted for that amendment.

Senator KLOBUCHAR. And so did you consider that at that time when you voted on it, the public safety risk?

Judge BOGGS. I was not aware, as I am now, Senator, at the time of the public safety risk. Again, in the back and fro of bringing up a bill, floor amendments coming up, I should have, and in hindsight it is regretful that I did not.

Senator KLOBUCHAR. Okay. Last year the Supreme Court issued an important ruling on marriage equality in the *Windsor* case. How would your personal views on marriage equality impact your decisions as a judge?

Judge BOGGS. They would not. I am faithful to the obligation to follow stare decisis, and I would follow *Windsor* and any other cases out of the Supreme Court, including *Romer* and *Lawrence*.

Senator KLOBUCHAR. Would you commit to following Supreme Court precedent in this area when it comes to marriage equality?

Judge BOGGS. Absolutely, Senator.

Senator KLOBUCHAR. All right. I know that there has also been some attention around comments you made while running to be a State court judge. If confirmed, what role do you think your personal opinions about women's reproductive rights should have on the cases before you?

Judge BOGGS. My personal opinion on women's reproductive rights has no role on how I would decide legal issues or decide cases or analyze issues were I to be confirmed as a district court judge.

Senator KLOBUCHAR. One of the things that has been brought to my attention I think would concern a lot of people, but not as much as the amendment on the doctors' posting. But you cosponsored a bill that took some pictures with license plates—you took pictures with a license plate, I think, and it said "Choose Life," the license plate. What do you think about that and how it would influence any decisions that you would make going forward?

Judge BOGGS. Well, thank you, Senator. The Choose Life adoption support program was a bill that was presented to the General Assembly. I cosponsored it along with probably a majority of the members of the 180-member House of the General Assembly in Georgia because it was important to the constituents that I rep-

resented. It would have no impact, my personal beliefs, on reproductive rights as with my personal beliefs on any issues. Not only would it have no impact if I were fortunate enough to be confirmed, but I think my record demonstrates over the last 10 years that I am faithful to never interject my personal opinion into decisions I make.

Senator KLOBUCHAR. Were there any questions about you injecting your personal opinion into decisions that you made? I am sure you had cases appealed, like everyone else does, as a State court judge. And were the basis of any of the appeals that you had somehow injected your personal views on any subject?

Judge BOGGS. I am proud to say, no, Senator, not one time.

Senator KLOBUCHAR. All right. Thank you very much. I appreciate your answers.

Judge BOGGS. Thank you.

Senator HIRONO. [Presiding.] I will be chairing. Senator Flake?

Senator FLAKE. Well, thank you. I hate to keep this going, but, Judge Boggs, just quickly, in 2013 you received the Grass Roots Justice Award that was given by the Georgia Justice Project on behalf of the Criminal Justice Reform Council. According to the Georgia Justice Project, the Grass Roots Award was created in 2008 as a way to lift up the work of people and organizations whose efforts give voice or lend aid to the poorest in the community, and in doing so, complement the work that they do at the Georgia Justice Project.

Can you tell about the role you played in the Criminal Justice Reform Council and the work you did to receive that award?

Judge BOGGS. Thank you, Senator. That award was received by me on behalf of the Criminal Justice Reform Council. It was not an award specific to me, but an acknowledgment of the work of the entire council, which I co-chaired. I have had the pleasure, since I have been both a trial court judge and an appellate court judge, to work to improve the judicial system for the very people that are most frequently involved in it, particular in the criminal justice arena.

As a trial court judge, I developed and presided over our circuit's first felony drug court program. I believed that it was appropriate to try to assist people whose mental health issues or substance abuse issues were driving their felony criminal conduct.

I am proud to say that that program still exists. It has now expanded into a mental health court program, which I had always aspired to do had I stayed on that bench.

In 2011, the chief justice of the Georgia Supreme Court appointed me as a member of the Georgia Criminal Justice Reform Council, and as a member, we addressed adult felony criminal justice reform by doing a lot of the things, quite honestly, Senator, that this body is considering, both in the Smart Sentencing Act, the Recidivism Reduction Act, and Chairman Leahy's Safety Valve Act of 2013, where we have looked at mandatory minimums and provided a couple of safety valves. We have looked at programs that would assist people with substance abuse issues that are involved in felony criminal conduct so that we can assist them in the community.

We found that those programs that are evidence-based programs are very successful in reducing recidivism. They are much better at saving taxpayer money. And, importantly, they put people back with their families, and they restore people to a productive life.

Later, the Governor of the State of Georgia appointed me for the last 2 years to co-chair Criminal Justice Reform. In 2013, we addressed juvenile justice reform, developed a fiscal incentive grant program to incentivize local communities to treat juveniles in their community as opposed to very costly and unproductive, we think, out-of-home placements. And then last year, I co-chaired the council again, and we addressed the concept of re-entry. What do we do with the approximately 18,000 inmates that are being released from Georgia's prison system a year? How can we better equip them to be successful? How can we ensure public safety at a better rate than what we have been achieving? Our recidivism rates are currently roughly 30 percent, and that is unacceptable, particularly with respect to the cost to the taxpayers in our State.

And so with the charge we were given, I have been very fortunate in being part of developing a program, an evidence-based program in the State that will help these inmates while they are in prison learn job training skills that are transferable, help these inmates with substance abuse programs while in the system, provide a seamless transition from prison to the community, and then provide resources to the community to ensure that these citizens are productive, lawful, compliant with the law, but also productive citizens that can get their lives back. And I have been very proud to be a part of that, and I appreciate your question, Senator.

Senator FLAKE. Thank you. That is all.

Judge BOGGS. Thank you.

Senator HIRONO. Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Madam Chairman.

I would like to ask a couple of questions, if I can. Again, I regret that I was not here, Judge Boggs, to hear your answer to the question on essentially the bill that had online profiles to the number of abortions performed by a doctor over the prior 10 years. And I think you said it was a mistake. What exactly did you mean by it was a mistake?

Judge BOGGS. I do not think it would be appropriate, Senator, to post that information online. It would be a huge public safety risk for the physicians that are performing, lawfully performing abortions pursuant to the authority they have from the Supreme Court. And that is what I meant.

Senator FEINSTEIN. Okay. So you are saying essentially the bill was wrong.

Judge BOGGS. The amendment that was proposed was not——

Senator FEINSTEIN. The amendment, yes.

Judge BOGGS. It was not my amendment, but, yes, ma'am, the amendment was ill conceived, I believe, in hindsight.

Senator FEINSTEIN. Because I trust you are aware of the kind of violence that takes place around this issue. And, you know, there is a question, I think, among many of my colleagues whether an activist conservative judge can no longer—or an activist conservative can become a judge that is not an activist judge. I happen to believe that is possible. In a couple of cases, I have voted for an

Eleventh Circuit and a Fifth Circuit judge that I think have done very well when they said they would not continue to be activist.

I think when you come to a Federal court, it is really very important that the questions of constitutionality on an issue are active by someone who, as Judge Abrams has said, will follow precedent. And this Committee—I sat on it for 22 years—we have been acutely disappointed by the fact that people pledge themselves to stare decisis, and then they leave here and they take the oath as a judge, and you just watch and you say, "Where has it all gone?"

I do not want to cast a vote for someone where that happens, and so I want to ask you a couple of questions.

The issue of choice is extraordinarily important to me. I represent a State which is dominantly pro-choice. What would be your position on issues revolving around a woman's right to choose? Now, this is purposely an open question.

Judge BOGGS. Yes, ma'am. Thank you, Senator. My position on matters that might appear before me regarding a woman's right to choose would be faithfulness to the rule of law, faithfulness to stare decisis. And while I respect that there have been some bad experiences maybe by Members of this Committee, I think the best example I can give you is not what I say that I will do but evidence of what I have done as both a trial judge and an appellate court judge in my State, disposing of roughly 14,000 cases.

I think my record is the best evidence that I can separate any political or partisan or public policy position I may have from my ability to be an impartial decisionmaker. And you have my commitment that, if I am fortunate enough to be confirmed, I will follow the precedent of the U.S. Supreme Court on women's reproductive rights issues as I will on any other issue that they decide.

Senator FEINSTEIN. Well, you see, I listened to a couple of Supreme Court Justices say just that, and Senator Hirono was not here then, but there were long discussions on this, and then, bingo, it all changed. And it makes us feel very foolish to believe what we hear.

So, I mean, for me, I have to make a judgment whether you mean what you say or whether it will be just like the Supreme Court Justices who pledged to us diligent pursuance of stare decisis. And it just did not happen.

Now, let me ask you another issue, and Senator Klobuchar began it, and I would like to just do it in a slightly different way, and that is, *U.S. v. Windsor*. I am aware that a lawsuit is pending in the court to which you are a nominee, so I want to be very careful. But I am the main author on repealing the Defense of Marriage Act. I was one of 14 that voted against it in the 1990s, and we have 42 cosponsors. We lost Baucus, but we are getting close. And as you know, 17 States and the District of Columbia have essentially approved the right of marriage to same-sex partners.

What DOMA did was—family law—divorce, et cetera—is generally the preserve of State law, but in that case, they made it the preserve of Federal law and in so doing removed some 1,100 Federal rights from couples that are duly married in their State. So this involves estate tax rights, Social Security rights, and on and on and on.

So the question I have would be: If your State were to approve same-sex marriage or the Supreme Court on the *Windsor* case would repeal DOMA, how would you feel and how would you act as a judge?

Judge BOGGS. My personal feelings would be irrelevant to how I would act as a judge. You have my commitment that I would follow the decision in *Windsor*. I would follow any precedent from the Eleventh Circuit or the Supreme Court on marriage equality issues, as I would any issues. My personal opinions expressed over 10 years ago on that issue may or may not have changed. But whatever my personal beliefs are on that or any other issue, they have never been relevant to how I have decided cases.

With respect to your earlier question, Senator, my fundamental philosophy is that judges have an obligation to follow the law. You do not have to believe me necessarily when I say here today under oath—I hope you would—that I would follow precedent. But I hope you would also look to what I have done for the last 10 years that demonstrates a faithfulness to follow precedent in over 14,000 cases and 273 opinions I have authored on the Georgia Court of Appeals that have all been made available to the Committee.

I think it is a fundamental obligation of judges to follow stare decisis, but I recognize that maybe that is not always followed through with by some nominees.

Senator FEINSTEIN. Well, at least my vote depends on whether I believe that or not and for how long I can continue to believe it. And I think this is a very hard one.

The third issue, of course, is race. I think you were eloquent on the subject of the Confederate flag and what it means. It really means much more than just the material of that flag. It is a whole history, it is a whole set of beliefs, which are rather counter to America of today.

So my hope is—and I do not know. I hope to have a chance to talk with you more after this. But what I want you to know is for my vote I have to have certainty. And I do not know quite how to get it in view of this record. So I want to just put that on the table publicly.

Judge BOGGS. Thank you, Senator. I respect that position.

Senator FEINSTEIN. Thank you. My time is up.

Thanks, Mr. Chairman.

Senator BLUMENTHAL [presiding]. Thank you, Senator Feinstein.

Let me just close by going back to a line of questioning that I began—I know that some of my colleagues have pursued it—the amendment dealing with publicizing doctors' performances of abortion. And I know that you said that it was not your amendment, that you may have been—well, maybe I should just ask you: Were you unaware about the violence that was linked to performing abortions at that time? Dr. Barnett Slepian was killed in 1998. The FACE statute in New York was passed in 1994. Your amendment was voted on in 2001. There was clearly a very powerful history of violence linked to doctors' providing these services. And I find frankly incredible the idea that you would not understand that this amendment would put doctors at risk.

Judge BOGGS. Well, thank you for the question, Senator. Indeed, it was not my amendment. However, I did support it on the floor.

I have stated earlier in this hearing that I believed the amendment was ill conceived. I regret that I voted for it. I recognize the public safety risk now much more so than I did at that time.

Ultimately, I think, as a legislator casting thousands of votes for amendments and bills and making decisions in committee, it is not, I think, entirely unexpected that there may be some votes that I have cast throughout my judicial career that in hindsight looking back on them as a legislator trying my best to represent the people that I represented in a very staunchly pro-life district, I might have made some mistakes. I was not a perfect legislator. I am not a perfect judge. But looking back on it, I regret that vote, and I recognize fully the public safety risk.

Senator BLUMENTHAL. Well, I appreciate your disavowal of it. I think it is more than just another vote. This one was significant. We all cast votes here, and we are all responsible for every one of them, and some are more significant. This one strikes me as profoundly significant insofar as it involved not just a matter of constitutional rights, not just the rule of law, but physical safety for medical care providers, doctors who were providing constitutionally guaranteed rights to women vulnerable to the same kind of violence.

So I appreciate your comments on it, and I think it is something that we will have to take into account.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. I, too, have some questions for Judge Boggs, and I know that mainly it is—and the rest of you should feel good about that, is what I am saying. You should feel very happy about that.

Judge Boggs, I had the opportunity to meet you a couple weeks ago, and I enjoyed that meeting. And I believe that judges can decide things by—you know, in the proper way, even if they have had a record before of votes when they are in the legislature that are contrary to constitutional—what has been decided constitutionally. And I do not want a situation where we cannot ever have people confirmed because they have some public record on something. I think that is a bad tendency. I think that is a bad tendency to do that. So I think that—because a judge's role is to make decisions based on what the law is, and not take their personal opinions, although personal opinions or experience I think do shape how a judge—and it invariably has to. And Oliver Wendell Holmes said that, you know, experience is the law in many ways for judges.

So I think it is important, we have to factor it in, but we cannot establish a system here where we are just looking at things in the past, either at votes as a legislator or just opinions expressed by a professor, you know, who is writing scholarship. I think that is a dangerous thing that we are doing.

But I do think that we—I think it was good that we get to question you, and I think it is good that we get to actually meet you beforehand in private, and I did that. And when I talked to you about the Confederate flag or the Confederate war symbol, or battle emblem, rather, I guess, on the flag, you told me that you voted against changing the flag because your constituents wanted the right to vote on it on referendum. Isn't that right? Isn't that what you told me?

Judge BOGGS. I did tell you that, Senator, yes.

Senator FRANKEN. So then I look back, and it turned out you voted twice on this, and at the first time, in 2001, there was no referendum.

Judge BOGGS. Correct.

Senator FRANKEN. So I felt kind of, you know, a little odd about that because I went like, okay, well, that one there was no referendum. And so give me a chance—or I would like to give you a chance to explain that, because what I got out of our meeting was that you had—that your constituents overwhelmingly wanted a referendum on this, and yet there was no referendum attached the first time. So can you explain both votes?

Judge BOGGS. Well, the first vote, Senator, indeed there was no non-binding referendum presented in that legislation. My constituents overwhelmingly believed that a vote against that bill might subsequently result in a referendum that would offer them an opportunity to choose between the old flag and what subsequently we had changed to.

You know, I have expressed earlier my position on that. I do not know how to explain it any further. I will tell you, Senator, that it was an agonizing opportunity 17 days into my legislative career to make this balance between and address this challenge between voting the will of my constituents and voting what I believed conscientiously was the correct thing to do.

Subsequently, there was an opportunity to choose—to present to the public in Georgia a non-binding referendum that includes the post-1956 flag and the flag that we had changed to in 2001. I voted for that referendum. It provided my constituents with what I thought they wanted.

Subsequently, however, that did not pass, and there was another referendum to the one I think to which you refer, and voted the same way I did the first time.

Senator FRANKEN. Did you introduce a resolution in 2001 to have a referendum?

Judge BOGGS. No, sir. I never—I did not introduce a referendum. I did not author any of these bills. But I did not, likewise, introduce a referendum.

Senator FRANKEN. Okay. Well, you understand from my point of view where, when I asked about this, you said it was because your constituents overwhelmingly wanted a referendum.

Judge BOGGS. Yes, sir.

Senator FRANKEN. But there was no referendum on that vote, and you did not introduce anything about a referendum. Did you say anything about there bring a referendum? Was there anything in the public record about your saying there should be a referendum?

Judge BOGGS. No, sir, I never spoke then publicly about my position on the flag. I do not necessarily——

Senator FRANKEN. Okay, but you talked to me about it.

Judge BOGGS. Yes, sir.

Senator FRANKEN. And what you said to me was the way you voted was because your constituents overwhelmingly wanted to vote on it.

Judge BOGGS. Yes, sir.

Senator FRANKEN. And it does not seem like that vote had anything to do with a referendum.

Judge BOGGS. I understand the question, Senator, and appreciate it. I am trying to clarify it. I do not see the inconsistency that your question presumes. My constituents wanted to vote, we were not presented with an opportunity to vote, and that therefore represents an inconsistency. My position was, my constituents' position was to vote against any flag change that did not present them with an opportunity to vote on the flag. And 17 days into my career would not have probably been the time for me to introduce a nonbinding resolution on that matter.

Senator FRANKEN. Okay. But what you told me was that you voted because you wanted them to have a chance to vote, but nevertheless, there is no record of your saying that.

Judge BOGGS. Right.

Senator FRANKEN. And, actually there is a record of your telling a local newspaper that you voted to keep the flag with a Confederate—this is in 2001, that you voted to keep the flag with a Confederate symbol because your constituents overwhelmingly supported the flag.

Judge BOGGS. Yes, sir, I did say that, and I think that is consistent with what I have said today, and what I told you when we met.

Senator FRANKEN. It seems like that when we met, you said that—you did not say it was because your constituents overwhelmingly supported the flag. It was because your constituents overwhelmingly wanted to vote on it. And I think those are two different things. And it gave me the—it led me to the understanding, whether you intended it or not, that your only vote was a vote on whether to put that flag up for a vote, that that is what you wanted, that you voted against changing the Confederate flag on the Georgia State flag—it is like a bit part of the flag. It is like half the flag or something. And that was passed in 1956, and for no other—I mean, that was because of *Brown*. And so it really was about—this was not something that was part of the Georgia State flag after Reconstruction. It happened in 1956, 2 years after *Brown*.

So to me, this is a very important thing, and as I said, I do not think that we should be judging—or we should be confirming people based on public stuff they said before unless it is so antithetical to being a good judge. And I know you have been a judge for 10 years now, and I hear wonderful things about you. The thing that upsets me or that gave me some pause is that we had this meeting, and in the meeting I felt that you gave me a little slightly misrepresentation of your record on this by saying that the reason you voted against changing the Confederate flag being on the bill—on the State flag was that your constituents wanted a referendum on it. But there was no referendum tied to that 2001. You did not raise anything about a referendum. You did not say anything publicly about a referendum. And, in fact, you told a local newspaper that the reason you voted against it was because your constituents overwhelmingly want to keep that flag. And those are two different explanations to me. Those are two different things.

And so while I am very—you know, I am very disturbed about this tendency of us to vote against people because something in their past—because they were brave enough or acted out of conviction beforehand, I do judge by my meetings with people how forthright they are.

On this last thing, or on this thing that the Chairman brought up about the voting to put online the number of procedures, abortion procedures, that doctors had performed, you know, there was at that time these Nuremberg files that they talked about, which they put on the names of doctors. There had been doctors murdered for this. And yet you say that you were a State legislator then and that you were not aware of that at all?

Judge BOGGS. Senator, respectfully, I was not. That was not my amendment. The bill that was proposed to be amended was a Patient Right to Know Act that would have listed 20 other things about physicians, predominantly related to medical malpractice lawsuits and settlements.

Senator FRANKEN. But did it list procedures, other procedures?

Judge BOGGS. I do not recall, Senator, if it listed other procedures.

Senator FRANKEN. You do not recall.

Judge BOGGS. But I have indicated here today and I would have indicated previously that my position on that was ill conceived.

Senator FRANKEN. But you were a State legislator at the time but were not aware of any of the public safety issues that were involved around this whole issue?

Judge BOGGS. I was not, and I think that is probably attributable to the fact that this came as a floor amendment, not a bill, not something I had an opportunity to study, not something I had an opportunity to even speak to other legislators about. It happened on the floor of——

Senator FRANKEN. So this was simply off your radar, all this news around threats to doctors and bombings of clinics and those kinds of things? How old were you at the time?

Judge BOGGS. Thirty-seven.

Senator FRANKEN. You were 37 years old.

Judge BOGGS. Yes, sir.

Senator FRANKEN. And a State legislator.

Judge BOGGS. Yes, sir.

Senator FRANKEN. And you were not aware of any of that.

Judge BOGGS. No, sir.

Senator FRANKEN. Okay. Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you, Senator Franken.

Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. And I thank all of the panel members for being here.

Judge Boggs, you explained your vote regarding the Georgia flag, you explained your position regarding the online posting of abortion instances as basically, if I understand you correctly, reflecting your constituents' views and not your own conscience. Is that an accurate statement?

Judge BOGGS. With respect to the flag, yes, Senator, that is correct. With respect to at the time my position on reproductive rights issues, I was respecting also the will of my constituents, yes.

Senator HIRONO. For those of us who have served in State legislatures, we certainly know the challenges in when to express your constituents' views and when to vote your conscience. So as you think back, can you give an example of when you went against the will of your constituents and voted with your conscience?

Judge BOGGS. I can think of several instances, Senator. I supported reapportionment maps drawn by Democrats in the General Assembly during my term in the legislature that were not supported by the majority of the people in my district.

Senator HIRONO. Well, if you do not mind my interrupting, then considering that so many of the questions that we have been asking have to do with in the area of reproductive rights, civil rights, those areas, have you at any point when you were in the State legislature voted your conscience on matters that are related to the gist of the questions that we have been asking?

Judge BOGGS. Senator, I cannot think of any specific instance at this time. I would be happy to answer that question in writing after having been given an opportunity to review my legislative voting record.

Senator HIRONO. That is fair.

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

Senator HIRONO. You have voted a number of times as a legislator for bills and amendments that raise the question regarding your views on abortion. So I wanted to ask you, because you said that your personal view on abortions would not be appropriate for you to let us know, but do you agree with the Supreme Court's decision in *Roe v. Wade* that granted a constitutional right to a woman to have an abortion?

Judge BOGGS. Absolutely, and also in the *Casey* decision as well, and I would be bound by those if I were confirmed, and I pledge to you that I would faithfully follow that precedent.

Senator HIRONO. So until and if the U.S. Supreme Court changes its decision on *Roe v. Wade*, you will apply *Roe v. Wade* in the way that it should be applied?

Judge BOGGS. Without question, Senator.

Senator HIRONO. Thank you.

Now, you were also a vocal proponent as a State legislator on Georgia's constitutional amendment prohibiting same-sex marriage. You have also raised questions about judicial activism. I think the way you put it was you have concerns about judges issuing decisions that venture into policymaking. I take it that that is what you mean by judicial activism when they venture into policymaking that should be left to the legislature.

Judge BOGGS. Yes, Senator.

Senator HIRONO. So getting back to Georgia's constitutional amendment against same-sex marriage, you do know that that constitutional amendment is being challenged.

Judge BOGGS. Yes, sir.

Senator HIRONO. So if the constitutional amendment is struck down by the Federal court, would you consider that court to be engaging in judicial activism?

Judge BOGGS. I would not, but to——

Senator HIRONO. Why is that?

Judge BOGGS. To go back to my comments made in 2004 as a State legislator, candidly, I did believe that at that time. Ten years ago, my comments about judicial activism were that judges that were to determine same-sex marriage as constitutional would have been engaging in that. Looking back on that now, particularly with 10 years being a judge, 10 years being faithful to the obligation to follow stare decisis, 10 years of looking back on a career as a legislator and noting the notable differences between both roles, that is what I was referring to in 2004. But I do not believe that now, that that judge that might decide, in Georgia or otherwise, that that constitutional amendment is unconstitutional would be engaging in judicial activism.

Senator HIRONO. So would you consider judicial activism in the context of if it were a lower court that were doing things that did not comport with what you viewed as what the Supreme Court, the U.S. Supreme Court held, that that would be deemed judicial activism? For example, when our Supreme Court decided Lily Ledbetter or decided Citizens United, would you consider those decisions judicial activism? Because they did take a lot of people by surprise, to say the least.

Judge BOGGS. No, Senator, I would not, and the difference is my view of judicial activism as a legislator versus my view of judicial activism as a judge. I have grown in my job as a judge to respect the role of judges to decide those cases based on the facts presented before them. When I was a legislator, I was not a judge. I did not have an obligation to be faithful to the rule of law. I was not making decisions in that capacity. And so I think the crux of the distinction is determining what I was at the time I made those comments.

But certainly you are correct: Comments I made in 2004 were reflective of the sentiment you expressed.

Senator HIRONO. Except that as a judge, though, you will be confronted with cases before you that the decisions that you make on those cases could be deemed and described by State legislators, like you were, as engaging in judicial activism. And you can see that possibility as a Federal judge.

Judge BOGGS. Sure, Senator. Judges at all levels of court in my State or any State are routinely criticized for making unpopular decisions, maybe making decisions that legislators do not believe are appropriate. I have been in legislative hearings when that has happened, and I have been a judge where I have heard that happen.

The difference is a judge that shows faithfulness to the rule of law is going to apply precedent faithfully, and while it is true those issues, the equal rights issues, have not come before me on a regular basis as an appellate judge, the jurisdiction that I have on the court of appeals is broad. We heard appeals from every class of course, and in each instance I have been faithful to follow the rule of law and to apply precedent.

Senator HIRONO. So you could as a Federal judge engage in what some legislators may consider to be judicial activism based on the facts of the case and what is presented to you?

Judge BOGGS. I cannot presume what a State legislator might think about any decision I made——

Senator HIRONO. One like you.

Judge BOGGS [continuing]. as an appellate judge. Well, one like me very well may criticize me. But what I would say to that is that I have shown a dedication to the Code of Judicial Conduct in Georgia and never decided cases based on public clamor or fear of criticism. And I commit to you that I would continue to be faithful to those obligations.

Senator HIRONO. Just for clarification, then, as a State court judge, have you had cases dealing with marriage equality, equal protection for gays and lesbians? And I think you did note that you had one case involving a minor seeking an abortion. So as to marriage equality cases, equal protection of gays and lesbians, have you had as a State court judge any cases in those areas?

Judge BOGGS. I have had one, Senator, that it is an adoption case that the record is sealed, and I would not want to do anything to jeopardize the rights of the mother or—but I will tell you that I did have a case as a trial court judge several years ago wherein a woman who identified herself as a lesbian and identified her partner before me in chambers requested that I approve her adoption of a child from foster care.

Georgia law is particular with respect to juvenile court matters and particular with respect to adoptions, and we are—it is sacred that we maintain the fidelity of our laws in that those records are sealed. I do not know what she may have told family or others in her community concerning her sexual orientation. It is irrelevant to me. But I do know that I was presented with that case by a lawyer that told me that he had presented that case to our circuit's chief judge and our circuit's chief judge refused to hear that case. So he came to me, the junior judge in the circuit. And I heard the case. I listened to her evidence, her fitness to be an adoptive parent. I listened faithfully and impartially to the evidence presented by the Department of Family and Children's Services, and I approved the adoption.

And as I have said routinely, I am faithful to follow the law. That was the appropriate decision to make in that case, not because of her sexual orientation but because the facts warranted it. She was capable of taking care of this child. She had shown an ability to take care of the child through the foster care program. DFACS had indicated that every time they conducted a home evaluation, her home was clean and she was capable of taking care of the child. I handled that case as I would for any other petitioner concerning adoptions.

Senator HIRONO. Thank you. My time is up. Thank you.

Senator BLUMENTHAL. Thank you, Senator Hirono.

Senator Coons.

Senator COONS. Thank you, Senator Blumenthal. I would like to thank all of the nominees who appear before us this morning. Thank you for the opportunity to join what I understand has been a vigorous exchange with other Members of the Committee, and I would like to thank Senator Blumenthal for chairing today.

First, if I might, I would just like to ask each of you in turn if you would offer what comments you wish on what role you think you would have as a member of the Federal judiciary in ensuring equal access to justice and ensuring fair and balanced treatment of all litigants who might appear before you, and what in your experi-

ence gives us some confidence that you will make that a priority in your service, if we might, Ms. Abrams, welcome, and from you to your left, that would be wonderful. Thank you.

Ms. ABRAMS. Thank you, Senator. As I have stated, I believe that my role as a judge, if I am confirmed, will be to fairly and impartially apply the applicable law to the individual facts of each case, and that would necessitate that I be fair and impartial with each person that comes before me.

I believe that throughout this process people have talked to lawyers who have appeared opposite me, and I think that my interaction with them, my attempt to be fair in all cases, even as a prosecutor, to see the full picture, not disregarding my duty as a prosecutor and as an advocate for the Government, but to be fair and to be considerate of what was going on, and I believe that lawyers who have worked with me on the other side, and I believe judges whom I have appeared before would say that I do attempt to be fair and balanced, and I would carry that into being a district court judge if I am confirmed.

Senator COONS. Thank you.

Judge Boggs.

Judge BOGGS. Thank you for the question, Senator. Equal access is kind of a broad topic. I view equal access to the court as being a model of efficiency, and that is that the judge has an obligation to move cases through the system so that cases do not languish, so that litigants have an opportunity to bring closure to their cases. The efficiency of the judicial system is bent on that, and I think it is necessary. You have corporate litigants that have no closure to cases because cases are not moving, and so equal access means a lot of things. It means that the judge should remain active—to me, the judge should remain active in the case, move cases forward, set reasonable deadlines, but also move the court into a system that is more efficient, and that may mean—for example, when I was a trial court judge, I dealt with the drug court program to move some of the felony cases off the original docket, the main docket, criminal docket. It also may mean that—I supported pretrial diversion programs. I supported mandatory mediation in civil trials where juries had been requested—all models built on allowing equal access by improving how quickly people could get to court.

With respect to ensuring everyone is treated fairly, I think the best evidence I could give you of that would be my record as a trial court judge and appellate court judge, where I have an unblemished record of having ensured that everybody that appears before me is treated equally, with an unbiased and an impartial application of the law to the facts of their case. And that is what has prepared me, I think, to model that if I were fortunate enough to get confirmed on the district court.

Senator BLUMENTHAL. Thank you, Your Honor.

Mr. Cohen.

Mr. COHEN. Senator, if I am fortunate enough to be confirmed, the oath that I would take provides that I would administer justice without respect to person and to equal rights to the poor and to the rich, and I would take that very seriously. I think that is a cardinal

fact that any Federal judge has to consider when he or she is presiding over a case.

I think it is also important, just looking at my record, a lot of us attorneys in private practice have done pro bono work, and I certainly have done some with respect to working through the Atlanta Bar Association's eviction defense program and representing people who are being unjustly thrown out of their apartments. And also for many years I served on a board of a wilderness group that provided for alternative sentencing for juveniles that, frankly, should not have gone into a juvenile detention facility but deserved to go to a program where they can get education and work to keep themselves out of the adult prison system down the road.

So also as a district judge, we have the Federal Defender Program in the Northern District of Georgia, and I, of course, would, in accordance with the rules in the Northern District, whenever a defendant came before me, make sure that that defendant had the opportunity not only for counsel but obviously to notify the Federal Defender Program if they could represent that person.

Senator COONS. Thank you.

Ms. May.

Ms. MAY. Thank you, Senator Coons. Throughout my time in private practice, I have mainly been handling plaintiff's litigation. So in terms of my work experience, I oftentimes represent people that are not familiar with the court system and have to kind of take them through what is going to happen and educate them about the civil system. So from that standpoint, I have experience in those areas.

Along with my colleagues, I do believe the most important part of equal access is to treat everyone fairly before the law, no matter what their circumstances are. But there are some concrete activities that the judges can do to make that more likely. For example, courts on their websites can provide links to different resources that pro se people can utilize. Judges in their standing orders can provide more detail for folks represented pro se so they can learn more what is expected of them in the courtroom.

I also believe a judge has a responsibility to encourage pro bono work and to be out in the community and speaking on issues about equal access to the courts. And in my own career, I have been very active in pro bono activities.

Thank you.

Senator COONS. Thank you. Ma'am.

Judge ROSS. Thank you. You cannot see my nameplate.

Senator COONS. Yes, forgive me.

Judge ROSS. Eleanor Ross. That is fine, Senator. Thank you so much.

Senator COONS. Forgive me.

Judge ROSS. That is no problem at all. As a State court judge, I have concerned myself very much with equal access. First of all, we do have a lot of pro se litigants in State court, so it is important to assure that they know all of the resources available to them, including the services of the public defender and legal aid as well as the law library.

Also, in terms of fairness, I have demonstrated as a State court judge that I am very fair and respectful to the litigants who appear

before me, whether they are pro se litigants or the most well versed, well-known attorneys.

So it is a pattern that I have demonstrated time and time again as a State court judge, and if I am fortunate enough to be confirmed as a district court judge, I would definitely continue it.

Senator COONS. Thank you, Your Honor.

Judge ROSS. Thank you, sir.

Senator COONS. Judge Boggs, if I might, I have a few questions rooted in your record that I wanted to get to, if I might.

Judge BOGGS. Yes, sir.

Senator COONS. You cast a vote when a member of the Georgia Legislature to approve posting profiles of abortion doctors online, and there has been some exchange about that. What, in your opinion, motivated your vote for that measure? And how could I understand that measure as being anything other than an intent to burden a woman's right to choose?

Judge BOGGS. Thank you for the question, Senator Coons. I was motivated by a very strong desire to represent the will of my 38,000 constituents in south Georgia who were predominantly pro-life. Those issues were important to my constituents. That amendment, albeit an amendment that I did not have very much time to consider and for which I have expressed regret for not having been more considerate of that vote, in the end of the day the motivating factor for my vote on pro-life issues in general was motivated by my desire to represent my constituents.

Senator COONS. You in 2012 completed a judicial questionnaire in your application to the court of appeals on which you now serve, and you stated, and I think I quote, "The judiciary continues to endure criticism, fairly earned in some cases, of abrogating their constitutionally created authority by issuing decisions that venture into policymaking." This is the question of activism by the judiciary.

If you could, just help me understand. Did you believe the Georgia Supreme Court was being inappropriately activist when they struck down Georgia's sodomy law in *Powell v. State* or the U.S. Supreme Court in *Lawrence v. Texas*? Were they being inappropriately activist in the way you detailed there?

Judge BOGGS. No, sir.

Senator COONS. Could you name three or four cases where you believed the judiciary has fairly earned criticism for, as you put it, abrogating their constitutionally created authority? What cases did you have in mind?

Judge BOGGS. At the time I made not necessarily those comments but other comments on the floor of the House as a legislator, I had in mind judges that were declaring same-sex marriage as constitutional, candidly. That is what I thought as a legislator. That is the cases that I was referring to, those States where judges had declared that law constitutional.

Looking back on that, particularly now, 13 years later, and particularly now, with the benefit of having been a judge for 10 years, the concept of activist judge that I had as a legislator is no longer prevalent in my mind-set.

Senator COONS. You said, I believe, earlier today in an exchange with Senator Blumenthal that it would be inappropriate under

Georgia's Canon of Judicial Ethics, or perhaps under the Federal Canon of Judicial Ethics as well, to convey to this Committee where you stand on particular issues, yet those same canons would have applied to you as a judicial candidate in 2004 when you made a public announcement in a candidate forum about where you stood on issues like same-sex marriage. Was that a violation of the Canon of Judicial Ethics?

Judge BOGGS. I do not know. I would leave that to the Judicial Qualifications Commission in Georgia. I will tell you that, in looking back on those comments made while I was still a legislator but also seeking the job of judge and, candidly, probably after I had qualified for the position of judge, I regret that I was not more articulate and artful in crafting an explanation to my constituents that reflected my understanding of the role of a judge, looking back on it.

Senator COONS. The Georgia Canon of Judicial Ethics states a judge or a candidate for election to judicial office shall not make a contribution to a political organization, and a political organization is defined as "a political party or group the principal purpose of which is to further the election of a candidate to office."

Would you consider Georgia Conservatives in Action to be a political organization under that definition?

Judge BOGGS. Senator, I would have to look at it. I am not—I am familiar with that organization, but not enough with regard to tax status and otherwise to determine if they meet——

Senator COONS. You are familiar with it because your campaign committee perhaps made a contribution to it in September 2012, and my understanding is that Georgia Conservatives in Action endorses political candidates, including a candidate for the U.S. Congress. That is an issue that is of some concern to me in terms of crossing, I think, a line that is fairly clear.

Canon 7-A of the Georgia Canon of Judicial Ethics also says that a candidate shall not publicly endorse a candidate. When did you announce your candidacy for superior court judge?

Judge BOGGS. Senator, I do not recall. It would have been sometime in 2004.

Senator COONS. And at that point, were you a member of the Bush-Cheney Democrats for Bush National Steering Committee?

Judge BOGGS. To my knowledge, I have never been a member of that committee. It was only throughout this process that I discovered I had been listed, and I believe my listing, without my permission or even knowledge, was by virtue of me having attended a meeting prior to President Bush's fundraiser in Georgia. I did not attend the fundraiser. I did not make any political contribution. I did go back and having now seen that I was a member of that committee, 13 years later, and realized that everybody that attended that, with the exception of one member, was listed. Again, it was done without my authority. I had no knowledge of it.

And as to your comments back on Conservatives in Action, at the time I made a contribution from my campaign, judicial campaign, to Conservatives in Action, I had no knowledge of their sponsorship or endorsement of any candidates for elective office.

Senator COONS. I appreciate your answers to these questions. I may have others for the record, and, Mr. Chair, I appreciate your

forbearance in the time I have taken. I do think there is a voluminous record here that well bears consideration. I appreciate your testimony today. And to the rest of the panel, thank you very much for your testimony as well.

Senator BLUMENTHAL. Judge Boggs, the questions that you have been asked by Senator Coons lead me to one last set of questions, and I promise they will be brief.

On the topic of judicial activism and the right to privacy, you may recall in February 2004, in your capacity then as a State legislator, you spoke on the floor of the Georgia House of Representatives in favor of a resolution calling for a proposed constitutional amendment that would have banned same-sex marriage. And in support of that resolution, you said to your colleagues that they should recognize the "dangers" posed by "activist judges and mayors operating in derogation of current State law." And you cited as an example of that activism and derogation of State law a decision by the Supreme Court of the State of Georgia in the 1998 case of *Powell v. State*. You may recall in that case the Georgia State Supreme Court struck down the Georgia sodomy statute that imposed sentences of 20 years to people who engaged in consensual sex in the privacy of their own homes.

And my question to you is: Number one, do you think the Georgia Supreme Court wrongly decided *Powell* in striking down those laws?

Judge BOGGS. I do not now, no, sir.

Senator BLUMENTHAL. You did then but you do not now?

Judge BOGGS. My views have changed and my roles have changed. As a legislator, talking about activist judges was quite markedly different than what I believe now, yes.

Senator BLUMENTHAL. And you would not now support a constitutional amendment banning same-sex marriage, I take it.

Judge BOGGS. No, sir. I mean, my position on that issue, whatever it might have been then and whatever it is now, though, however, has no import whatsoever on how I decide cases.

Senator BLUMENTHAL. In that speech in 2004, you cited Judge Carley's dissent in *Powell*, and you cited his dissent as evidence of the potential dangers of judicial activism. And I wonder whether you would agree now with Justice Carley, who wrote in that dissent, "A constitutional right to privacy obviously cannot include the right to engage in private conduct which was condemned as criminal at the very time that the Constitution was ratified." I will repeat it for you.

Judge BOGGS. Please.

Senator BLUMENTHAL. "A constitutional right to privacy obviously cannot include the right to engage in private conduct which was condemned as criminal at the very time that the Constitution was ratified." You cited that dissent with approval in support of a view that, in effect, *Powell* was wrongly decided. And I would just point out that Georgia had many statutes, including criminalizing sexual relationships in marriages between people of different races at the time the Constitution was passed, and Justice Carley's dissent would indicate that the right to privacy would cover none of those kinds of private consensual acts now.

Judge BOGGS. I think to the extent that you are asking me to agree or disagree with my opinions about Justice Carley's dissent, I have not read that dissent in 10 years. My personal views on that are irrelevant, but I would say this: To the extent his opinion has been conflicted by decisions from the Supreme Court, I would follow the decisions of the Supreme Court. And while I have respect for Justice Carley, a very good friend of mine, formerly on the Georgia Supreme Court, my role as judge would be to apply precedent.

Senator BLUMENTHAL. Thank you.

You know, I want to close by thanking all of you as potential and likely district court judges because you are really going to serve as the protectors and guardians of our Nation's legal conscience, and I am reminded of that fact, thinking of Judge Frank Johnson, who was invoked—his memory was invoked by Senator Durbin. You know Judge Johnson's history. He was more than an icon. He was really a hero. And I think he is the reason that many of us chose this career, chose to be trial lawyers or prosecutors, because of his conscience and conviction and courage standing up to ostracism, physical threats, and violence.

And so I hope that you will take this responsibility—I know you will take it seriously because you are truly going to be the voice and face of justice for the people who come into your courtrooms. So I want to thank you for the long hours that you will spend, your willingness to serve, your families again who are here today, your friends who have supported you, to the Senators of your State, Senators Chambliss and Isakson, for their leadership in making your nominations possible, and to the President of the United States for his faith in your ability to serve.

And with that, I am going to adjourn this hearing. The record will be kept open for 1 week, and thank you all for attending.

[Whereupon, at 12:10 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, May 13, 2014
Dirksen Senate Office Building, Room 226
9:30 a.m.

Panel I

Julie E. Carnes, to be a United States Circuit Judge for the Eleventh Circuit

Jill A. Pryor, to be a United States Circuit Judge for the Eleventh Circuit

Panel II

Leslie Joyce Abrams, to be a United States District Judge for the Middle District of Georgia

Michael P. Boggs, to be a United States District Judge for the Northern District of Georgia

Mark Howard Cohen, to be a United States District Judge for the Northern District of Georgia

Leigh Martin May, to be a United States District Judge for the Northern District of Georgia

Eleanor Louise Ross, to be a United States District Judge for the Northern District of Georgia

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Julie Elizabeth Carnes
   Julie Carnes Cowen
   Julie Carnes Campanella

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.

   United States District Court for the Northern District of Georgia
   75 Spring Street, Southwest, Suite 2167
   Atlanta, Georgia 30303

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

   1950; Atlanta, Georgia

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, University of Georgia School of Law; J.D. (*magna cum laude*), 1975
   1968 – 1972, University of Georgia; A.B. (*summa cum laude*), 1972

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.

   1992 – present
   United States District Court for the Northern District of Georgia
   75 Spring Street, Southwest, Suite 2167
   Atlanta, Georgia 30303

Chief United States District Judge (2009 – present)
United States District Judge (1992 – present)

1990 – 1996
United States Sentencing Commission
One Columbus Circle, Northeast, Suite 2-500
Washington, D.C. 20002
United States Sentencing Commissioner

February – July 1989
United States Sentencing Commission
One Columbus Circle, Northeast, Suite 2-500
Washington, D.C. 20002
Special Counsel

1978 – 1990
United States Attorney's Office for the Northern District of Georgia
75 Spring Street, Southwest
Atlanta, Georgia 30303
Appellate Chief, Criminal Division (1982 – 1990)
Assistant United States Attorney (1978 – 1990)

1975 – 1977
United States Court of Appeals for the Fifth Circuit
18 Greenville Street
Newnan, Georgia 30263
Law Clerk to Judge Lewis R. Morgan

Summer 1974
Troutman Sanders LLP
600 Peachtree Street
Atlanta, Georgia 30308
Summer Associate

Summer 1973
C&S National Bank (now defunct)
Atlanta, Georgia
Clerical work

August 1972 – June 1973
University of Georgia Housing Department
Boggs Hall Dormitory
Athens, Georgia 30602
Resident Assistant

Summer 1972
United States Office of Economic Opportunity (now defunct)
Atlanta, Georgia
Clerical work

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

   I have not served in the military. I was not required to register for selective service.

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

   Professional:

   University of Georgia School of Law Portrait Ceremony (law school commissioned and hung my portrait) (2013)
   Atlanta Business Chronicle: Who's Who in Accounting and Law (2009 – 2013)
   University of Georgia Law School Distinguished Service Scroll Award (1998)
   University of Georgia Law School Dean Selection Committee (1998)
   University of Georgia Presidential Selection Committee (1997)
   United States Department of Justice, Director's Award for Outstanding Performance as an Assistant United States Attorney (1988)
   United States Attorney's Office, Special Achievement Award (1988)

   Academic:

   University of Georgia School of Law, Bryant T. Castellow Scholar (1972 – 1975)
   University of Georgia Law Review, Editorial Board Member (1973 – 1974)
   University of Georgia National Merit Scholar (1968 – 1972)
   University of Georgia Phi Beta Kappa (1972)
   University of Georgia Zodiac Club (top twelve women academically in junior class) (1972)
   University of Georgia Honors Program (1968 – 1972)
   WAGA-TV College Scholarship (given to the high school senior in the greater Atlanta metropolitan area who had demonstrated outstanding writing ability) (1968)
   National Council of Teachers of English Writing Competition (one of ten Georgia winners) (1968)

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

Atlanta Bar Association
Federal Bar Association
Executive Committee, Honorary Member (2009 – present)
Eleventh Circuit Judicial Council
Executive Committee of Judicial Council (2009 – present)
Eleventh Circuit Pattern Jury Instruction Committee (1996 – 2002)
Eleventh Circuit 2007 Judicial Conference Planning Committee
Chair (2005 – 2007)
Eleventh Circuit 2005 Judicial Conference Planning Committee (2004 – 2005)
Judicial Conference of the United States, Ad Hoc Advisory Committee on Judiciary Planning, (2008 – 2010)
Judicial Conference of the United States, Ad Hoc Advisory Committee, Staffing Formula for Death Penalty Law Clerks (2009 – 2010)
Judicial Conference of the United States Committee on Criminal Law (2005 – 2010)
Chair (2007 – 2010)
Lawyers Club of Atlanta
State Bar of Georgia

10. **Bar and Court Admission**:

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

Georgia, 1975 (inactive)

I took inactive status after my appointment as a federal district court judge.

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.

Georgia Superior Courts (1975)
United States District Court, Northern District of Georgia (1978)
United States Court of Appeals for the Fifth Circuit (1978)
United States Court of Appeals for the Eleventh Circuit (1981)
Georgia Supreme Court (1982)
United States Court of Military Appeals (1989)

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which

you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

University of Georgia School of Law Board of Visitors (1991 – 1994)
University of Georgia School of Law Dean Selection Committee (1998)
University of Georgia Lumpkin Inn of Court (1992 – present)
University of Georgia Presidential Selection Committee (1997)

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.

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.

I have provided those reports, memoranda, and policy statements that are public.

Strategic Plan for the Federal Judiciary, Judicial Conference of the United States, September 2010. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, September 14, 2010. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, September 2010. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, March 16, 2010. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, March 2010. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, September 15, 2009. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, September 2009. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, March 17, 2009. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, March 2009. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, September 16, 2008. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, September 2008. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, March 11, 2008. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, March 2008. Copy supplied.

Report to the Congress: Sex Offenses Against Children, United States Sentencing Commission, June 1996. Copy supplied.

Report to the Congress: Adequacy of Federal Sentencing Guidelines Penalties for Computer Fraud and Vandalism Offenses, United States Sentencing Commission, June 1996. Copy supplied.

Proceedings of the Second Symposium on Crime and Punishment in the United States: Corporate Crime in America: Strengthening the "Good Citizen" Corporation, United States Sentencing Commission, September 7-8, 1995. Copy supplied.

The Crack/Cocaine Penalty Ratio: Recommendations to Congress by United States Sentencing Commission. Dissent by Judge Deanell R. Tacha, joined by Judge Julie E. Carnes and Commissioner Michael Goldsmith, to Sentencing Commission's vote to recommend that crack and powder cocaine ratios be made equal. Federal Sentencing Reporter: Vol. 7, No. 6, May/June 1995, pp. 315-321. Copy supplied.

Report to the Congress: Adequacy of Penalties for the Intentional Exposure of Others, through Sexual Activity, to the Human Immunodeficiency Virus, United States Sentencing Commission, March 1995. Copy supplied.

Report to the Congress: Adequacy of Penalties for Fraud Offenses Involving Elderly Victims, United States Sentencing Commission, March 1995. Copy supplied.

Report to the Congress: Analysis of Penalties for Federal Rape Cases, United States Sentencing Commission, March 1995. Copy supplied.

Special Report to the Congress: Cocaine and Federal Sentencing Policy, United States Sentencing Commission, February 1995. Copy supplied.

Plea Negotiations Under the Federal Sentencing Guidelines: An Empirical Examination of the Post-*Mistretta* Experience, December 1994. I do not have a copy. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

Report to Congress on the Maximum Utilization of Prison Resources, June 30, 1994. I do not have a copy. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

Analysis of Sentencing-Related Provisions of S. 2305 and H.R. 3371 Conference Report Crime Bills, United States Sentencing Commission, Spring 1992. Copy supplied.

Supplementary Report on Sentencing Guidelines for Organizations, United States Sentencing Commission, August 30, 1991. Copy supplied.

Special Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, United States Sentencing Commission, August 1991. Copy supplied.

Supplementary Report to the Congress: Statutory Penalty Review Project, February 13, 1991. I do not have a copy. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

Annual Reports, United States Sentencing Commission, 1990 – 1996. Copies of 1990, 1991, 1992, 1995, and 1996 Annual Report are supplied. I do not have copies of the 1993 or 1994 Annual Reports. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

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.

August 13, 2013: Letter to Vice-President Joseph R. Biden, Jr., co-signed by eighty-seven chief federal district judges, concerning the impact of sequestration. Copy supplied.

January 10, 2013: Letter to David Hofstetter, General Services Administration, conveying comments of the United States District Court for the Northern District of Georgia on the Multimodal Passenger Terminal (MMPT) Evaluation of Alternatives (EOA) document. Copy supplied.

January 10, 2013: Letter to David Hofstetter, General Services Administration, conveying comments of the United States District Court for the Northern District of Georgia on the environmental impact of the MMPT project. Copy supplied.

August 31, 2012: Letters to Senators Saxby Chambliss and Johnny Isakson concerning the MMPT project. Copy supplied.

May 17, 2012: Letter to David Hofstetter, General Services Administration, conveying comments of the United States District Court for the Northern District of Georgia on the Multimodal Draft Scoping Document. Copy supplied.

September 13, 2010: Letter on behalf of Criminal Law Committee to Honorable William K. Sessions, Chairman, United States Sentencing Commission, opposing giving retroactive effect to Amendment 5. Copy supplied.

August 23, 2010: Letter on behalf of Criminal Law Committee to Judith W. Sheon, Staff Director, United States Sentencing Commission, opposing giving retroactive effect to Amendment 5. Copy supplied.

July 14, 2009: Testimony on behalf of the Criminal Law Committee of the Judicial Conference before the United States House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism and Homeland Security, concerning mandatory-minimum sentencing statutes. Written statement and transcript of testimony supplied.

I served on the Judicial Conference of the Committee on Criminal Law of the Judicial Conference of the United States from 2005 to 2010, becoming the chair in mid-November 2007. During the period in which I was a member, Judge Paul Cassell served as Chair and likely submitted letters, briefs, and periodic reports on behalf of the Committee. Although I did not personally prepare these documents, I do recall voting as a member to approve the submission of one significant letter to the United States Sentencing Commission, which I have supplied below.

> November 2, 2007, Letter to United States Sentencing Commission regarding Comments on Retroactivity of Crack Cocaine Amendments. Copy supplied.

1990 – 1996: While I was a United States Sentencing Commissioner, I attended regular public meetings to discuss the Sentencing Guidelines. Minutes have been supplied where available.

February 19, 1992: United States Senate, Committee on the Judiciary, Confirmation Hearing on Nomination to be a United States District Judge for the Northern District of Georgia. Transcript supplied.

June 15, 1990, United States Senate, Committee on the Judiciary, Confirmation Hearing on Nomination as a United States Sentencing Commissioner. Transcript supplied.

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

This list represents the presentations I have identified through searches of my files and Internet databases. I have tried to list all such events that I can remember, but given the length of my legal career, it is unlikely that I have been able to identify all such presentations.

January 2009 – present: As chief judge of the Northern District of Georgia, I have been called upon to perform ceremonial duties, which have included presiding over numerous judicial and bar investitures and retirement ceremonies, as well as welcoming various visitors and groups to our courthouse and city. I have not listed such ceremonies except for those where I provided substantive remarks.

November 19, 2013: Presided over the investiture of Jere W. Morehead as President of the University of Georgia, Athens, Georgia. Notes supplied.

November 8, 2013: Panelist, "Federal Practice Rules Update: The 'Ground Rules' Have Changed," Federal Bar Association, Atlanta, Georgia. Notes supplied.

April 19, 2013: Portrait ceremony in my honor at the University of Georgia, Athens, Georgia. Video recording of my remarks is available at: http://digitalcommons.law.uga.edu/lectures_pre_arch_lectures_other/73.

April 10, 2013: Panelist, "Women in the Profession: Federal Judicial Panel," State Bar of Georgia, Young Lawyers Division, Atlanta, Georgia. Although I have no notes, transcripts or recordings, questions asked of the panel are supplied.

May 30, 2012: Opening Remarks, "National Seminar for Federal Defenders," Federal Defenders Program, Atlanta, Georgia. Notes supplied.

May 2012: I made remarks for a video presentation to the Honorable George Carley, on the occasion of his retirement from the Georgia Supreme Court, Atlanta, Georgia. Remarks supplied.

December 2011: Guest Speaker, Annual Holiday Tea, co-sponsored by The Women in the Profession Committee, Young Lawyers Division, State Bar of Georgia and by the Atlanta Bar Association, Atlanta, Georgia. I offered brief remarks concerning my career and professional background. I have no notes, transcript, or recordings. The address for the Atlanta Bar Association is 229 Peachtree Street, Suite 400, Atlanta, Georgia 30303

July 20, 2011: Welcoming Remarks, Dinner, Annual Convention, Federal Magistrate Judges Association, Atlanta, Georgia. Notes supplied.

July 15, 2010: Speaker concerning current issues being addressed by Criminal Law Committee, Chief United States Probation Officer Conference, Philadelphia, Pennsylvania. Notes supplied.

June 24, 2010: Speaker, Chief United States Probation Officer Advisory Group, Atlanta, Georgia. The presentation concerned the ongoing efforts of the Criminal Law Committee and the Administrative Office of Courts to conduct and implement a work measurement study for probation officers. I have no notes, transcript, or recordings. The address for the Office of Probation and Pretrial Services Office, Administrative Office of the U.S. Courts is One Columbus Circle, Northeast, Room 4-325,Washington, D.C. 20544.

January 22, 2010: Speaker, Investiture of Honorable Beverly B. Martin to the Eleventh Circuit United States Court of Appeals, Atlanta, Georgia. Remarks supplied.

October 30, 2009: Speaker concerning current issues being addressed by Criminal Law Committee, Eleventh Circuit District Court Workshop, Ponte Vedra, Florida. Notes supplied.

August 5, 2009: Speaker concerning current issues being addressed by Criminal Law Committee, Eighth and Tenth Circuit Judicial Conference, Duluth, Minnesota. Notes supplied.

May 28, 2009: Panelist, The Georgia Association of Black Women Attorneys' Annual Judicial Reception, Atlanta, Georgia. The panel, which included a Georgia Court of Appeals judge and me, was asked about our backgrounds and experiences as judges. I have no notes, transcript, or recordings. The address for The Georgia Association of Black Women Attorneys is Post Office Box 4381, Atlanta, Georgia 30302.

June 30, 2008: Speaker concerning current issues being addressed by Criminal Law Committee, Chief United States Probation Officers Conference, Chicago, Illinois. Notes supplied.

June 6, 2008: Speaker, Georgia Bar Association honoring Ed Tolley, Georgia Bar Association, Amelia Island, Florida. Remarks supplied.

February 2008: Guest Speaker, Third Annual Georgia Law Alumnae Evening, Atlanta, Georgia. I spoke about my background and professional experiences. I have no notes, transcript, or recordings. The address for the Office of Alumni Affairs for the University of Georgia Law is 225 Herty Drive, Athens, Georgia 30602.

January 17, 2008: Panelist at conference in Charlotte, North Carolina concerning impact of Sentencing Commission's decision to make its crack cocaine amendment retroactive. Notes and press coverage supplied.

October 2007: Guest Speaker, St. Crispin's Day Criminal Defense Seminar, Atlanta, Georgia. Notes supplied.

February 2007: Speaker, Investiture of the Honorable Judge Dan Pelletier, Atlanta, Georgia. Remarks supplied.

October 3, 2006: Speaker, Atlanta Bar Association Award Luncheon Honoring District Court Judge Orinda Evans, Atlanta Bar Association, Atlanta, Georgia. Remarks supplied.

July 24, 2006: Moderator, Panel Discussion on Legislative Responses to *Booker*, Federal Sentencing Institute, sponsored by the Federal Judicial Center, Washington, DC. Outline supplied.

April 2004: Speaker, Atlanta Bar Award to Judge Charles L. Carnes, Atlanta, Georgia. I introduced the honoree, my father, and offered remarks concerning his personal and professional background. I have no notes, transcript or recordings. The address for the Atlanta Bar Association is 229 Peachtree Street, Suite 400, Atlanta, Georgia 30303.

May 2003: Speaker, Investiture of the Honorable Judge Janis Gordon, Atlanta, Georgia. Remarks supplied.

February 11-12, 2003: Panelist on panel of three federal judges, Duke University School of Law, Durham, North Carolina. The topic was the duties and value of a federal clerkship. I have no notes, transcript, or recordings. The address for the Duke University School of Law is 210 Science Drive, Durham, North Carolina 27708.

November 15, 2002: Panelist, "Problems in Depositions," University of Georgia Conference on Problems in Discovery and Professionalism, Athens, Georgia. I have no notes, transcript, or recordings. The address for the University of Georgia School of Law is 225 Herty Drive, Athens, Georgia 30602.

May 2001: Speaker, Bleckley Award to Judge Charles L. Carnes, Atlanta, Georgia. Notes supplied.

2001: Speaker, Portrait Ceremony for Senior Judge Lewis R. Morgan, United States Court of Appeals for the Eleventh Circuit, Newnan, Georgia. Remarks supplied.

November 14, 2000: Speaker on potential Sentencing Guidelines amendments, Eleventh Circuit district court workshop, Amelia Island, Florida. I have no notes, transcript, or recordings. The address for the Eleventh Circuit is 56 Forsyth Street, Northwest, Atlanta, Georgia 30303.

October 12-13, 2000: U.S. Sentencing Commission Symposium on Federal Sentencing Policy for Economic Crimes and New Technology Offenses, co-sponsored by the U.S. Sentencing Commission, Committee on Criminal Law of the Judicial Conference of the United Sates, and American Bar Association – White Collar Crime Committee, Arlington, Virginia. I participated as the lead facilitator in a breakout session entitled, "Revising the Definition of Loss," for which minutes are supplied, and as a panelist in Plenary Session IV, entitled, "Major Issues Related to the Determination of 'Loss' as a Measure of Offense Seriousness and Offender Culpability, for which minutes are supplied.

May 1999: Panelist, National Seminar on the Federal Sentencing Guidelines, co-sponsored by the United States Sentencing Commission, Clearwater, Florida. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

1998: Recipient of University of Georgia Law School Distinguished Service Scroll Award, Atlanta, Georgia. I have no notes, transcript, or recordings, but press coverage is supplied. The address for the University of Georgia School of Law is 225 Herty Drive, Athens, Georgia 30602.

1993: Remarks to a local bar group concerning tips to trial attorneys, United States District Court, Atlanta, Georgia. Notes supplied.

May 1992: My investiture as a United States District Court Judge for the Northern District of Georgia, Atlanta, Georgia. Transcript supplied.

February 1992: Panelist, White Collar Crime Seminar, ABA, Section of Criminal Justice, San Francisco, California. The panel engaged in a discussion concerning the Sentencing Guidelines. I have no notes, transcript, or recordings. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

October and December 1991: Outline for Corporate Counsel Institute, United States Sentencing Commission, Chicago, Illinois and San Francisco, California. I have no notes, transcript, or recordings. The topic would likely have involved the new organizational guidelines. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 17, 1991: Panelist, ABA National Institute on Federal Sentencing Guidelines, Washington, D.C. The panel engaged in a discussion concerning the Sentencing Guidelines. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 2-3, 1991: Speaker at Judicial Conference--Military Law Institute, George Washington University, Washington, D.C., United States Sentencing Commission. Outline supplied.

March 21, 1991: Guest Lecturer, Sentencing Seminar, Georgetown University, Washington, D.C. I likely would have spoken about current issues before the Sentencing Commission. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

November 16, 1990: Panelist, ABA White Collar Crime Seminar, Criminal Justice Section, Washington, D.C. The panel discussion likely would have focused on sentencing issues pertinent to the white collar criminal defense bar, such as the loss guidelines and corporate guidelines. I have no notes, transcript, or recordings. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

October 18, 1990: Speaker and Instructor, Training Session for newly-appointed federal district court judges, Atlanta, Georgia. I likely would have offered suggestions for handling recurring sentencing issues. I have no notes, transcript, or recordings. The address for the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, Northeast, Washington, D.C. 20002-8003.

September 14, 1990: Speech on Proposed Organizational Guidelines, Institute of Continuing Legal Education, Atlanta, Georgia. I likely would have discussed the rationale behind the proposed corporate guidelines. I have no notes, transcript, or recordings. The address for the Institute of Continuing Legal Education is Post Office Box 1885, Athens, Georgia 30603.

September 4-7, 1990: Panelist, Federal Sentencing Institute for Fifth and Eleventh Circuits Judges, Fort Worth, Texas. I likely would have discussed current issues pending before the Sentencing Commission. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

July 1990 – December 1996: As a sentencing commissioner during this period of time, I attended many sentencing institutes and other gatherings at which the Sentencing Guidelines were discussed. I have attempted to list below all such events at which I was a panelist or offered remarks, but it is possible that there may be other similar events that I have not recalled.

February 1, 1990: Panelist, "Impact of the Guidelines," White Collar Crime Seminar, ABA, Section of Criminal Justice, New Orleans, Louisiana. I have no notes, transcript, or recordings. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

1986 – 1989: Guest Lecturer, University of Georgia School of Law, Topic: Preparation of Appellate Brief, Athens, Georgia. I have no notes, transcript, or recordings, but my remarks would have been consistent with those supplied at entry for March 1987: Speech at Federal Appellate Practice Seminar. The address for the University of Georgia School of Law is 225 Herty Drive, Athens, Georgia 30602.

November 13, 1989: Speaker, National Association of Manufacturers' Regional Meeting of General Counsel, Chicago, Illinois. My remarks concerned potential sentencing guidelines for organizations. I have no notes, transcript, or recordings. The address for the National Association of Manufacturers is 733 10th Street, Northwest, Suite 700, Washington, D.C. 20001.

November 1, 1989: Speaker, Department of Justice First Assistant United States Attorneys' Conference, Annapolis, Maryland. My remarks concerned the Sentencing Guidelines. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

July 24, 1989: Speech on Sentencing Guidelines, Department of Justice Trial Advocacy Course for Assistant U.S. Attorneys, Washington, D.C. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

June 19, 1989: Speaker, United States Attorney's Office and Federal Defender's Office, Eastern District of Michigan, Detroit, Michigan. I made remarks concerning current Sentencing Guidelines issues. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

June 1989: Panelist and Training Leader, Department of Justice Seminar on Sentencing Guidelines, Washington, D.C. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 31, 1989: Speaker, Meeting of Judges of the Fourth Circuit Court of Appeals, Richmond, Virginia. My remarks concerned current Sentencing

Guidelines issues. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 12, 1989: Speaker, Meeting of Judges of the Central District of California, Los Angeles, California. My remarks concerned current Sentencing Guidelines issues. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 1-3, 1989: Training Leader, United States Sentencing Commission Regional Seminar, New Orleans, Louisiana. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

April 3-5, 1989: Training Leader, United States Sentencing Commission Regional Seminar, Nashville, Tennessee. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

March 20-23, 1989: Panel Speaker and Training Leader, United States Sentencing Commission Regional Seminar, Phoenix, Arizona. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

March 13-15, 1989: Training Leader, United Stares Sentencing Commission Regional Seminar for Assistant U.S. Attorneys, Defense Attorneys, Probation Officers and Federal Judges, Washington, D.C. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 1988: Lecturer and Teacher, Department of Justice Appellate Advocacy Course, Washington, D.C. I have no notes, transcript, or recordings. The address for the Executive Office for United States Attorneys is United States Department of Justice, 950 Pennsylvania Avenue, NW, Room 2242, Washington, D.C. 20530-0001.

April 1988: Speech to United States Attorney General's Sub-Committee on Public Corruption, "Continuing Ramifications of *McNally* on Federal Prosecutions and Need for Corrective Legislation," Atlanta, Georgia. I have no notes, transcript, or recordings. The address for the Executive Office for United

States Attorneys is United States Department of Justice, 950 Pennsylvania Avenue, NW, Room 2242, Washington, D.C. 20530-0001.

January 1988: Speech to United States Attorney General's Sub-Committee on Public Corruption, "Impact of the Supreme Court's Decision in *United States v. McNally,"* New Orleans, Louisiana. I have no notes, transcript, or recordings. The address for the Executive Office for United States Attorneys is United States Department of Justice, 950 Pennsylvania Avenue, NW, Room 2242, Washington, D.C. 20530-0001.

March 1987: Speaker, "Preparation of Federal Appellate Brief," Federal Appellate Practice Seminar, sponsored by the Eleventh Circuit Historical Society and Federal Bar Association, Atlanta, Georgia. Remarks supplied.

February 1987: Panelist at ALI-ABA Regional Seminar on Sentencing Guidelines, Atlanta, Georgia. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

Undated (but sometime in the late 1980's while at the United States Attorney's Office): Emory University Law School- Point/Counterpoint debate between me and a noted defense attorney, Mark Kadish. Notes supplied.

May 1981: Speaker, "Developments in Federal Criminal Law," Georgia Continuing Legal Education Seminar, Augusta, Georgia. I have no notes, transcript, or recordings. The address of the Institute of Continuing Legal Education is Post Office Box 1885, Athens, Georgia 30603.

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.

"Daughter, Colleague Remember 'Happy' Carnes," Fulton County Daily Report, October 23, 2013. Copy supplied.

"Colleagues Remember Judge Charles Carnes," Fulton County Daily Report, October 17, 2013. Copy supplied.

"Charles L. Carnes, 86: Judged By His Service To Others," Atlanta Journal-Constitution, October 16, 2013. Copy supplied.

"Athens Welcome New UGA president," Athens Magazine, May 30, 2013. Copy supplied.

"Jere Morehead on Humor & Hobbies," Athens Magazine, May 29, 2013. Copy supplied.

"This Judge Has Earned His Place at the Table," Syndicated Columnist, Dick Yarbrough, March 12, 2013. Copy supplied.

"U.S. Senior Judge Retires After A Historic Career," Fulton County Daily Report, October 12, 2012. Copy supplied.

"Friends And Family Reflect On Judge G. Ernest Tidwell's Thirty-Two Years On The Federal Bench," Fulton County Daily Report, August 10, 2011. Copy supplied.

"Judge Jack Camp Arrested On Cocaine Charge," Fulton Daily Report, October 4, 2010. Copy supplied.

"Friends Remember Judge Moye," Fulton County Daily Report, July 29, 2010. Copy supplied.

"Study Requested on Reentry Court Programs," The Third Branch, December 2009. Copy supplied.

"Northern District of Georgia's New Chief Judge Reflects on Her Career," Fulton County Daily Report, March 16, 2009. Copy supplied.

"Interview with Judge Julie E. Carnes," The Third Branch, August 2008. Copy supplied.

"Prosecutor Relishes Sentencing Panel Job," Atlanta Journal and Constitution, August 16, 1990. Copy supplied.

"Fifth Californian Pleads Innocent to Illegal Plane Sales to Libya," AP Online, August 11, 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.

I have served as a United States District Judge in the Northern District of Georgia since 1992, and as Chief Judge since 2009. I was nominated by President George H. W. Bush on August 1, 1991 and confirmed by the Senate on February 6, 1992. The jurisdiction of a federal district judge is general in nature, and extends to all federal criminal cases and all civil cases in which there is federal subject-matter jurisdiction (i.e., federal question cases and diversity cases).

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

I have been assigned approximately 8,600 cases. The Clerk's records reflect the issuance of a judgment in 2,827 cases.

i. Of these, approximately what percent were:

The Clerk's records indicate that I have presided over 127 trials, including 110 jury and 17 bench trials.

jury trials:	87%
bench trials:	13% [total 100%]
civil proceedings:	42%
criminal proceedings:	58% [total 100%]

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

Case citations supplied in Appendix attached.

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. *Blankenship, et al. v. Clayton County, et al.*, Case No. 1: 91-cv-2286-JEC.

This case involved allegations of pervasive sexual harassment of female employees within the County Sheriff's Office and Jail, brought by several female plaintiffs. This was one of the earliest trials in the district in which allegations of a pervasive hostile work environment, office-wide, was tried. The trial lasted for four weeks, and the jury deliberated for five days, reaching a verdict for the plaintiffs and awarding over $400,000 in damages.

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Defendants' Counsel:

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2. *United States v. Carter, et al.,* Case No. 1:03-cr-636-JEC.

This criminal indictment charged the five defendants with planning the robbery of an armored Bantec truck by using an insider to disclose the specific route for the date in question and the times and places where the truck would be stopped, after which four other conspirators would lie in wait and ambush the truck, stealing the large quantity of money it contained. These four conspirators, who were charged as defendants in the case, executed this plan. In the course of trying to rob the truck, however, two of the defendants fired shots, injuring one of the guards on the truck and killing the other one. Prior to trial, three of the four entered a guilty plea. The fourth defendant, who fired the shot that killed the guard, went to trial, as did the alleged insider who had disclosed the route and schedule. The latter was acquitted; the defendant who was alleged to have shot the guard, was convicted. I sentenced two of the defendants who had pled guilty to 25 years in prison and the third pleading defendant, who had carried a gun and fired a shot, to 40 years. I sentenced the defendant who went to trial and who had killed the guard to life imprisonment.

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R. Gary Spencer, P.C.
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3. *Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta*, Case No. 1:96-cv-407-JEC (copy supplied).

This case involved an ongoing dispute between the City of Atlanta and the plaintiff (CAMP), an organization that each year sponsored a marijuana festival at a downtown Atlanta park. Having been denied a permit by the City of Atlanta in 1995 to hold its festival, in 1996, CAMP filed a federal action seeking an injunction declaring unconstitutional the City's Festival Ordinance. CAMP argued, among other things, that the City's ordinance was unduly vague and that it constituted an improper prior restraint on First Amendment activity. I analyzed exhaustively each part of the ordinance at issue and concluded that, while some sections were unconstitutionally vague, much of the ordinance was constitutional. Specifically, it was constitutional for the City to charge a fee, based on anticipated attendance, at all large outdoor festival events, even those events that might include political speech, in order for the City to recoup its costs of providing additional City services. As to those parts of the ordinance that had been struck,

the Order set out specifically the shortcomings of those provisions. The Eleventh Circuit affirmed my decision on appeal.

Plaintiffs' Counsel:

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Defendant's Counsel:

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4. *Columbus Drywall & Insulation, Inc., et al. v. Masco Corp., et al.*, Case No. 1:04-cv-3066-JEC, 2009 WL 856306 (N.D. Ga. Feb. 9, 2009).

This case was a protracted and complex class action antitrust action that impacted the entire American fiberglass insulation industry. The 377 independent fiberglass insulation contractors who brought the case relied on a novel "price spread" theory. They alleged that Masco, one of the largest insulation contractors in the country, had orchestrated an agreement among the major insulation suppliers to maintain a price advantage in favor of Masco in exchange for Masco's agreement to support industry-wide price increases. I granted class certification and, based on documentary evidence of an illegal parallel pricing strategy, I also denied summary judgment. I issued several orders in the case touching on the numerous and complex legal and factual issues that are set out in the 948 docket entries in the file. After presiding over an intensive and interactive week-long pretrial proceeding, which included my review of hearsay objections on hundreds of statements, the parties settled on the eve of trial, for 75 million dollars, which when added to the previous 37-million dollar settlement with the insulation suppliers, made this one of the largest antitrust settlements in the State of Georgia.

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5. *United States v. Feng*, Case No. 1:03-cr-276-JEC.

This was a two-week criminal trial in which the two defendants were convicted of assisting in the smuggling and harboring of illegal aliens. Over a seven-year period of time, the Fengs, a husband-and-wife team who ran an employment agency, processed over 7,230 illegal aliens who had recently arrived from Mexico. They arranged for the transportation of these individuals across the Eastern seaboard to various Chinese restaurants where they were forced to work for little pay and under conditions that sometimes resembled involuntary servitude. Moreover, many of these illegal immigrants suffered from diseases, such as Hepatitis C, endangering the patrons of the restaurants, many of which reportedly did not follow hygienic practices. I upwardly departed, sentencing

Mrs. Feng, who was the leader of the operation, to 96-months imprisonment and Mr. Feng to 5-years imprisonment.

Government's Counsel:

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Defendants' Counsel:

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Dwight L. Thomas (Feng, S.)
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6. *United States v. Junnier, et al.*, Case No. 1:07-cr-129-JEC and *United States v. Tesler*, Case No. 1:08-cr-424-JEC.

This criminal case arose out of the shooting of a 90-year old African-American woman by white police officers, while the woman was sleeping in her bed. The officers obtained a warrant to search the address at which the woman, Ms. Johnson, lived. As they entered at night her home, which was in a high-crime area, she did not know that they were the police, and, thinking that her home was being invaded, she pulled out a gun and fired a shot. The officers, thinking that they were under attack, shot back, killing her. In responding to questions about what happened, the officers initially were not honest and instead attempted to cover up the misconduct that had led to the killing of Ms. Johnson. Subsequent investigation revealed that these officers had obtained a search warrant by falsely stating that a reliable informant had given them the tip. In addition, these officers, from time to time, had been obtaining search warrants based on affidavits that contained untrue assertions. Ultimately, all three officers entered guilty pleas to civil rights violations. The sentencing lasted two days, and I imposed a ten-year sentence on the officer who fired the shot, and five years each on the other two officers.

Government's Counsel:

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7. *A.M. v. Martin*, Case No. 1: 96-cv-2316-JEC. Decision supplied.

A Georgia statute provided that an initial detention hearing must be held for a juvenile who has been detained for delinquency within 72 hours, but if that deadline expires on a weekend or holiday, then the hearing can be held the next day after that. The ACLU filed suit, arguing that the statute should be struck down because it violates Supreme Court precedent requiring a prompt hearing after a warrantless arrest. The Supreme Court precedent in question had not specified a particular time period by which a hearing must be held, but indicated

that a hearing within 48 hours, including weekends and holidays, is presumptively timely; further, the government must demonstrate extraordinary circumstances to detain someone on a warrantless arrest for more than 48 hours without a probable cause hearing. The County defendant argued that such a deadline would be impracticable in dealing with juveniles. I ruled for the plaintiff and struck down the Georgia law. Thereafter, it was necessary for juvenile courts throughout the state to revamp their procedures regarding the timing of probable cause hearings.

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8. *United States v. Mach*, Case No. 1:05-cr-543-JEC.

This criminal case involved the lengthy investigation of a large-scale ecstasy drug distribution ring originating in Canada, with distribution activities in the Eastern part of the United States, including Atlanta. Of the thirty-two defendants indicted, only one defendant, Mr. Ong, ultimately went to trial. He was convicted following a jury trial. The consolidated sentencing hearings for these thirty-plus defendants took almost a week to conclude, involving complex calculations of drug quantities attributed to each defendant.

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9. *United States v. Perkins,* Case No. 1:10-cr-97-JEC, 2013 WL 3820716 (N.D. Ga. July 23, 2013).

This was a criminal case in which the defendant was charged with having executed a lucrative fraud scheme in which, among other things, he persuaded bank employees to provide him with information regarding high-dollar business bank accounts for the purpose of withdrawing the funds from these accounts. The defendant also executed a credit card fraud scheme in which he posed as a merchant and caused credit card companies to funnel large amounts of money to him to which he was not entitled. Although the criminal offense, by itself, would have made this case significant, its greater significance lies in the extraordinarily disruptive behavior of the defendant and the need to fashion procedures to address this behavior. Specifically, the defendant refused to come to the courtroom and I determined that forcibly bringing him could result in injury to him or others, as well as creating prejudice before the jury, as he would have had to be heavily manacled and restrained. Accordingly, I held initial trial proceedings in the Marshal's lock-up with counsel and a court reporter present. Given the defendant's violent reaction to that proceeding and his continuing refusal to be brought to the courtroom, I deemed him to have waived his presence at trial. The defendant was able to observe the trial in his cell, and the jury ultimately convicted him. I sentenced him to a thirty-year term of imprisonment.

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10. *Wolf v. Ramsey*, Case No. 1:00-cv-1187-JEC, 253 F. Supp. 2d 1323 (N.D. Ga. 2003).

This was a civil case arising out of the widely-publicized and unsolved murder of six-year old JonBenet Ramsey, whose body was found in the basement of her parent's home in Boulder, Colorado. The plaintiff, Mr. Wolf, sued the Ramsey parents based on allegedly defamatory statements that they had made indicating their belief that he should be considered a suspect. The plaintiff contended that the Ramseys necessarily knew that he should not be a suspect because they knew that they had murdered their own child or, at least, knew that someone, other than the plaintiff, was responsible for the murder. I granted summary judgment for the Ramseys as the material evidence presented by them, and not disputed by the plaintiff, could not, as a matter of law, give rise to an inference that they had killed their child. My decision was based only on the civil record before me, which did not include the police investigative reports. The plaintiff had made little to no effort to adduce any facts in support of his contentions and my Order did not profess to answer definitively the question of who had murdered the child.

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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. *Bullard v. MRA Holding, LLC,* Case No. 1:04-cv-02407-JEC, 890 F. Supp. 2d 1323 (N.D. Ga. 2012), *question certified*, 292 Ga. 748 (2013).

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2. *Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta*, Case No. 1:96-cv-407-JEC. Decision previously supplied in response to 13c.

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3. *Conklin v. Thomas*, Case No. 1:95-cv-914-JEC (copies supplied), *aff'd, Conklin v. Schofield*, 366 F.3d 1191 (11th Cir. 2004), *cert. denied*, 544 U.S. 952 (2005).

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4. *A.M. v. Martin*, Case No. 1:96-cv-2316-JEC, Order Granting Summary Judgment, January 26, 1998. Decision previously supplied in response to 13c.

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5. *Mauldin v. Wal-Mart Stores*, Case No. 1:01-cv-2755-JEC, Order Granting Class Certification, 2002 WL 2022334 (N.D. Ga. Aug. 23, 2002) and Order Denying Reconsideration (copy supplied).

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6. *United States v. Perkins,* Case No. 1:10-cr-97-JEC, 2013 WL 3820716 (N.D. Ga. July 23, 2013).

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7. *United States v. Pressley*, Case No. 1:95-cr-189-JEC, 473 F. Supp. 2d 1303 (N.D. Ga. 2006).

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8. *Smith v. Cobb County Board of Elections*, Case No. 1:02-cv-1093-JEC, 314 F. Supp. 2d 1274 (N.D. Ga. 2002) and *Perry v. Cobb County Board of Elections and Registrations*, Case No. 1:02-cv-1206-JEC, 314 F. Supp. 2d 1332 (N.D. Ga. 2003).

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9. *Thomas, et al. v. Clayton Cnty. Bd. of Educ., et al.*, Case No. 1:97-cv-1517-JEC, 94 F. Supp. 2d 1290 (N.D. Ga. 1999), *aff'd sub nom. Thomas ex rel. Thomas v. Roberts*, 261 F.3d 1160 (11th Cir. 2001), *cert. granted*, 122 S. Ct. 2653 (2002), *reinstated upon reconsideration*, 323 F.3d 950 (11th Cir. 2003).

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10. *Weyerhaeuser Co. v. Lambert*, Case No. 1:05-cv-1144-JEC, 2007 WL 2826957 (N.D. Ga., Sept. 26, 2007), *aff'd sub nom., In re Paragon Trade Brands, Inc.*, 278 Fed. App'x 1000 (11th Cir. 2008).

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

A district court is not always informed whether certiorari has been requested or granted. Nevertheless, I have included all cases I was able to identify. Case citations are supplied in Appendix attached.

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

During my tenure as a district court judge, I have been assigned over 8,600 cases. The Clerk's records indicate that a judgment was issued in 2,827 cases and that 1,052 appeals of my decisions have been filed. Through a review of my own records and the Clerk's Office search of my case assignments list, using query language devised for this purpose, I have identified, below, 40 cases in which I have been reversed by the Eleventh Circuit. Of those 40 cases, four were remanded for further factual findings or for a clarification of my reasoning, and were affirmed on the second appeal that followed issuance of my order on remand; three were reversed because of an intervening change in the law; reversals in two cases were effectively vacated by the Circuit upon further appeals of that same case; three cases were reversed following certification of a

controlling issue of unsettled Georgia law to the Georgia Supreme Court; and one case was remanded to correct a clerical error in the judgment.

Civil Cases

Akins v. Fulton Cnty., Case No. 1:00-cv-2212-JEC, Orders Granting Summary Judgment (copies supplied), *aff'd in part and rev'd in part, Akins v. Fulton Cnty.*, 420 F.3d 1293 (11th Cir. 2005). Plaintiffs, who were Fulton County employees, brought a §1983 action alleging retaliation by county officials because the employees had criticized the conduct of these officials. My second substantive order granting summary judgment assumed that the retaliatory acts complained of were adverse enough to be actionable, but concluded that the supervising officials were entitled to qualified immunity because plaintiffs failed to show that their speech related to matters of public concern and was therefore protected under the First Amendment. The Eleventh Circuit reversed in part, concluding that the speech did relate to matters of public concern and that the defendants should have been on notice of this. After remand, however, the Supreme Court issued its decision in *Garcetti v. Ceballos*, 126 S. Ct. 1951 (2006), holding that statements made pursuant to an employee's official job duties, as were the plaintiffs' statements in this case, are not protected speech. Acting on defendants' motion, I reinstated my grant of summary judgment to the defendants. *Akins v. Gates*, 2007 WL 2729006 (N.D. Ga., Sept. 14, 2007). The plaintiffs appealed and the Eleventh Circuit affirmed, although the Circuit did note its disagreement with my decision to strike affidavits of the plaintiffs that were inconsistent with their prior deposition testimony. *Akins v. Fulton Cnty.*, 278 Fed. App'x 964 (11th Cir. 2008).

Akinwale v. Reno, Case No. 1:99-cv-324-JEC, Order Adopting Magistrate Judge's Report and Recommendation recommending dismissal (copies supplied), *rev'd*, 216 F.3d 1273 (11th Cir. 2000). The petitioner filed a habeas corpus petition to block deportation. The magistrate judge concluded that, given certain provisions of the Antiterrorism and Effective Death Penalty Act of 1996, the district court lacked jurisdiction to consider the petitioner's habeas petition. I concurred, but granted a certificate of appealability for the Eleventh Circuit to resolve the question. Relying on precedent issued since the dismissal in the district court, the appellate court concluded that a district court would have subject matter jurisdiction, and remanded.

Albert-Aluya v. Burlington Coat Factory Warehouse Co., Case No. 1:09-cv-2111-JEC, Order Adopting Magistrate Judge's Report and Recommendation recommending grant of summary judgment (copies supplied), *aff'd in part, rev'd in part, and remanded,* 470 Fed. App'x 847 (11th Cir. 2012). Plaintiff, who was represented by counsel, asserted that her termination violated §1981 and Title VII. The magistrate judge's report and recommendation ("R&R") recommended granting summary judgment to the defendant. Although plaintiff had asserted that the defendant had discharged her based in part on her accent, she had explicitly

disavowed a national origin claim in her pleadings. Accordingly, the magistrate judge recommended dismissal of any accent discrimination claim based on national origin under Title VII, and then considered, and ultimately rejected, an accent claim under §1981. Plaintiff filed objections to the R&R, but did not dispute the magistrate judge's conclusion that she was not seeking to assert a Title VII national origin claim based on her accent. I adopted the R&R. On appeal, the Eleventh Circuit held that neither plaintiff's "waiver" nor her counsel's failure to object to the magistrate judge's finding of a "waiver," precluded the claim, and the court remanded. It affirmed the dismissal of all other claims.

Ameritrust Co., N.A. v. White, Case No. 1:90-cv-2691-JEC, 848 F. Supp. 1001 (N.D. Ga. 1994), *aff'd in part and rev'd in part*, 73 F.3d 1553 (11th Cir. 1996). This was a complex commercial dispute concerning the validity of a promissory note. After a bench trial, I ruled that the plaintiff could not collect from the defendant on the note because a put-option agreement relieved him of liability. The Eleventh Circuit disagreed that the put-option provided a valid defense, but remanded for me to determine whether other potential defenses not ruled on were available to defendant. I ruled that those defenses were valid and again ruled for the defendant. On appeal, the Eleventh Circuit affirmed without opinion, based on my Order.

Aschbacher v. The Delta Pilots, Case No. 1:00-cv-2127-JEC, Orders ruling on motion for voluntary dismissal, motion for dismissal with prejudice, and motion for summary judgment (copies supplied), *vacated and remanded*, App. No. 01-14071 (11th Cir. 2001) (copy supplied). This action was one of multiple actions in which retired Delta pilots sued their retirement plan for benefit payments that they argued were due them. Plaintiff Marshall moved to dismiss all claims with prejudice, except for Count II, on which the defendant had moved for summary judgment. I granted the motion for summary judgment and dismissed the remaining counts with prejudice. On appeal, the parties argued the merits of the grant of summary judgment: specifically, whether exhaustion of administrative remedies was required. The Eleventh Circuit did not reach the merits of any of my rulings, but instead held that because the plaintiff had already received the benefits that were the subject of Count II, the claim became moot and should have been dismissed for lack of jurisdiction. While the appellate court vacated my order as to summary judgment on Count II and remanded for me to dismiss the complaint, it noted that I could consider on remand the imposition of attorney's fees against plaintiff even without a formal grant of summary judgment.

AT&T Wireless PCS, Inc. v. City of Atlanta, Case No. 1:98-cv-962-JEC, 50 F. Supp. 2d 1352 (N.D. Ga. 1999), *rev'd,* 210 F.3d 1322 (11th Cir. 2000), *vacated,* 260 F.3d 1320 (2001). AT&T had sued the City of Atlanta for its alleged non-compliance with the Telecommunications Act of 1996, and I granted its requested writ of mandamus for the City to grant its application. AT&T had also raised these same claims pursuant to 28 U.S.C. §1983, which would have entitled it to attorney's fees if successful. I ruled that the §1983 claim could not be made

because, by enacting a comprehensive remedial scheme in the Telecommunications Act, Congress intended to supplant §1983 for such claims. A panel of the Eleventh Circuit, noting that this issue presented a case of first impression in the circuit courts, reversed, finding that a claimant could sue under both the Telecommunications Act and §1983 based on the same allegations. Subsequently, the Eleventh Circuit voted to hear the case en banc, and vacated the panel decision. *AT&T Wireless v. City of Atlanta*, 260 F.3d 1320 (11th Cir. 2001). While the en banc proceeding was pending, AT&T dismissed its appeal, 264 F.3d 1314 (11th Cir. 2001), and accordingly my original opinion remains the law of the case. Subsequently, the Supreme Court held, as to the specific provision of the Telecommunications Act before it, that the plaintiff could not enforce the Act through use of a § 1983 action, as my original Order had held. *City of Rancho Palos Verdes, Cal. v. Abrams*, 544 U.S. 113 (2005).

Bourff v. Rubin Lublin, LLC, Case No. 1:09-cv-2437-JEC, Order Granting Motion to Dismiss (copy supplied), *vacated and remanded*, 674 F.3d 1238 (11th Cir. 2012). In this case of first impression in the circuit, the plaintiff debtor had claimed that a law firm's foreclosure notice violated the Fair Debt Collection Practices Act. I rejected the magistrate judge's conclusion that the law firm was not covered by the Act, holding that in appropriate circumstances an attorney can be considered a debt collector. I ruled that the law firm had not violated the Act by falsely identifying the creditor, and that in any event the claimed misidentification of the creditor was harmless. The Eleventh Circuit agreed that a law firm could be covered as a debt collector, but disagreed that the creditor was correctly identified and implicitly disagreed that this was necessarily harmless.

As a result of the holding in *Bourff*, a similar ruling by me in another case was vacated. *Shoup v. McCurdy & Candler, LLC*, 465 Fed. App'x 882 (11th Cir. 2012).

Bright v. Apfel, Case No. 1:97-cv-3509-JEC, Order Adopting Magistrate Judge's Report and Recommendation (copy supplied), *vacated and remanded*, App. No. 99-11732 (11th Cir. Apr. 11, 2000) (copy supplied). I adopted the magistrate judge's R&R affirming the Commissioner's Decision to deny plaintiff disability benefits on the grounds it was supported by substantial evidence. The Eleventh Circuit reversed, concluding that the Administrative Law Judge had failed to give the proper weight to the treating physician and to other evidence.

Doyle v. Volkswagenwerk, Case No. 1:91-cv-1926-JEC, Order Granting Partial Summary Judgment Motion (copy supplied), *question certified*, 81 F.3d 139 (11th Cir. 1996), *rev'd in part, Doyle v. Volkswagenwerk Aktiengelell Schaft*, 114 F.3d 1134 (11th Cir. 1997). In this product liability case, I concluded that the automobile manufacturer's seat belt system complied with federal standards and, relying on a Georgia Court of Appeals decision, also concluded that Georgia law did not hold manufacturers to a higher standard than required by federal law. The Eleventh Circuit affirmed as to the ruling on federal standards, but certified the

question of state law to the Georgia Supreme Court to determine whether the latter agreed with the lower state appellate court decision. Based on the answer by the Georgia Supreme Court that held that Georgia law permits a claim even where the manufacturer has satisfied federal standards, the Eleventh Circuit reversed in part.

Estes v. Chapman, Case No. 1:02-cv-1131-JEC, Order Adopting Magistrate Judge's Report and Recommendation (copies supplied), *rev'd*, 382 F.3d 1237 (11th Cir. 2004). I adopted the magistrate judge's R&R that the state habeas corpus petition was untimely because the petitioner's motion in state court to vacate an illegally-imposed sentence was not "properly filed," as required by 28 U.S.C. §2244(d)(2), and therefore the time running during the pendency of that motion was not tolled under §2244. The Eleventh Circuit disagreed, noting that whether or not the state-court motion was timely-filed in that forum, the state court had jurisdiction to hear the motion and therefore the time while that motion was pending in state court could be properly tolled.

Frederick v. Sprint United Mgmt. Co., Case No. 1:96-cv-2170-JEC, Orders Denying Summary Judgment (copies supplied), *rev'd in part*, 246 F.3d 1305 (11th Cir. 2001). Plaintiff alleged that her former supervisor created a hostile sexual work environment and that she did not receive a promotion due to sexual harassment. On plaintiff's appeal of my first order granting summary judgment to the employer, the Eleventh Circuit remanded for me to determine whether the Supreme Court's recent *Faragher* and *Ellerth* decisions would affect my decision. On remand, the employer asserted the *Faragher/Ellerth* affirmative defense, as plaintiff had never complained during the two years the conduct was ongoing, and her supervisor had been fired under the employer's sexual harassment policy because of inappropriate behavior toward another employee. I concluded that the employer should prevail on its affirmative defense as it had taken reasonable steps to prevent and correct harassing conduct, and again granted summary judgment. The Eleventh Circuit affirmed my conclusion, albeit for different reasons, that plaintiff could not prevail on the promotion claim. The Eleventh Circuit reversed on the affirmative defense finding, stating that there were factual disputes about the adequacy of certain company policies. On remand, after a trial date was set, the plaintiff declined to proceed, and the case was therefore dismissed with plaintiff's consent.

Gordon v. Stock, Case No. 1:95-cv-2852-JEC, Order Dismissing Plaintiff's Claim (copy supplied), *aff'd in part and rev'd in part*, App. No. 95-9589 (copy supplied). The plaintiff, a federal prisoner, had sued multiple defendants based on an injury he received from a fellow inmate and plaintiff's subsequent placement in administrative segregation. I found that the plaintiff had failed to state a claim and dismissed. The Eleventh Circuit affirmed this dismissal, except for the claim against the case manager who had sent plaintiff to retrieve his property.

Grant v. Noltina, Case No. 1:92-cv-103-JEC, Order Granting Defendant's Motion to Dismiss, *Escareno v. Noltina Crucible & Refractory Corp.*, 152 F.R.D. 661 (N.D. Ga. 1993), *vacated* and *remanded*, 77 F.3d 407 (11th Cir. 1996), *granting motion to dismiss*, *Escareno v. Noltina Crucible & Refractory Corp.*, 172 F.R.D. 522 (N.D. Ga. 1997), *question certified to Georgia Supreme Court and vacated*, 163 F.3d 1257 (11th Cir. 1998). While his personal injury case was pending before me, the plaintiff, who was a foreign national living in Mexico, died. Plaintiff's counsel was appointed as the temporary administrator of the case and sought to substitute himself as plaintiff. Relying on Georgia law, defendant argued that the attorney was not a proper party. I agreed and granted the motion to dismiss. On appeal, the Eleventh Circuit remanded to give plaintiff's counsel an opportunity to reappear before the Georgia probate court to resolve the uncertain Georgia law questions at issue and to sort out any errors in its initial appointment of counsel as a representative of plaintiff's estate. Thereafter, a newly-appointed representative for plaintiff appeared before me, but he had not dealt with the difficult issues identified by the Circuit panel, and I dismissed again. The Eleventh Circuit then certified the question at issue to the Georgia Supreme Court, which answered the question favorably to plaintiff and again remanded the case to me. The action ultimately settled.

Haynes v. W.C. Caye & Co., Inc., Case No. 1:91-cv-2844-JEC, Order Adopting Magistrate Judge's Report and Recommendation Entering Judgment for Defendant (copies supplied), *rev'd,* 52 F.3d 928 (11th Cir. 1995). In this sex and age discrimination case, the magistrate judge had conducted a bench trial, issued findings of fact and conclusions of law, and ruled for the defendant. I adopted the R&R. The Eleventh Circuit affirmed the decision as to the age claim, but remanded because the magistrate judge had incorrectly considered a supervisor's statement to be circumstantial rather than direct evidence of intent. On remand, the magistrate judge again found in favor of defendant. I determined that I could not make a credibility determination based on sharply-disputed evidence, and ordered a new non-jury trial before me. The case ultimately settled.

Int'l Fin. Grp. v. Barsk, Case No. 1:98-cv-3333-JEC, Orders Granting Motions to Dismiss (copies supplied), *rev'd*, 31 Fed. App'x 200 (11th Cir. 2001). I found that plaintiff failed to state a claim for breach of contract and that the fraud claim was barred by the statute of limitations. The Eleventh Circuit disagreed on both points and remanded.

Jairath v. Dyer, Case No. 1:96-cv-1987-JEC, Order Denying Motion to Remand, 961 F. Supp. 277 (N.D. Ga. 1996) and Order Granting Motion for Summary Judgment (copy supplied), *rev'd*, 154 F.3d 1280 (11th Cir. 1998). Plaintiff alleged that a doctor had refused to perform a surgical procedure because the plaintiff was HIV-positive. Thereafter, he filed a claim in state court relying on a catch-all Georgia statute that permits a cause of action based on any law that requires a person to perform an act for the benefit of another, even though that law may not expressly provide for a cause of action. The law that he alleged to

have created the duty in his case was the Americans with Disabilities Act (ADA). After removal by the defendant, I denied plaintiff's motion for remand, holding that removal was proper because a federal question was presented through the plaintiff's allegation of a duty under the ADA, which provided for a private injunctive remedy. In a subsequent order, I granted the defendant's motion for summary judgment. On appeal, the Eleventh Circuit did not reach the merits of the summary judgment ruling, but it reversed based on my earlier decision not to remand the case to state court, holding that because the plaintiff could not have sued for damages under the ADA, nor did he have standing to seek an injunction under the ADA, the state claim contained elements not present in a federal ADA action.

Marbut v. State Ct. of Dekalb Cnty., Case No. 1:01-cv-371-JEC, Order Granting Summary Judgment (copy supplied), *aff'd in part and rev'd in part*, App. No. 03-15259 (11th Cir. May 19, 2004) (copy supplied). Plaintiff had claimed sex discrimination when she was not awarded a promotion within the county probation office. I granted summary judgment to the defendant. The Eleventh Circuit upheld the ruling as to the retaliation claim but concluded that there were material issues of fact as to the other claims.

Miller v. Harco Nat'l Ins. Co., Case No. 1:99-cv-417-JEC, Order Ruling on Motions For Summary Judgment (copy supplied), *question certified*, 241 F.3d 1331 (11th Cir. 2001), *rev'd*, 280 F.3d 1353 (11th Cir. 2002). The plaintiffs had been injured in an automobile accident with a commercial truck and had sued the trucking company, its owner, and the insurance carrier for the owner. I granted summary judgment to plaintiff as to the first two entities, and the Eleventh Circuit affirmed, adopting my analysis. I also held that, under Georgia law, the insurance coverage did not extend to the trucking company. The Eleventh Circuit certified this question to the Georgia Supreme Court, which held that an insured party can be found liable based on a theory of piercing the corporate veil and that motor carrier coverage is more broadly construed than is ordinary motor vehicle coverage. Accordingly, the Eleventh Circuit reversed the earlier grant of summary judgment in favor of the insurer.

Morgan v. United States, Case No. 97-cv-604-JEC, Order Affirming Order of Bankruptcy Judge (copy supplied), *remanded*, 182 F.3d 775 (11th Cir. 1999). The IRS has priority status as to taxes owed during tax years no more than three years before the filing of a bankruptcy petition. Here, however, the debtors had filed successive bankruptcy petitions, thereby complicating the proper calculation of this three-year period and preventing the IRS from collecting back taxes during the overlapping automatic stay periods. Relying on two separate statutes, the bankruptcy court followed the majority position, which calls for a tolling of the limitations period to allow the IRS to collect for a period of time greater than the three years preceding the filing of the latest bankruptcy petition. On appeal to the district court, I affirmed. The Eleventh Circuit agreed that the bankruptcy court had the equitable power to toll the running of the limitations period, but remanded

because the bankruptcy court should not have considered the tolling to be legally mandated.

Owen Mumford USA, Inc. v. Surgilance, Inc., Case No. 1:01-cv-588-JEC, Summary Judgment Orders (copies supplied), *rev'd*, 137 Fed. App'x 342 (Fed. Cir. 2005). In this patent infringement claim, I ruled for the plaintiff, who had argued that the defendant's product, used to prick a patient to obtain blood, infringed the plaintiff's patent. In a 2-1 decision, the Federal Circuit held that I had erred in interpreting the pivotal claim term, "relaxed condition of the spring," to mean that the spring be only less energized than at the time immediately prior to firing. Instead, the proper construction should have defined that term as meaning that the spring initially has no potential energy.

Oduok v. Cobb Cnty. Bd. of Comm'rs, Case No. 1:00-cv-2046-JEC, Order Granting Summary Judgment (copies supplied), *aff'd in part and rev'd in part*, App. No. 02-12141 (11th Cir. 2003) (copy supplied). In response to a domestic disturbance call by plaintiff's estranged wife, police arrived and asked the plaintiff to leave. When he refused to do so, the officers arrested him. Based on this incident, plaintiff filed multiple claims against several parties. I granted summary judgment for the defendant on all claims. The Eleventh Circuit affirmed as to all claims, except for the excessive force claim. The case was ultimately tried to a jury, which returned a verdict for the defendant officers. The Eleventh Circuit affirmed.

Powles v. Baker, Case No. 1:06-cv-2853-JEC, Order Adopting Magistrate Judge's Report and Recommendation (copies supplied), *rev'd*, *Powles v. Thompson*, 282 Fed. App'x 804 (11th Cir. 2008). Both I and the magistrate judge concluded that the state prisoner's petition for habeas corpus relief was filed more than one-year after his state conviction had been final, and that, because it was untimely, the petition had to be dismissed. After my ruling, the Eleventh Circuit issued its opinion in *Taylor v. Williams*, 528 F.3d 847 (11th Cir. 2008), holding that the "mailbox rule" applies to state prisoners. With that new rule, petitioner's habeas petition was deemed timely.

Reyes v. Clayton Cnty., Case No. 1:98-cv-1230-JEC, Order Denying Qualified Immunity (copy supplied), *rev'd*, App. No. 00-11884 (11th Cir. 2002) (copy supplied). Plaintiffs had been subjected to an intrusive search and seizure, during which they were handcuffed and their apartment searched pursuant to a warrant. The residents of the apartment had no drugs and the police officers applying for the warrant had likely entered the wrong apartment number, based on a vague description of the apartment by a confidential informant. I granted qualified immunity for all defendants, except for the two officers who obtained the warrant, concluding that they were on clear notice that the information provided by the informant was too unspecific to justify obtaining a warrant for the apartment in question. The Eleventh Circuit disagreed, concluding that the information

supplied by the informant was specific enough to confer immunity for the officers in their execution of the search.

Russell v. Reno, Case No. 1:98-cv-142-JEC, Order of March 9, 1999 dismissing habeas corpus petition of deportable immigrant on jurisdictional grounds (copy supplied), *aff'd*, App. No. 99-10084 (11th Cir. May 9, 2000) (copy supplied), remand to the Board of Immigration Appeals (11th Cir. Dec. 27, 2001) (copy supplied), remand to district court (11th Cir. Aug. 11, 2003) (copy supplied). As explained in the Eleventh Circuit's unpublished May 9, 2000 opinion affirming my decision, I had initially dismissed the habeas petition for lack of jurisdiction. The Eleventh Circuit indicated that in doing so, I "correctly followed the precedent of this Circuit," and it affirmed. Thereafter, in 2001, the Supreme Court granted certiorari and, in light of its recent decision in *I.N.S. v. St. Cyr*, 121 S. Ct. 2271 (2001), it remanded the case back to the Eleventh Circuit for further consideration. As explained in its 2001 decision, the Eleventh Circuit received a consent motion from the petitioner and the Government to certify the question whether he was entitled to relief under *St. Cyr* to the Board of Immigration Appeals; the Eleventh Circuit granted the motion. Following the Board's subsequent determination that the petitioner was entitled to relief, the Eleventh Circuit then remanded the case back to me to decide the Section 2241 habeas petition on its merits. I ultimately denied the petition on the merits. No appeal was taken.

Schwier v. Cox, Case No. 1:00-cv-2820-JEC, Order Granting Motion for Summary Judgment (copy supplied), *rev'd and remanded,* 340 F.3d 1284 (11th Cir. 2003). The plaintiffs had sued the State of Georgia, arguing that Georgia's law requiring that citizens provide their social security numbers when registering to vote violated the federal Privacy Act. Relying in part upon a Ninth Circuit decision, *Dittman v. California*, 191 F.3d 1020 (9th Cir. 1999), I held that the plaintiffs could not file a private cause of action seeking to vindicate the provision of the Privacy Act in question. The Eleventh Circuit disagreed with the Ninth Circuit, and reversed, holding that a private cause of action was permissible. On remand, I ruled for the plaintiffs as to the State's alternate defenses, and was later affirmed.

Solomon v. Sullivan, Case No. 1:92-cv-511-JEC, Orders Adopting Magistrate Judge's Reports and Recommendation Affirming the Commissioner's Decision (copies supplied), *aff'd in part and remanded in part*, App. No. 93-8550 (11th Cir. Dec. 23, 1993) (copy supplied). In this social security disability appeal, the magistrate judge recommended that I affirm the Commissioner's decision that the plaintiff's disability had ceased, and I adopted his recommendation. The Eleventh Circuit affirmed in part, but remanded for the court to determine whether the plaintiff was disabled based on an age-based Medical Vocational grid. The magistrate judge referred to this grid and again determined that the Commissioner's determination was correct, and I adopted the magistrate judge's report. The Eleventh Circuit affirmed.

St. Charles Foods, Inc. v. America's Favorite Chicken Co., Case No. 1:96-cv-1466-JEC, Order Granting Summary Judgment (copy supplied), *rev'd, St. Charles Foods, Inc., v. America's Favorite Chicken Co.,* 198 F.3d 815 (11th Cir. 1999). In a contract dispute between a franchisee and a franchisor concerning an exclusivity term, I found ambiguity as to the scope of the right of first refusal and, applying Georgia rules of contract construction, resolved that ambiguity in the franchisor's favor. The Eleventh Circuit remanded, concluding that even after application of these rules of construction, the intent of the parties could be disputed and thus a jury should resolve the dispute.

Tippitt v. Reliance Standard Life Ins. Co., Case No. 1:02-cv-1140-JEC, Order Following Bench Trial For Defendant (copy supplied), *remanded for further findings of fact*, 457 F.3d 1227 (11th Cir. 2006). The plaintiff had sued under ERISA, arguing that the defendant insurance company had improperly denied his request for disability benefits. I concluded that, as plaintiff was able to complete up to three hours of sedentary work, he was not totally disabled. On appeal, the Eleventh Circuit articulated standards for total versus partial disability, and remanded for further findings of fact. I decided again that the plaintiff should be considered partially disabled, and the Eleventh Circuit affirmed.

Watson v. Dep't of Human Res., Case No. 1:98-cv-253-JEC, Order Adopting Magistrate Judge's Report and Recommendation Denying Individual Defendant's Motion for Summary Judgment (copies supplied), *rev'd*, App. No. 00-11668 (11th Cir. 2000) (copies supplied). The plaintiff had filed a Title VII suit charging racial discrimination against the state agency for which he worked, as well as a §1983 action against the supervisor who disciplined him. The magistrate judge had recommended denying qualified immunity to his supervisor, and I agreed. The Eleventh Circuit disagreed and held that the supervisor was not on notice that his actions violated the plaintiff's constitutional rights.

West v. Dikoku, Case No. 1:96-cv-2036-JEC, Order Dismissing Plaintiff's Complaint for Failure to State A Claim (no copy can be located), *rev'd*, App. No. 97-9191 (11th Cir. Nov. 12, 1998) (copy supplied). The plaintiff prisoner brought a §1983 claim arguing that a jail doctor had acted with deliberate indifference to the plaintiff's medical condition. On a frivolity review, I dismissed because the plaintiff's allegations did not rise above an allegation of negligence, which is not actionable as a constitutional tort. The Eleventh Circuit disagreed and concluded that the allegations were sufficient to permit the plaintiff to proceed. Ultimately, I granted summary judgment to the defendant and plaintiff's subsequent appeal was dismissed by the Eleventh Circuit.

Yu v. Reno, Case No. 1:97-cv-2984-JEC, Order Adopting Magistrate Judge's Report and Recommendation Dismissing Petitioner's Habeas Corpus Petition (copies supplied), *rev'd*, Order of July 7, 1999 (11th Cir.) (copy supplied). The petitioner filed a habeas corpus action, seeking to vacate his order of deportation.

The magistrate judge concluded that a provision of the Antiterrorism and Effective Death Penalty Act restricting criminal aliens' eligibility for waiver of deportation applied retroactively and therefore the petitioner was not eligible for a waiver of deportation. I adopted the R&R. Thereafter, the Eleventh Circuit issued its decision in *Mayers v. United States Dep't of I.N.S.*, 175 F.3d 1289 (11th Cir. 1999), holding that the provision was not retroactive. Consistent with the court's direction, I remanded the waiver question at issue to the Board of Immigration Appeals.

Criminal Cases

United States v. Cornelius, Case Nos. 1:05-cr-411-JEC and 1:05-cr-295-JEC, *aff'd in part and remanded in part*, App. No. 06-10727 (11th Cir. Oct. 30, 2006) (copy supplied). The Eleventh Circuit affirmed my sentence of 84 months for defendant's fraud conviction, but remanded as to the felon-in-possession of a firearm conviction so that I could correct a clerical error that showed the sentence for the latter conviction to have been 84 months, when the sentence imposed was actually 24 months.

United States v. Galindo-Lara, Case No. 1:07-cr-171-JEC, Sentencing Order (copy supplied), *remanded*, App. No. 07-15363 (11th Cir. May 19, 2008) (copy supplied). In this illegal-reentry case, I had departed upward based on the inadequacy of the defendant's criminal history score, and imposed a 37-month sentence. Although I had earlier issued a 7-page Order explaining my reasons for the upward departure, the Eleventh Circuit remanded because I had not discussed each criminal history category that I had passed over en route to the category that I decided properly reflected the defendant's future dangerousness. On remand, I reiterated my earlier reasons for departing from a Category II to an overlapping range in Categories III and IV, including the fact that the defendant had been deported seven times, but had continued to reenter the country illegally and had already been convicted two other times for illegal reentry. The Eleventh Circuit affirmed.

United States v. Gallo, Case No. 1:96-cr-296-JEC, *remanded*, App. No. 96-9478 (11th Cir. Oct. 30, 1997) (copy supplied). This defendant had been convicted of illegal reentry. I sentenced him to 15-months imprisonment, and further ordered, as a condition of his supervised release, that he be deported. In an earlier *en banc* opinion, the Eleventh Circuit had held that a district court may set such a condition for a defendant who is subject to deportation. After the sentencing, Congress changed the immigration law to provide that only an immigration judge may order deportation. Given this statutory change, and its subsequent adherence to that change in *United States v. Romeo,* 122 F.3d 941 (11th Cir. 1997), the Eleventh Circuit remanded for me to remove the deportation condition from the terms of supervised release.

United States v. Hardaway, Case Nos. 1:94-cr-59-JEC and 1:94-cr-146-JEC, *remanded*, App. No. 00-16010 (11th Cir. July 3, 2001) (copy supplied). The defendant was sentenced and, upon release from prison, began his term of supervised release. He violated the conditions of his supervision, after which I sentenced him for that violation and reimposed supervised release. The Eleventh Circuit affirmed as to the revocation decision and the accompanying sentence of imprisonment, but noted that, because I had sentenced the defendant to the maximum term of imprisonment available, I could not impose an additional term of release. It remanded, directing me to correct the judgment accordingly.

United States v. Jimenez-Pineda, Case No. 1:99-cr-558-JEC, *aff'd in part and rev'd in part*, App. No. 00-14108 (11th Cir. Oct. 10, 2001) (copy supplied). I originally sentenced the defendants to a 60-month term of imprisonment. The Eleventh Circuit agreed that the defendants should have received a 2-level enhancement for possession of a firearm, but disagreed that this enhancement, under the particular facts of this case, should deprive the defendant of eligibility for a 2-level reduction under the safety valve provision of the Sentencing Guidelines. Therefore, the court remanded for me to reassess whether the safety valve was unavailable to the defendant based on other disqualifying factors. At resentencing, I concluded that the safety valve should apply and imposed a sentence of 46 months, which was the low end of the newly-calculated Guidelines.

United States v. McLellan, Case No. 1:91-cr-326-JEC. Prior to my appointment to the bench in 1992, I had been appointed as a member of the United States Sentencing Commission in 1990, with my term set to end in 1996. I therefore remained on the Commission after my appointment as a judge. The Sentencing Reform Act required that the Commission include at least three federal judges, and three other judges on the Commission had continued to perform their judicial duties while also performing their duties as Sentencing Commissioners.

Shortly after I became a federal district judge, the Federal Defenders Program in my district filed motions contending that as long as I was a Sentencing Commissioner, I could not impose a sentence on any criminal defendant and that I should recuse from deciding the motions. I denied the motion to recuse and denied, on the merits, the motion seeking to remove me from all criminal cases, as well as its challenges to the constitutionality of the Commission, whose constitutionality had been decided in *Mistretta v. United States*, 488 U.S. 361 (1989).

In an unpublished decision, *United States v. McClellan* (copy supplied), the Eleventh Circuit ruled that because, as a Commissioner, I was paid a salary equivalent to that of a circuit judge, which salary is higher than that of a district judge, I had a direct pecuniary interest in the outcome of the litigation, and should have granted the motion to recuse. The panel did not rule on the merits of the defendants' constitutional challenges, which it said "could affect the continued

existence of the Guideline system," but stated that they were not frivolous even in light of *Mistretta.*

At that time, the cases challenging my ability to sentence criminal defendants were transferred to another judge for sentencing, as was the motion challenging the constitutionality of the Commission. During the course of litigating that challenge, defense counsel sought discovery from the Commission and other agencies and officials. The presiding district court judge denied the Government's motion to quash these subpoenas and the Government sought a writ of mandamus in the Eleventh Circuit.

The Eleventh Circuit issued a published decision granting the Government's motion. *In re United States*, 60 F.3d 729 (11th Cir. 1995). It noted that, separating out the dictum found in the earlier panel decision, the only holding of that prior panel opinion was that I should have recused, albeit the present panel "emphatically disavowe[ed]...any intention to adopt" that holding. As to the motion to quash before it, the panel concluded that the subpoenas sought immaterial evidence, as the Supreme Court had already decided the constitutionality of the Commission and the Guidelines in *Mistretta*, and only the Supreme Court could overturn that ruling. As to the specific challenge contesting the propriety of an Article III Judge-Commissioner's presiding over a sentencing hearing, the panel concluded that the defendant lacked standing. No further such challenges were brought.

The following list shows the cases that were remanded to be assigned to a new judge during the interim between the first Eleventh Circuit unpublished ruling and the published decision: *United States v. Ansong*, Case No. 1:92-cr-193-JOF-JMF; *United States v. Bozza*, Case No. 1:92-cr-186-JOF-ALC; *United States v. McLellan*, Case No. 1:92-cr-326-JOF-JMF; *United States v. Millwood*, Case No. 1:92-cr-267-JOF-JRS; *United States v. Roark*, Case No. 1:92-cr-62-JMF; *United States v. Smith*, Case No. 1:93-cr-67-3-JEC-JRS; *United States v. Tullos*, Case No. 1:92-cr-355-JOF-JRS.

United States v. Njanja, Case No. 1:04-cr-283-JEC, *vacated and remanded*, App. No. 04-15961 (11th Cir. May 24, 2005) (copy supplied). I sentenced the defendant at a time when the federal sentencing Guidelines were mandatory. By the time the Eleventh Circuit heard the defendant's appeal, the Supreme Court had ruled that the Guidelines were advisory. The Eleventh Circuit therefore vacated the sentence and remanded for resentencing.

United States v. Pressley, Case No. 1:95-cr-189-JEC, Sentencing *aff'd in part and rev'd in part*, App. No. 99-112731 (11th Cir. July 24, 2000) (copy supplied). Second Sentencing, *rev'd, United States v. Pressley,* 345 F.3d 1205 (11th Cir. 2003). Following trial and conviction of the defendant, at his first sentencing hearing I sentenced him to 292 months imprisonment. While the defendant was eligible for a 2-level enhancement for brandishing a gun and another 2-level

enhancement for restraint of a victim, I determined not to impose both enhancements as that would result in double counting under the circumstances. On appeal, the Circuit affirmed as to all grounds, except the Government's contention that I had erred by failing to impose the additional 2-level enhancement. That error meant that the defendant was subject to a minimum 360-month sentence. At the second hearing, I calculated the Guidelines as requiring a minimum sentence of 360 months. The defendant requested a downward departure because he had been in 23-hour lock-down for over five years during the protracted sentencing litigation in his case. I indicated that I would consider such a departure, had I the power to do so, but concluded that I lacked this power. I therefore imposed a 360-month sentence. On appeal, the Eleventh Circuit reversed, holding that I did have the power to depart on this ground, and it remanded for me to consider whether to do so. By the time of the third sentencing hearing, the Supreme Court had issued its decision in *Booker*, and the parties agreed that, on resentencing of the defendant, the Guidelines were now only advisory. I imposed a 16-year sentence. Neither party appealed.

United States v. Thomas, Case No. 1:00-cr-281-JEC, Order Denying Motion to Vacate Sentence (copy supplied), *rev'd*, *Thomas v. United States*, 572 F.3d 1300 (11th Cir. 2009). The defendant pled guilty to a drug and firearms charge, and was sentenced to a 192-month sentence as a career offender. On appeal, defendant's attorney filed an *Anders* brief, indicating that there were no meritorious issues to be presented on appeal; the Eleventh Circuit concurred and the judgment was affirmed. Defendant subsequently filed a §2255 petition to vacate his sentence, arguing ineffectiveness of his counsel for failure to challenge one of his predicate convictions. I denied that ground, noting that the defendant, in his *pro se* appellate brief, had raised that issue and that the original Eleventh Circuit decision had indicated that defendant's appellate grounds were without merit. On appeal of the denial of the §2255 motion, the appellate court remanded, ruling that it had not determined these claims, as defendant's claim on direct appeal had not been specific enough to suggest the argument that he later made in his §2255 motion. On remand, the Government agreed to defendant's request for a new sentencing because, while the appeal was pending, one of his predicate convictions had been vacated by the state sentencing court. I granted the joint motion and sentenced defendant to a time-served sentence.

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.

For the most part, I have requested that very few of my opinions be published. All of my unpublished orders and opinions issued since the federal court's CM/ECF system began docketing these documents can now be found on that system, which can be accessed by Pacer users. In addition, many of my opinions are available in Westlaw and 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.

Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta, Case No. 1:96-cv-407-JEC (copy previously supplied in response to 13c), *aff'd*, 219 F.3d 1301 (11th Cir. 2000)

Conklin v. Thomas, Case No. 1:95-cv-914-JEC (copy previously supplied in response to 13d), *aff'd, Conklin v. Schofield*, 366 F.3d 1191 (11th Cir. 2004), *cert. denied*, 544 U.S. 952 (2005)

Hein v. Kimbrough, Case No. 1:09-cv-1791-JEC (copy supplied) and 942 F. Supp. 2d 1308 (N.D. Ga. 2013), *aff'd*, ___ Fed. App'x ___, 2013 WL 6163636 (N.D. Ga. Nov. 21, 2013)

Jackson v. City of Stone Mountain, 232 F. Supp. 2d 1337 (N.D. Ga. 2002)

Johnson v. Miller, 929 F. Supp. 1529 (S.D. Ga. 1996)(*per curiam*)(three-judge panel)

Jordan v. Cobb County, 227 F. Supp. 2d 1322 (N.D. Ga. 2001)

Kennedy v. Avondale Estates, 414 F. Supp. 2d 1184 (N.D. Ga. 2005)

A.M. v. Martin, Case No. 1:96-cv-2316-JEC (copy previously supplied in response to 13c)

Payne v. Dekalb County, 414 F. Supp. 2d 1158 (N.D. Ga. 2004)

Smith v. Cobb County, Case No. 1:02-cv-1093-JEC, 314 F. Supp. 2d 1274 (N.D. Ga. 2002) and *Perry v. Cobb County*, Case No. 1:02-cv-1206-JEC, 314 F. Supp. 2d 1332 (N.D. Ga. 2003)

Thomas v. Clayton County, 94 F. Supp. 2d 1290 (N.D. Ga. 1999), *aff'd*, 261 F.3d 1160 (11th Cir. 2001), *vacated*, 536 U.S. 953 (2002), *reinstated*, 323 F.3d 950 (11th Cir. 2003)

Walden v. Centers for Disease Control and Prevention, Case No. 1:08-cv-2278-JEC (copy supplied), *aff'd*, 669 F.3d 1277 (11th Cir. 2012)

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

Estate of Kosow v. Comm'r of Internal Revenue, 45 F.3d 1524 (11th Cir. 1995) (Carnes, Dist. J.). The IRS had attempted to deny an estate a deduction for the

four million dollars it had paid to the sons of the decedent pursuant to an agreement the latter had made thirty years before in a divorce settlement with his then-wife, who was the mother of the sons. The sons' mother had given up her right to request greater child support in return for the decedent's agreement to leave a certain portion of his estate to the two sons. Reversing the tax court's decision, the opinion holds that the agreement between the decedent and his ex-wife was made in good faith for value, and was supported by adequate and full consideration. Accordingly, a deduction was proper.

Jaques v. Kendrick, 43 F.3d 628 (11th Cir. 1995) (Carnes, Dist. J.). The opinion affirms the decision of the district court that a convenience store whose employee had sold alcoholic beverages to one individual, was not liable under Georgia law for that individual's later transfer of the alcohol to a minor who later caused a serious automobile accident, absent evidence that the employee had actual or constructive knowledge that the alcohol would be transferred to that minor. As there was no such evidence, the panel opinion affirmed the district court's grant of summary judgment to the defendant.

Birmingham Steel Corp. v. Tennessee Valley Auth., 353 F.3d 1331 (11th Cir. 2003) (Carnes, Dist. J.). The opinion reversed a district court that had decertified a class based on the inadequacy of the existing class representative, but without allowing class counsel and the class a reasonable time to find a new class representative.

Southeast Paving v. Jackson Cnty., App. No. 93-3052 (11th Cir. 1994)

Lykes Bros, Inc. v. United States Army Corps of Eng'rs, 64 F.3d 630 (11th Cir. 1995)

Honeycutt v. Birge, App. No. 93-3462 (11th Cir. 1994)

Barnett Bank of Marion Cnty., N.A. v. Gallagher, 43 F.3d 631 (11th Cir. 1995), overruled *sub nom*, *Barnett Bank of Mariona County, N.A. v. Nelson*, 517 U.S. 25 (1996)

Electro-Wire Prod., Inc. v. Sirote & Permutt, P.C., 40 F.3d 356 (11th Cir. 1994)

Rowland v. Vermont Mutual Ins. Co., App. No. 93-9504 (11th Cir. 1994)

Wrenn v. Am. Cast Iron Pipe, 40 F.3d 1162 (11th Cir. 1994)

McCoy v. Webster, 47 F.3d 404 (11th Cir. 1995)

USA v. Antelmo Marquez-Lopez, App. No. 01-16809 (N.D. Ga. 2003)

Reynolds v. McInnes, 338 F.3d 1221 (11th Cir. 2003)

Anders v. Hometown Mortg., Servs., Inc., 346 F.3d 1024 (11th Cir. 2003)

Doe v. Pryor, 344 F.3d 1282 (11th Cir. 2003)

Miller v. Tyson Foods, Inc., App. No. 02-15709 (11th Cir. 2003)

Gayfer Montgomery Fair v. Pinkey, App. No. 02-15964 (11th Cir. 2003)

In Re: Ford Motor Co., 345 F.3d 1315 (11th Cir. 2003)

Levine v. Bellsouth, App. No. 04-10819 (11th Cir. 2005)

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.

Automatic Recusals:

I have informed the Clerk of Court that I must recuse from all cases in which a party is represented by King & Spalding, LLP, or in which the latter is a party, as my husband is a partner at that firm. Accordingly, if King & Spalding appears at the time a case is initially filed, the Clerk of Court does not assign that case to me, but instead assigns the case to the next judge on our court's random rotation list. If, however, King & Spalding makes an appearance after a case has been assigned to me, I must then recuse from that case.

Cases In Which I Have Recused *Sua Sponte*:

Neither I nor the Clerk's Office generate or maintain a report containing a list of cases in which I have recused *sua sponte*. The Clerk's Office has assisted me in attempting to find all such cases and has provided me with the following list. While I have tried to identify all of the cases on which I have recused *sua sponte*, I cannot ensure that this list has captured all such cases.

(i) Cases where the law firm of King & Spalding, LLP, has appeared:

American European Insurance Company v. Suntrust Bank, Inc., Case No. 1:09-cv-1310 (N.D. Ga.)

Bleier v. The Coca-Cola Company, Case No. 1:06-cv-697 (N.D. Ga.)

Bulthaup Corporation v. French, Case No. 1:09-cv-320 (N.D. Ga.)

Carpenter v. Airborne, Inc., Case No. 1:04-cv-3076 (N.D. Ga.)

CCH Associates, LLC v. Datascope Corp., Case No. 1:08-cv-3313 (N.D. Ga.)

Coffell v. Equifax Information Services, LLC, Case No. 1:12-cv-2693 (N.D. Ga.)

Cole v. Daimler AG, Case No. 1:09-cv-2509 (N.D. Ga.)

Collier v. The Coca-Cola Company, Case No. 1:06-cv-194 (N.D. Ga.)

Cooper v. Daimler AG, Case No. 1:09-cv-2507 (N.D. Ga.)

Cooper v. Daimler AG, Case No. 1:09-cv-2510 (N.D. Ga.)

Cowe v. Equifax Credit Reporting, Case No. 1:09-cv-991 (N.D. Ga.)

Creasy v. Massachusetts Mutual Life Insurance Company, Case No. 1:04-cv-2151 (N.D. Ga.)

I kept no notes as to my reason for recusal. I suspect that the reason for recusal was because one of the attorneys for the defendant had been a partner at King & Spalding, the firm in which my husband was a partner. At the time this case was filed, this person had recently left King & Spalding for a new law firm, but often our docket sheets are not updated simultaneously with such address changes and it is probable that this lawyer was still listed at that time on the cover of the docket sheet as a lawyer with King & Spalding.

Cua v. Corsolutions Medical, Inc., Case No. 1:05-cv-1286 (N.D. Ga.)

Dang v. XLHealth Corporation, Case No. 1:09-cv-1076 (N.D. Ga.)

Doe v. Wooten, Case No. 1:07-cv-2764 (N.D. Ga.)

Dosa v. Equifax Information Services, LLC, Case No. 1:11-cv-2857 (N.D. Ga.)

Electronic Claims Processing, Inc. v. Emdeon Corporation, Case No. 1:06-cv-1813 (N.D. Ga.)

Everson v. The Coca-Cola Company, Case No. 1:05-cv-2301 (N.D. Ga.)

Federal Deposit Insurance Corporation v. Skow, Case No. 1:11-cv-111 (N.D. Ga.)

Fuller v. Home Depot Services, LLC, Case No. 1:06-cv-1490 (N.D. Ga.)

Functional Products Trading, S.A. v. JITC, LLC, Case No. 1:12-cv-355 (N.D. Ga.)

Gentle v. Equifax Information Services, LLC, Case No. 1:13-cv-102 (N.D. Ga.)

Gianfagna v. SmithKline Beecham Corporation, Case No. 1:11-cv-950 (N.D. Ga.)

Gold Kist Inc. v. Pilgrim's Pride Corporation, Case No. 1:06-cv-2441 (N.D. Ga.)

Grubbs v. SmithKline Beecham Corporation, Case No. 1:04-cv-3433 (N.D. Ga.)

Haines v. International Management Associates, LLC, Case No. 1:08-cv-1937 (N.D. Ga.)

Harry P. Kuniansky Limited Partnership v. Flint Group North America Corporation, Case No. 1:09-cv-2606 (N.D. Ga.)

Hiwassee College, Inc. v. The Southern Association of Colleges and Schools, Inc., Case No. 1:05-cv-951 (N.D. Ga.)

Hoque v. Toyota Motor Sales, USA. Inc., Case No. 1:09-cv-2360 (N.D. Ga.)

Hughes v. Kia Motors Corporation, Case No. 1:11-cv-2733 (N.D. Ga.)

ITT Corporation v. Xylem Group, LLC, Case No. 1:11-cv-3669 (N.D. Ga.)

Jackson v. Organon USA, Inc., Case No. 1:13-cv-820 (N.D. Ga.)

Lowry v. Toyota Motor Corporation, Case No. 1:10-cv-2165 (N.D. Ga.)

Lucas v. Scana Energy Marketing, Inc., Case No. 1:12-cv-2356 (N.D. Ga.)

Mack v. Organon USA, Inc., Case No. 1:13-cv-1278 (N.D. Ga.)

McKesson Information Solutions LLC v. Epic Systems Corporation, Case No. 1:06-cv-2695 (N.D. Ga.)

Miller v. Daimler AG, Case No. 1:09-cv-2506 (N.D. Ga.)

Monk v. Daimler AG, Case No. 1:09-cv-2511 (N.D. Ga.)

OFS Brightwave Solutions, Inc. v. Preferred Real Estate Investments, Inc., Case No. 1:06-cv-2017 (N.D. Ga.)

Pedraza v. The Coca-Cola Company, Case No. 1:05-cv-1256 (N.D. Ga.)

Perkins v. Megaloni Limited Liability, Company, Case No. 1:07-cv-1557 (N.D. Ga.) and *Perkins v. Chingros*, Case No. 1:07-cv-1558 (N.D. Ga.).

Siemens Industry, Inc. v. SIPCO, LLC, Case No. 1:10-cv-2478 (N.D. Ga.)

At the time of assignment to me, the automatic conflict checking report indicated that King & Spalding had appeared in the case. Upon looking at the docket now, I do not see King & Spalding on the docket. Further research on Google indicates that one of the attorneys on the case had been an associate with King & Spalding, presumably at the time this case was filed. This individual later left King & Spalding to go with the law firm now listed on the docket: Kilpatrick Townsend & Stockton.

Romala Stone, Inc. v. The Home Depot U.S.A., Inc., Case No. 1:04-cv-2307 (N.D. Ga.)

Rosinek v. The Home Depot, Inc., Case No. 1:07-cv-2972 (N.D. Ga.)

Stroman v. Bank of America Corporation, Case No. 1:10-cv-4080 (N.D. Ga.)

United States v. Apria Healthcare, Case No. 1:95-cv-2142 (N.D. Ga.)

Wal-Mart Stores, Inc. v. Sun Construction Group, Inc., Case No. 1:11-cv-3632 (N.D. Ga.)

Whisby v. Suntrust Bank, Inc., Case No. 1:09-cv-1493 (N.D. Ga.)

Williams v. Just Blinds, L.P., Case No. 1:10-cv-1570 (N.D. Ga.)

(ii) Cases In Which My Husband Had A Financial Interest In One Of The Parties:

Head v. Home Depot, Inc., Case No. 1:04-cv-1913 (N.D. Ga.)

Johnson v. AT&T, Case No. 1:04-cv-3111 (N.D. Ga.)

Lang v. Depuy Orthopaedics, Inc., Case No. 1:05-cv-700 (N.D. Ga.)

Lightsey v. John Crane, Inc., Case No. 1:02-cv-3391 (N.D. Ga.)

Leathers v. Pfizer, Inc., Case No. 1:04-cv-615 (N.D. Ga.)

Miller v. The St. Paul Companies, Inc., Case No. 1:04-cv-1678 (N.D. Ga.)

Mozee v. Atchley, Case No. 1:04-cv-2771 (N.D. Ga.)

Reed v. Home Depot 0160, Case No. 1:05-cv-173 (N.D. Ga.)

SED International Holding, Inc. v. Employers Insurance, Case No. 1:04-cv-906 (N.D. Ga.)

The HBS Group, Inc. v. Home Depot U.S.A., Inc., Case No. 1:04-cv-2563 (N.D. Ga.)

Top Docs, Inc. v. St. Alexius Medical Center, Case No. 1:04-cv-2871 (N.D. Ga.)

Travelers Property v. Allen-Bradley Co LLC, Case No. 1:04-cv-1181 (N.D. Ga.)

United States for the Use and Benefit of Quantum Construction Company v. McCarthy Building Companies, Inc., Case No. 1:05-cv-880 (N.D. Ga.)

(iii) Cases Where I Was Listed As A Defendant:

Barber v. Carnes, Case No. 1:07-cv-285 (N.D. Ga.)

Green v. Carnes, Case No. 1:04-cv-2067 (N.D. Ga.)

(iv) Miscellaneous Reasons:

Bogart & Bogart, P.C. v. Wachovia Bank, National Association, Case No. 1:10-cv-1553 (N.D. Ga.). I had known one of the parties for many years.

Braswell v. Board of Regents of the University System of Georgia, Case No. 1:04-cv-2583 (N.D. Ga.). One of the defendants was Dr. Michael Adams, president of the University of Georgia. I had been a member of the selection committee that

recommended Dr. Adams as a finalist for this position a few years before this action was filed.

Carecentric National, LLC v. AdvantaCare Health, Inc., Case No. 1:10-cv-959 (N.D. Ga.). At the time, a family member was dating one of the attorneys on the case.

Emory University v. Nova Biogenetics, Inc., Case No. 1:06-cv-141 (N.D. Ga.). One of the defendants was my neighbor.

Faus Group Inc. v. Berry Floor N.V., Case No. 1:08-cv-315 (N.D. Ga.). My husband was representing the owner of one of the corporate parties in another matter.

Federal Deposit Insurance Corporation v. Flack, Case No. 1:12-cv-2594 (N.D. Ga.). I recused *sua sponte* for a period of time from cases involving a law firm representing one of the parties listed above, following the employment of a family member at that law firm.

Federal Deposit Insurance Corporation v. Van D. Jackson, Case No. 1:12-cv-1725 (N.D. Ga.). I recused *sua sponte* for a period of time from cases involving a law firm representing one of the parties listed above, following the employment of a family member at that law firm.

Federal Deposit Insurance Corporation v. Patel, Case No. 1:12-cv-2521 (N.D. Ga.). I recused *sua sponte* for a period of time from cases involving a law firm representing one of the parties listed above, following the employment of a family member at that law firm.

Matthews-Washington v. Wells Fargo Bank NA, Case No. 1:10-cv-1262 (N.D. Ga.). I recused because I thought that my husband had a financial interest in one of the parties, which appears now to be incorrect, as I cannot confirm that he had an interest requiring recusal at that time.

Mays v. Grayer, Case No. 1:09-cv-1037 (N.D. Ga.). Following enactment of the Second Chance Act, which gave the Bureau of Prisons authority to release inmates to halfway houses earlier than had previously been permitted, the defendant requested that I write a letter to the Bureau supporting his request. The defendant had been a model prisoner and had comported himself in an exemplary manner during his incarceration, and I did so. When the Bureau did not accede to the defendant's request, he sued them based on their denial. Given my involvement in the matter at issue, I recused on this particular case.

Miller v. State Farm Fire and Casualty Insurance Company, Case No. 1:04-cv-1777 (N.D. Ga.). I recused because I thought that my husband had a financial

interest in one of the parties, which appears now to be incorrect, as I cannot confirm that he had an interest requiring recusal at that time.

SP Acquisition Corp. v. Beaulieu Group, LLC, Case No. 1:11-cv-4536 (N.D. Ga.). My husband was representing the owner of one of the corporate parties in another matter.

Tucker v. GTKB Marketing, LLC, Case No. 1:11-cv-4481 (N.D. Ga.). I recused *sua sponte* for a period of time from cases involving a law firm representing one of the parties listed above, following the employment of a family member at that law firm.

United States v. Moses, Case No. 1:04-cr-508 (N.D. Ga.). The defendant was a neighbor of mine and my husband.

United States v. Udogu, Case No. 1:06-cr-290 (N.D. Ga.). I had been assigned the case and was notified that the defendant wished to enter a plea of guilty. At the hearing to accept his plea of guilty, the prosecutor recounted the factual basis for the plea. As a result of that recitation, it became clear that I knew the victim of the identity theft and fraud and that she was a relative of a very good friend. For that reason, I recused and the case was reassigned to a new judge for plea and sentencing.

Vollmer v. Wachovia Bank, N.A., Case No. 1:09-cv-560 (N.D. Ga.). An attorney for one of the parties was a former law clerk with whom I had maintained a personal relationship.

Cases In Which I Have Denied Motions For Recusal

(i) *McClellan* Cases

As explained in greater detail in my response to Question 13f, shortly after I became a district judge, and as part of their challenge to the constitutionality of the Sentencing Guidelines, the Federal Defender's Program in my district sought to disqualify me from all criminal cases in which they represented clients because of my service on the United States Sentencing Commission. I denied their motion for my recusal and disqualification in all such cases. Subsequently, the Eleventh Circuit ruled that I should have recused from deciding whether I was disqualified to hear criminal cases. A later Eleventh Circuit decision determined that, because the Supreme Court had previously found the Sentencing Guidelines to be constitutional, the defendants' challenges to the constitutionality of the Sentencing Commission were without merit. No further motions to recuse were filed, and I again began sentencing defendants.

The list below shows cases in which I denied motions to recuse based on *McClellan* arguments. There may be additional such cases that the Clerk's Office was not able to identify with the query search that was devised for this purpose. Some of these cases

were subsequently reassigned to another judge during the period between the issuance of the first Eleventh Circuit opinion and the second Eleventh Circuit opinion.

United States v. Alexander, Case No. 1:92-cr-428 (N.D. Ga.)

United States v. Ambroise, Case No. 1:94-cr-444 (N.D. Ga.)

United States v. Ambroise, Case No. 1:95-cr-54 (N.D. Ga.)

United States v. Ansong, Case No. 1:92-cr-193 (N.D. Ga.)

United States v. Awolola, Case No. 1:94-cr-117 (N.D. Ga.)

United States v. Baldeon, Case No. 1:93-cr-78 (N.D. Ga.)

United States v. Bozza, Case No. 1:92-cr-187 (N.D. Ga.)

United States v. Charlton, Case No. 1:94-cr-103 (N.D. Ga.)

United States v. Herreras, Case No. 1:92-cr-404-02 (N.D. Ga.)

United States v. Hunter, Case No. 1:94-cr-446 (N.D. Ga.)

United States v. Johnson, Case No. 1:93-cr-369 (N.D. Ga.)

United States v. Kekereekun, Case No. 1:93-cr-434 (N.D. Ga.)

United States v. Lamotte, Case No. 1:94-cr-173 (N.D. Ga.)

United States v. Lowe, Case No. 1:93-cr-327 (N.D. Ga.)

United States v. Curt McLellan, Case No. 1:91-cr-326 (N.D. Ga.)

United States v. Miller, Case No. 1:93-cr-504 (N.D. Ga.)

United States v. Millwood, Case No. 1:92-cr-267 (N.D. Ga.)

United States v. O'Neal, Case No. 1:93-cr-519 (N.D. Ga.)

United States v Onokpachere, Case No. 1:92-cr-392 (N.D. Ga.)

United States v. Reed, Case No. 1:92-cr-406 (N.D. Ga.)

United States v. Sadie, Case No. 1:92-cr-307-03 (N.D. Ga.)

United States v. Sazon, Case No. 1:93-cr-67-05 (N.D. Ga.)

United States v. Lael Small, Case No. 1:96-cr-417-06 (N.D. Ga.)

United States v. Smith, Case No. 1:93-cr-67-03 (N.D. Ga.)

United States v. Stafford, Case No. 1:94-cr-14-01 (N.D. Ga.)

United States v. Tullos, Case No. 1:92-cr-355 (N.D. Ga.)

United States v. Williams, Case No. 1:93-cr-466 (N.D. Ga.)

United States v. Willis, Case No. 1:93-cr-206-02 (N.D. Ga.)

United States v. Woods, Case No. 1:93-cr-370 (N.D. Ga.)

(ii) Other Denials of Motions to Recuse

Neither I nor the Clerk's Office generate or maintain a report containing a list of cases in which motions to recuse have been filed. The Clerk's Office has been able to identify the following cases in which motions were filed by using a standard query language search recently created specifically for this purpose. However, as most motions to recuse are filed by *pro* se litigants and as the Northern District of Georgia has a high volume of *pro se* litigation, it is possible that additional motions have been filed that were not identified by the Clerk's Office due to the use of unconventional terminology or language in the title and text of the motion.

Barber v. Director of FBI, Case No. 1:02-cv-203 (N.D. Ga.)

Cartman v. United States, Case No. 1:13-cv-1650 (N.D. Ga.)

Cox v. Kahn, Case No. 1:10-cv-653 (N.D. Ga.)

Cuyler v. Ley, Case No. 1:12-cv-3066 (N.D. Ga.)

Danenberg v. Kugler, Case No. 1:94-cv-489 (N.D. Ga.)

Dean v. Homecomings Financial Services, Case No. 1:07-cv-1521 (N.D. Ga.)

Dean v. Law Firm of Morris, Schneider & Prior, Case No. 1:07-cv-1706 (N.D. Ga.)

Dean v. Homecomings Financial Network Incorporated, Case No. 1:08-cv-550 (N.D. Ga.)

Green v. Wetherington, Case No. 1:01-cv-420 (N.D. Ga.)

Harrison v. Board of Regents of The University System of Georgia, Case No. 1:11-cv-1312 (N.D. Ga.)

Hinojosa v. Wachovia Bank of GA, Case No. 1:01-cv-3470 (N.D. Ga.)

Kante v. Countrywide Home Loans, Case No. 1:09-cv-1233 (N.D. Ga.)

Kante v. McCurdy & Candler L.L.C., Case No. 1:10-cv-1972 (N.D. Ga.)

McWeay v. Citibank, N.A., Case No. 1:11-cv-2875 (N.D. Ga.)

Odouk v. Saint Leo University, Inc., Case No. 1:09-cv-1647 (N.D. Ga.)

Odouk v. Solicitor General, Case No. 1:00-cv-249 (N.D. Ga.)

Odouk v. Cobb County Board, Case No. 1:00-cv-2046 (N.D. Ga.)

Taylor v. Teledyne Tech, et al., Case No. 1:00-cv-1741 (N.D. Ga.)

United States v. Jean-Daniel Perkins, Case No. 1:10-cr-97-01 (N.D. Ga.)

Winter v. Cotton, Case No. 1:04-cv-2723 (N.D. Ga.)

Winter v. Cotton, Case No. 1:04-cv-2724 (N.D. Ga.)

Granting Of Motions To Recuse

Following the Eleventh Circuit's initial decision in *McClellan*, in which a defendant sought my recusal based on my membership on the United States Sentencing Commission, I granted a motion to recuse in the following case. There are likely other cases, not identified by the query search utilized by the Clerk's Office, in which I granted a motion to recuse on the same ground.

United States v. Wilson, Case No. 1:93-cr-133 (N.D. Ga.), granted on December 14, 1993.

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

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

None.

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

In 1964, my father, Charles L. Carnes, ran for a seat in the Georgia House of Representatives. I was 14 years old at the time and my mother, father, and I spent the summer handing out campaign flyers in our district.

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;

1975 – 1977
United States Court of Appeals for the Fifth Circuit
18 Greenville Street
Newnan, GA
Law Clerk to Judge Lewis R. Morgan

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

No.

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

1978 – 1990
United States Attorney's Office for the Northern District of Georgia
75 Spring Street, Suite 600
Atlanta, GA 30303
Appellate Chief, Deputy Chief, and Assistant United States Attorney

February – July 1989
United States Sentencing Commission
One Columbus Circle, Northeast, Suite 2-500
Washington, D.C. 20002-8002
Special Counsel

1990 – 1996
United States Sentencing Commission

One Columbus Circle, Northeast, Suite 2-500
Washington, D.C. 20002-8002
United States Sentencing Commissioner

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.

After my Fifth Circuit Clerkship, I became an Assistant United States Attorney in 1978. In addition, for almost six months in 1989, I was on detail assignment as Special Counsel to the United States Sentencing Commission in Washington, D.C. From 1978 to 1981, as an Assistant United States Attorney, I handled a mixed caseload including general crimes from 1978 to 1979, economic crimes from 1980 to 1981, and some appellate work throughout that entire time period. Beginning in 1982, my practice was predominately appellate in nature, although I still made frequent appearances in district court and magistrate's court to handle arraignments, motions, sentences, probation revocations, and other similar duties. From 1987 to 1990, in addition to serving as Appellate Chief, I also acted as Deputy Chief of the Criminal Division, supervising division court trial attorneys and sentencing guidelines' matters.

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

My client was the United States and my employer was the Department of Justice. I specialized in federal 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.

100% of my practice was in litigation, and almost all of that litigation was appellate litigation. From 1979 to 1981, I appeared in district court frequently and occasionally in appellate court. From 1982 to 1986, I appeared in appellate court frequently, and I continued to appear occasionally in district court for bench trials. From 1987 to 1990, my appearances consisted almost entirely of my frequent appearances in appellate court. I also continued to supervise trial attorneys but only appeared in district court infrequently. Over the course of my

appellate career, I handled 47 cases that resulted in a published decision, as well as an approximately equal number of cases that did not result in a published opinion.

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.

I tried three cases to a jury, two as sole counsel and one as co-counsel. In addition, as a supervisor and appellate chief, I assisted trial attorneys on particularly significant or complex cases. In addition, I have had several § 2255 motions, which resembled short non-jury matters, that were heard by a judge.

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.

None.

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. Benton*, 637 F.2d 1052 (5th Cir. 1981)
   Co-counsel at trial - July-August 1979. Judge Newell Edenfield, NDGA.

At the time of the offense, defendant, a major narcotics figure in the Miami area, was incarcerated at the Atlanta Penitentiary. He was convicted of killing a fellow inmate, Zambito, a co-conspirator who had become a Government informant, within 16 hours of the latter's arrival at the Atlanta Penitentiary. The case was one of a rash of murders at the penitentiary. It was particularly significant because evidence at the trial focused on some of the security problems at the prison, inasmuch as Zambito was a potential witness and had been mistakenly transferred to the penitentiary where the person who had threatened to kill him was incarcerated. Defendant was convicted of conspiracy to commit murder and sentenced to life imprisonment. The conviction was affirmed.

Co-counsel:

Honorable Gerrilyn G. Brill
Currently a United States Magistrate Judge
United States District Court
For the Northern District of Georgia
75 Spring Street, Southwest
Atlanta, GA 30303
(404) 215-1365

Opposing Counsel:

Roger Thompson (deceased)

2. *United States v. Spiegel*, No. 83-8289 (11th Cir. 1984) (unpublished).
   NDGA, § 2255 proceeding in district court. August 1980 to March 1983.
   Judge Charles Moye.

Defendant had been convicted of mail fraud in 1974 in one of the largest fraud cases prosecuted in the Northern District of Georgia at that time. In 1981, I became involved in the § 2255 motion that defendant, who still had not begun service of his sentence, had filed. I was co-counsel during the hearings, which took two years to complete, and sole counsel on appeal. In February of 1984, less than a week after oral argument, the Eleventh Circuit affirmed the denial of the § 2255 and ordered the mandate to issue immediately, meaning that after ten years, the defendant was required to begin serving his sentence.

Co-counsel:

William P. Gaffney (deceased)

Opposing Counsel:

John Martin
Martin Brothers
44 Broad Street, Suite 202
Atlanta, GA 30303
(404) 522-0400

3. *United States v. Holmes*, 680 F.2d 1372 (11th Cir. 1982).

The defendant was convicted after a jury trial on one charge and after the entry of a plea of guilty on another charge, but failed to appear at his consolidated sentencing hearing. In a case of apparent first impression in federal appellate courts, the Government prevailed in its argument that a defendant who flees after conviction, but before sentencing, waives his right to appeal from the conviction. I both briefed and argued the case on appeal for the Government.

Opposing Counsel:

John William Hammond
241 Lemon Street, Northeast, Suite D
Marietta, GA 30060
(770) 422-3883

4. *United States v. Mers*, 701 F.2d 1321 (11th Cir. 1983).

In another case involving issues of first impression, the Government prevailed in its argument that an attorney's representation of four co-defendants who asserted conflicting defenses was not an actual conflict of interest. In addition, the court accepted the Government's interpretation of an important area of excludable time under the Speedy Trial Act. This case has been frequently relied on in criminal trials and on appeals. I both briefed and argued the case on appeal.

Opposing Counsel:

Mark J. Kadish
(no current business contact information available)

Mike K. McIntyre
965 Virginia Avenue, Northeast
Atlanta, GA 30306
(404) 879-1515

5. *United States v. Howard*, 655 F. Supp. 392 (N.D. Ga. 1987), 855 F.2d 832 (11th Cir. 1988).

I represented the Government in post-trial proceedings, including a motion for a new trial, and on appeal in the Eleventh Circuit. The defendant, an Atlanta City councilman, was convicted of filing false tax returns. The Government prevailed in an appeal presenting two complex appellate questions: the admissibility of expert testimony before a jury concerning the taxability of certain monies and the defendant's intent and the extent to which the jury can determine the taxability of monies. I both briefed and argued the case on appeal for the Government.

Opposing Counsel:

Richard H. Sinkfield
2700 International Tower
229 Peachtree Street, Northeast
Atlanta, GA 30303
(404) 420-4605

Tony L. Axam
Axamlaw
62 Moreland Avenue, Northeast
Atlanta, GA 30306
(404) 524-2233

Trial Counsel for Government:

Stephen S. Cowen
Currently at King & Spalding, LLP
1180 Peachtree Street, Northeast
Atlanta, GA 30309
(404) 572-4688

6. *United States v. Anderson*, 782 F.2d 908 (11th Cir. 1986).

In a case of first impression in appellate courts, arising out of a RICO prosecution of an owner of a night club who had committed arson on competitors, the Eleventh Circuit accepted the Government's argument concerning a jury's role in determining the applicability of state law, where a state violation is a predicate act of the RICO charge. The appeal also raised important evidentiary questions. I both briefed and argued the case on appeal for the Government.

Opposing Counsel:

Mark J. Kadish
(no current business contact information available)

7. *United States v. Espinosa-Guerra*, 805 F.2d 1502 (11th Cir. 1986).

In the 1980s, the DEA had set up interdiction programs in large airports, such as Atlanta's, in an effort to apprehend drug couriers. The novelty of this kind of program at the time initially gave rise to new legal questions concerning the propriety of the stop and search of suspected drug couriers. I participated in the preparation of, or wrote, several appellate briefs for the Government in this area, of which the above case is an example. In this case, the district court had suppressed the evidence obtained after the stop and search of an arriving passenger at the Atlanta airport. The Eleventh Circuit reversed the district court, holding that the seizure of the non-English speaking defendant based on reasonable suspicion did not ripen into an arrest requiring probable cause merely because the agent required the suspect to follow him to an office and await an interpreter. This case was significant for multiple reasons, including the appellate court's holding that each stop and search should be considered based on the entirety of the circumstances, and not on bright-line tests. I both briefed and argued the case on appeal for the Government.

Opposing Counsel:

Stephanie Kearns
Federal Public Defender's Office
101 Marietta Tower, Suite 1500
Atlanta, GA 30303
(404) 688-7530

8. *United States v. Hernandez-Cano*, 808 F.2d 779 (11th Cir. 1987).

I represented the Government on the appeal of the district court's suppression of evidence in this case. The district court had suppressed evidence obtained through the search of luggage at the Atlanta airport. The Eleventh Circuit reversed the district court and held that the search was lawful. Here, an airline employee had observed a passenger move a bundle that appeared to contain white powder from his carry-on to his checked luggage. The luggage was pulled off the checked area and held. Eventually, airline employees notified police, and the former initiated a search of the luggage, during which a police officer assisted her. A search by a non-Governmental agent is not subject to the Fourth Amendment. A search by such an agent is, and here there was no probable cause to support the search. The Eleventh Circuit accepted the Government's argument that the "inevitable discovery rule" should apply, as but for the unrequested participation

by the officer, the private employee would have soon thereafter found the contraband drugs in what would have been a legal search.

Opposing Counsel:

Paul Kish
Kish & Lietz P.C.
1700 South Tower
225 Peachtree Street, Northeast
Atlanta, GA 30303
(404) 588-3991

9. *United States v. Hammock*, 860 F.2d 390 (11th Cir. 1988).

In this search arising out of a drug interdiction program at bus stations, the officers entered a bus that had just arrived and approached seated passengers, requesting permission to search their bags. Finding a bag that no one would claim, the officers searched and found cocaine. That search led to a search of the defendant, on whose person the officers found the claim check for the bag. The Eleventh Circuit affirmed the conviction and approved the search, concluding that the property was abandoned and that defendant's response to questions was consensual. I briefed and argued the case on appeal for the Government.

Opposing Counsel:

Frederic W. Tokars
(no current business contact information available)

10. *United States v. Roper*, 702 F.2d 984 (11th Cir. 1983).

Preparing both the brief and arguing the case, I represented the Government on the appeal of the district court's suppression of evidence in this case. This case addressed the impact of the fact that an apprehending officer has brandished a weapon in determining whether the encounter constitutes a seizure or an arrest, as well as an expansion of the authority of an officer to make an arrest based on the imputed collective knowledge of other officers. A police officer had observed a flyer seeking the apprehension of a defendant who had jumped bail. Later, observing an automobile that matched the description and tag number on the flyer, the officer stopped the car and approached the driver's side with his pistol drawn, directing him to exit. The driver turned out to be the bail-jumper and the district court suppressed the evidence (a gun discovered on the driver's person), concluding that the officers had arrested the driver on less than probable cause. The Eleventh Circuit accepted the Government's argument that the drawing of a gun does not, necessarily, transform an investigative stop into a full-blown arrest. As there was reasonable suspicion to support the latter, the appellate court indicated that the evidence discovered during the encounter should not be

suppressed in the defendant's subsequent prosecution for being a felon in possession of a firearm.

Opposing Counsel:

Darrell Greene (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.)

As a prosecutor, most of my district court cases did not proceed to trial. The most significant cases in this category were the cases of *United States v. Wamburg* and *United States v. Hathaway*. Wamburg was a C&S bank official who was indicted for a very complex scheme to defraud the bank and to enrich Mr. Wamburg. C&S lost several million dollars as a result of the scheme. Mr. Wamburg pleaded guilty and was sentenced to three years' incarceration. The court ultimately reduced the sentence to one-year incarceration. Mr. Hathaway had been a respected and well-known bankruptcy auctioneer in the Atlanta area. An FBI investigation revealed that he had been skimming money for a period of years from the estates whose assets he was entrusted with liquidating. Mr. Hathaway pled guilty and received a term of incarceration.

I was active on the Attorney General's Subcommittee on Sentencing Guidelines since its inception in 1988 to 1990. Except for me, that committee was composed entirely of United States Attorneys from around the country and was very active in monitoring the implementation of the guidelines and making recommendations to the Attorney General and the field concerning use of those guidelines.

I was also involved in the Attorney General's Subcommittee on Public Corruption in 1988. That subcommittee, which was chaired at that time by my United States Attorney, was active in seeking legislation, which was ultimately passed by Congress and signed into law, to amend statutes affected by the Supreme Court's decision in *United States v. McNally*, which had held that the mail fraud statute did not cover schemes to defraud a victim of an individual's "honest and faithful services."

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

Adjunct Professor – George Washington School of Law, Fall 1991, Litigation Practice. I was one of four adjunct teachers conducting break-out groups in a class overseen and

taught by Professor Stephen Saltzburg. The role of the adjunct professor was to critique the students as the latter engaged in mock trial scenarios, such as cross-examination, the making of objections, or closing argument. I have no syllabus.

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

    None.

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

    No.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My husband remains a partner at King & Spalding, and I will recuse on any case in which that firm appears. My daughter is an Assistant Attorney General for the State of Georgia, and I will recuse on any case on which she has worked. As my husband ceased purchasing stock several years ago, in large part because of the recusal difficulties that such transactions created, I foresee no category of cases involving a financial interest that should arise.

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 have the Clerk of Court flag cases involving King & Spalding and the State Attorney General's Office. I will recuse on the former and, as to the latter, recuse on any cases on which my daughter has worked. To the extent that there are any practices established by the Eleventh Circuit concerning the need for a newly-appointed judge to recuse on the cases of recent former colleagues on the district court bench, I will follow those practices. Of course, I would recuse on any case over which I presided as a district court judge.

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 entire career has been in public service, and I have therefore been precluded from taking pro bono representations. As Chief Judge, however, I have worked with the Federal Defender Program here in an effort to ensure that adequate resources are provided for the criminal defense of indigents in our district. I also support educational programs for federal defenders and appointed criminal counsel, by appearing at such programs.

As Chief Judge, I have focused on outreach to members of our bar and to those who aspire to a legal career. Our court has several times hosted middle-school or high school students who aspire to be attorneys. In the spring of 2000, I was one of the judges for the *"Do the Write Thing Challenge"* Program, in Atlanta. Sponsored by the National Campaign to Stop Violence and focusing on disadvantaged students, this program holds an annual essay competition for middle-school students.

Each year, our court hosts a gathering of younger attorneys within the state to explain to them our federal system, and I have been active in that effort. I am a member of an Inn of Court that includes law school students and younger lawyers. This Inn strives not only to provide substantive instruction, but also to inculcate high ethical standards. As Chief Judge, with the support of my court and the co-sponsorship of the local chapter of the Federal Bar Association, I have also begun an annual CLE program that pays particular attention to the development of less-experienced lawyers. In 2012, the program focused on changes in the federal rules of civil procedure. In 2013, the Court and FBA sponsored two sessions on legal writing, with one of these sessions focused on younger lawyers, in an effort to help improve their written advocacy skills.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and

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

In late February 2013, I was contacted by my state's two senators, Senator Saxby Chambliss and Senator Johnny Isakson, who inquired whether I would be willing to be recommended to the White House for the open Eleventh Circuit position. I agreed that they could submit my name. Since September 5, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 21, 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. That nomination was resubmitted on January 6, 2014.

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
Carnes, Julie E.	Eleventh Circuit	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**
Circuit Judge	☑ Nomination Date 01/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 01/05/2014
7. Chambers or Office Address		
2167 U.S. Courthouse 75 Spring Street, S.W. Atlanta, Georgia 30303		

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.	Executor	Estate #1
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 18	Name of Person Reporting Carnes, Julie E.	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	lawyer - self-employed
2.	2013	part-time employee, University System of Georgia, stipend
3.	2014	lawyer - self-employed
4.	2014	part-time employee, University System of Georgia, stipend

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 18	Name of Person Reporting Carnes, Julie E.	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 18

Name of Person Reporting	Date of Report
Carnes, Julie E.	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. Associated Credit Union cash acc't	A	Interest	M	T	Exempt				
2. SunTrust Bank cash acc't	A	Interest	N	T					
3. Trust #1									
4. - Suntrust Bank cash account	A	Interest	J	T					
5. - Northwestern Mutual whole life insurance	B	Dividend	K	T					
6. Wells Fargo Bank cash acc't	A	Interest	M	T					
7. Capital One 360 (formerly ING Direct) cash acc't	B	Interest	M	T					
8. Prudential Life Insurance Company Annuity	A	Dividend	O	T					
9. Athens GA Hsg Auth Rev UGARFDG East Campus 12/1/24	C	Interest	L	T					
10. Clayton Cnty GA Dev Auth Rev Tuff Archives RF 07/01/2025	C	Interest	L	T					
11. Fayette Co. GA Sch DT Maty: 03/01/2013	B	Interest							
12. Fulton Cnty GA Dev Auth Rev Catholic B 11/15/2023	B	Interest	K	T					
13. Gainesville-Hall Cnty GA HSPRV Northeast B RF 02/15/2045	C	Interest	L	T					
14. Lowndes Cnty GA Pub Facs Maty: 06/01/2013	A	Interest							
15. Liberty Co. GA Hosp Auth Maty: 08/01/2014	B	Interest	K	T					
16. Gwinnett Co. GA Wtr & Swr Maty: 08/01/2015	C	Interest	M	T					
17. GA ST Hsg&Fin AU Single Fam Mtg Sr.A,Subsr A-2-AMT due6/1/16	B	Interest	L	T					

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

FINANCIAL DISCLOSURE REPORT Page 5 of 18	Name of Person Reporting Carnes, Julie E.	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)	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)
18. Fayette Co. GA Sch DT Maty: 03/01/2017	B	Interest	K	T					
19. Cobb Cnty GA Dev Auth Rev Ser A CIFG due 7/15/17	B	Interest	L	T					
20. Gainesville GA Wtr & Sew Rev Maty: 11/15/2017	B	Interest	L	T					
21. Tampa FLA Health Sys Rev Baycare Health RF 11/15/2023	B	Interest	L	T					
22. Schwab Money Market Fund cash acc't	A	Interest	M	T					
23. American Fund (AMCAP Fund)	A	Dividend							
24. American Fund (Washington Mutual Inv.)	A	Dividend							
25. American Fund (Capital World Bond Fund)	A	Dividend							
26. American Fund (Euro Pacific Growth Fund)	A	Dividend							
27. American Fund (Investment Co. of America)	A	Dividend							
28. American Fund (New Perspective Fund)	A	Dividend							
29. American Fund (New Economy Fund)	A	Dividend							
30. Value Line Premier Growth Fund (VALSX)	A	Dividend							
31. Bestbank cash acc't	A	Interest	K	T					
32. Merrill Lynch Bank cash acc't	A	Interest	M	T					
33. BB&T Bank cash acc't	A	Interest	M	T					
34. Phoenix AZ Ser A Maty: 7/01/21	D	Interest	M	T					

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 18

Name of Person Reporting	Date of Report
Carnes, Julie E.	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)
35. Kentucky ST PPTY & BLDGS Nov 01/18	D	Interest	M	T					
36. JEA FLA ELEC SYS REV SUB-SER SER B B RF Maty: 10/1/22	D	Interest	M	T					
37. Pennsylvania ST First Ser A Nov 01/17	D	Interest	M	T					
38. Maine Mun Bd Bk Lt Ser C Nov 01/17	D	Interest	M	T					
39. Ohio ST Major New ST Infrastructure PJ Rev I Jun 15/16	D	Interest	M	T					
40. Washington Cnty Ore. CLEAN WTR SVCS SEW REV A Maty: 10/1/19	D	Dividend	M	T					
41. ML US Treasury Money Fund cash acc't	A	Interest	J	T					
42. The Endowment Registered Fund LP	A	Dividend	N	T					
43. ALPS ALERIAN MLP ETF (AMLP)	A	Dividend							
44. DWS RREEF GLOBAL INFRAST SEC FUND CL S (TOLSX)	C	Dividend	L	T					
45. EATON VANCE RCHRD BRSTN EQUITY STRATGY FD (ERBIX)	A	Dividend	L	T					
46. Pimco Unconstrained Bond Fund CL P (PUCPX)	B	Dividend	M	T					
47. Blackrock Global Allocation FD INC INSTL (MALOX)	D	Dividend	M	T					
48. Blackrock Multi Asset INCOME PORTFOLIO INSTL (BIICX)	C	Dividend	L	T					
49. Alpine Ultra Short Tax Optimized Income Fund	A	Dividend							
50. Goldman Sachs Strategic Income Fund CL I (GSZIX)	B	Dividend	L	T					
51. Ishares Select Dividend Index Fund (DVY)	B	Dividend	L	T					

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 18

Name of Person Reporting	Date of Report
Carnes, Julie E.	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)
52. ISHARES S&P 100 (OEF)	A	Dividend	L	T					
53. JP MORGAN INCOME BUILDER FUND CL SELECT (JNBSX)	A	Dividend	L	T					
54. JP MORGAN STRATEGIC INCOME OPP FUND (JSOSX)	A	Dividend	K	T					
55. Pimco All Asset All Authority Fund CL P (PAUPX)	B	Dividend							
56. Pimco Income Fund CL P (PONPX)	C	Dividend	L	T					
57. POWERSHARES CEF INCOME COMPOSITE PORTFOL (PCEF)	B	Dividend							
58. PRUDENTIAL SHORT DUR HIGH YLD INCOME FD CL Z (HYSZX)	A	Dividend	K	T					
59. Thornburg Limited Term Municipal Fund CL I (LTMIX)	B	Dividend	L	T					
60. TRANSAMERICA MLP & ENERGY INCOME FUND CL I (TMLPX)	A	Dividend	L	T					
61. Blackrock Eqty Dividend Fund Instl (MADVX)	B	Dividend	M	T					
62. Franklin Rising Dividends FD (FRDAX)	B	Dividend	M	T					
63. Franklin Income FD ADV (FRIAX)	C	Dividend	L	T					
64. Loomis Sayles Strategic Inc FD (NEZYX)	B	Dividend	L	T					
65. Pimco Total Return Fund CL P (PTTPX)	A	Dividend							
66. Templeton GLBL Bond FD ADV CL (TGBAX)	C	Dividend	L	T					
67. SPDR INDEX SHS FDS (FEZ)	B	Dividend	K	T					
68. SPDR S&P Dividend ETF (SDY)	D	Dividend	M	T					

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

FINANCIAL DISCLOSURE REPORT Page 8 of 18	Name of Person Reporting Carnes, Julie E.	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)	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)
69. Parnassus Equity Income Fund Investor SH (PRBLX)	C	Dividend	L	T					
70. Manning & Napier World Oppty A (EXWAX)	A	Dividend	L	T					
71. Schwab S&P 500 Index FD (SWPPX)	B	Dividend	L	T					
72. Scout Intl FD (UMBWX)	A	Dividend	K	T					
73. Vanguard Growth ETF (VUG)	C	Dividend	M	T					
74. Chicago ILL Brd Ed 5% 16GO UTX DUE 12/01/16	A	Interest							
75. JEA FLA Wtr & Swr 5% 21 REV DUE 10/01/21	A	Interest	K	T					
76. Minnesota PUB FACS 5% 20 REV DUE 03/01/20	A	Interest	K	T					
77. Minnesota ST 4% 18GO UTX DUE 08/01/18	A	Interest	K	T					
78. New York NY 5% 15GO UTX DUE 11/01/15	A	Interest	K	T					
79. Ohio State 5% 14GO DUE 11/01/14	A	Interest	K	T					
80. Plano TEX INDPT SCH 5% 13GO UTX DUE 02/15/13	A	Interest							
81. Texas ST 5% 19GO DUE 10/01/19	A	Interest	K	T					
82. Washington St 5.0% 16 EXIT DB DUE 07/01/16	B	Interest	K	T					
83. AMERICAN CENTURY MID CAP VALUE FD INV CL (ACMVX)	C	Dividend	K	T					
84. American Century Inflation ADJ BD INV (ACITX)	B	Dividend	K	T					
85. BARON SMALL CAP FUND (BSCFX)	B	Dividend	L	T					

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

FINANCIAL DISCLOSURE REPORT
Page 9 of 18

Name of Person Reporting	Date of Report
Carnes, Julie E.	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)
86. BROWN ADVISORY GROWTH EQUITY INST (BIAGX)	A	Dividend	L	T					
87. COLUMBIA CONTRARIAN CORE FD CL Z (SMGSZ)	C	Dividend	L	T					
88. EGSHARES ETF EMERGING MARKETS (ECON)	A	Dividend	J	T					
89. FEDERATED TOTAL RETURN BOND FD INST CL (FTRBX)	B	Dividend	K	T					
90. FIDELITY CONTRA FUND (FCNTX)	D	Dividend	M	T					
91. FRANKLIN GROWTH FUND ADV CL (FCGAX)	A	Dividend	L	T					
92. HARBOR INTERNATIONAL FUND INST CL (HAINX)	B	Dividend	L	T					
93. ISHARES ETF AAA-A RATED CORPORATE (QLTA)	A	Dividend	J	T					
94. ISHARES FTSE EPRA NAREIT GLOBAL REAL (IFGL)	A	Dividend							
95. ISHARES S&P U S PFD FUND S&P U S PFD STK INDEX FD (PFF)	B	Dividend	K	T					
96. ISHARES Core Total U.S. Bond Mkt ETF (AGG)	B	Dividend	L	T					
97. ISHARES TR BOND 1-3 YEAR CREDIT BOND ETF (CSJ)	A	Dividend	K	T					
98. ISHARES GOLD TRUST (IAU)	A	Dividend	J	T					
99. ISHARES MSCI HONG KONG INDEX FUND (EWH)	A	Dividend							
100. ISHARES MSCI UNITED KINGDOM INDX FD (EWU)	A	Dividend	J	T					
101. ISHARES MSCI GERMANY INDEX FUND (EWG)	A	Dividend	K	T					
102. ISHARES TR BARCLAYS 7-10 YR TREAS.BOND FD (IEF)	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	
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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Carnes, Julie E.	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)
103. ISHARES TR BARCLAYS TIPSBOND FUND (TIP)	A	Dividend	J	T					
104. ISHARES TR RUSSELL 2000 RUSSELL 2000 INDEX FUND (IWM)	A	Dividend	K	T					
105. LORD ABBETT SHORT DUR INCOME FD CL A (LALSZ)	C	Dividend	M	T					
106. LORD ABBETT SHORT DURATION INCOME FD CL F (LDLFX)	A	Dividend							
107. LORD ABBETT MULTI ASSET INCOME FUND (LIGFX)	A	Dividend	K	T					
108. METROPOLITAN WEST TOTAL RETURN BOND M (MWTRX)	B	Interest	L	T					
109. OAKMARK INT'L FUND (OAKIX)	C	Dividend	M	T					
110. OPPENHEIMER EQUITY INCM FD CL A (QCV3Z)	D	Dividend	L	T					
111. OPPENHEIMER DEVELOPING MKTS FD CL Y (ODVYX)	A	Dividend	L	T					
112. PIMCO ETF 0-5 YR HIGH YIELD CORP (HYS)	A	Dividend	K	T					
113. PIMCO FOREIGN BOND FD UNHEDGED CL D (PFBDX)	A	Dividend	K	T					
114. POWERSHS DB COMMDTY INDX (DBC)	A	Dividend	J	T					
115. POWERSHARES S&P ETF 500 LOW VOLATILITY (SPLV)	D	Dividend	M	T					
116. POWERSHS EXCH TRAD FD TR EMERGING MKTS SOVEREIGN (PCY)	A	Dividend							
117. POWERSHS QQQ TRUST SER 1 (QQQ)	A	Dividend	K	T					
118. RIDGEWORTH HIGH INCOME CL I: (STHTX)	A	Dividend							
119. SENTINEL SMALL COMPANY I (SIGWX)	D	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	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 11 of 18

Name of Person Reporting	Date of Report
Carnes, Julie E.	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)
120. SPDR BARCLAYS CAP SHORT TERM CORP BOND FUND (SCPB)	A	Dividend	K	T					
121. S P D R S&P 500 ETF TR EXPIRING 01/22/2118 (SPY)	A	Dividend	K	T					
122. SPDR GOLD TRUST SPDR GOLD SHARES (GLD)	A	Dividend	K	T					
123. TCW TOTAL RETURN BOND FUND I CLASS (TGLMX)	C	Dividend	M	T					
124. VANGUARD INTL EQTY ETF GLOBAL EX-US REAL ESTATE (VNQI)	A	Dividend	J	T					
125. VANGUARD EQUITY INCOME FD INVESTOR SHRS (VEIPX)	A	Dividend	K	T					
126. VANGUARD REIT (VNQ)	B	Dividend	K	T					
127. VANGUARD SMALL CAP VALUE (VBR)	A	Dividend	K	T					
128. VANGUARD WHITEHALL FUNDS HIGH DIVIDEND YIELD (VYM)	B	Dividend	L	T					
129. VANGUARD BOND INDEX FUNDTOTAL BOND MARKET ETF (BND)	B	Dividend	K	T					
130. VANGUARD DIV APPRCIATION (VIG)	A	Dividend	K	T					
131. VANGUARD MSCI DEVELOPED MARKETS EAFE ETF (VEA)	A	Dividend	K	T					
132. VANGUARD MSCI EMERGING MARKETS ETF (VWO)	A	Dividend	J	T					
133. VANGUARD TOTAL STOCK MKT (VTI)	A	Dividend	K	T					
134. WESTERN ASSET CORE PLUS BD FD I (WACPX)	C	Dividend	L	T					
135. WISDOMTREE ASIA ETF LOCAL DEBT FUND (ALD)	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	
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3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
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FINANCIAL DISCLOSURE REPORT
Page 12 of 18

Name of Person Reporting	Date of Report
Carnes, Julie E.	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)	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)
136. WISDOMTREE DIVIDEND EX FINANCIALS FUND (DTN)	A	Dividend	K	T					
137. WISDOMTREE JAPAN HEDGED EQUITY FUND (DXJ)	A	Dividend	K	T					
138. WISDOMTREE TRUST BRAZILIAN REAL FUND (BZF)	A	Dividend	J	T					
139. GENL ELEC CAP CP 5.1%15 INTERNOTE DUE 08/15/15	B	Interest	K	T					
140. PRINCIPAL LIFE 5.10%14 NOTES DUE 04/15/14	B	Interest	K	T					
141. VERIZON GLOBAL 4.9%15 BONDS DUE 09/15/15 CALLABLE	B	Interest	K	T					
142. LOEWS CORP 5.25%16 NOTES DUE 03/15/16	B	Interest	K	T					
143. STATE BK INDIA CD DUE 06/22/17	A	Interest	L	T					
144. AMERICAN MUN PWR REV DUE 02/15/23	B	Interest	K	T					
145. CALIFORNIA ST ECONO 3%13EXIT DUE 07/01/13	A	Interest							
146. CHARLESTON SC EDL EXCE 5%23REV DUE 12/01/23	A	Interest	K	T					
147. GEORGIA MUN GAS AUTH GAS REV TOCCOA PROJ DUE 6/01/20	B	Interest	K	T					
148. LOS ANGELES CALIF GO U/LTX DUE 07/01/17	B	Interest	K	T					
149. DALLAS FORT WORTH REV DUE 11/01/22	A	Interest	K	T					
150. HOUSTON TEX INDPT 5%23GO LTX DUE 02/15/23	A	Interest	K	T					
151. NEW YORK N Y CITY 5%17REV DUE 06/15/17	A	Interest	K	T					
152. PENNSYLVANIA ST 5%20GO UTX DUE 07/01/20	C	Interest	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
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 13 of 18

Name of Person Reporting	Date of Report
Carnes, Julie E.	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)
153. SAN FRANCISCO CALIF GO UTX DUE 06/15/18	A	Interest							
154. SAN FRANCISCO CALIF REV DUE 05/01/21	A	Interest	K	T					
155. SAN FRANCISCO CALIF GO U/LTX DUE 06/15/24	A	Interest	K	T					
156. TALLAHASSEE FLA HLTHFACSREV TALLAHASSEE MEM HLTHCARE 12/1/30	C	Interest	L	T					
157. VIRGINIA ST PUB SCH 5%17GO DUE 08/01/17	A	Interest	K	T					
158. WASHINGTON ST FOR 5%19GO LTX DUE 07/01/19	A	Interest	K	T					
159. WISCONSIN ST TRANSN 5%24REV DUE 07/01/24	A	Interest	K	T					
160. BLACKROCK STRATEGIC INCOME OPPRTNTS PTF (BSIIX)	B	Dividend	L	T					
161. DOUBLELINE CORE FIXED INCOME FUND CL I (DBLFX)	A	Dividend							
162. DOUBLELINE TOTAL RETURN BOND FUND CL I (DLBTX)	A	Dividend							
163. EATON VANCE AMT FREE MUNICIPAL INCOME CL I (EVMBX)	C	Dividend							
164. GOLDMAN SACHS SATELLITE STRATEGIES PORT FD I (GXSIX)	D	Dividend	N	T					
165. ISHARES MSCI EAFE INDEX FUND (EFA)	A	Dividend	K	T					
166. THORNBURG INVSMT INCOME BUILDER FUND CL I (TIBIX)	D	Dividend	M	T					
167. VANGUARD VALUE ETF (VTV)	A	Dividend	K	T					
168. YACKTMAN FUND CL SERVICE (YACKX)	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 14 of 18

Name of Person Reporting	Date of Report
Carnes, Julie E.	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)
169. King & Spalding Cash Balance Plan	C	Dividend	L	T					
170. VANGUARD FTSE ALL-WORLD ex-U.S. INDEX	A	Dividend							
171. Invesco Growth and Income R5 (ACGQX)	A	Dividend							
172. JPMorgan Large Cap Growth R6 (JLGMX)	A	Dividend							
173. RidgeWorth Intl Equity Index I (SIE1X)	A	Dividend							
174. PIMCO Total Return Instl (PTTRX)	A	Dividend							
175. AllianzGI FIXED INCOME SHARES SERIES C (FXICX)	D	Interest	L	T					
176. AllianzGI FIXED INCOME SHARES SERIES M (FXIMX)	B	Interest	L	T					
177. BLACKROCK INTERMEDIATE MUNICIPAL FUND INSTL (MAMTX)	A	Interest							
178. GOLDMAN SACHS SHORT DURATION TAX FREE INSTL (GSDUX)	A	Interest							
179. LORD ABBETT INTERMEDIATE TAX FREE FD CL F (LISFX)	A	Interest							
180. THORNBURG INTERMEDIATE MUNI FUND CL I (THMIX)	A	Interest							
181. WISDOMTREE EMERGING MRKT EQUITY INCOME DEM	A	Dividend							
182. FHLMC Q02173 4.5% 41 DUE 07/01/41	A	Interest	J	T					
183. FHLMC Q17639 3% 43 DUE 04/01/43	A	Interest	J	T					
184. FNMA PL 190404 4.5% 40 DUE 05/01/40	B	Interest	J	T					
185. FNMA PL 745580 5% 36 DUE 06/01/36	A	Interest	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 15 of 18

Name of Person Reporting	Date of Report
Carnes, Julie E.	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)
186. FNMA PL AL3423 5% 40 DUE 05/01/40	B	Interest	J	T					
187. FNMA PL AO2961 4% 42 DUE 05/01/42	B	Interest	K	T					
188. FNMA PL AP1206 3% 43 DUE 02/01/43	A	Interest	J	T					
189. FNMA PL AP3839 3.5% 42 DUE 09/01/42	A	Interest	J	T					
190. FNMA PL AT5675 3.5% 43 DUE 06/01/43	A	Interest	J	T					
191. FNMA PL AU3751 4% 43 DUE 08/01/43	A	Interest	J	T					
192. US TREAS NOT 1.375%02/19 DUE 02/28/19	A	Interest							
193. FNMA PL 735402 5%35 DUE 04/01/35	A	Interest							
194. FNMA PL AU7258 3.5% 43 DUE 10/01/43	A	Interest	J	T					
195. US TREASU NT 1.125% 12/19 DUE 12/31/19	A	Interest	J	T					
196. US TREASUR NT 0.75% 10/17 DUE 10/31/17	A	Interest	K	T					
197. US TREASURY 2%02/23 BOND DUE 02/15/23	A	Interest	J	T					
198. US TREASURY 2%11/21 BOND DUE 11/15/21	A	Interest	J	T					
199. UST INFL IDX 0.125%07/22 DUE 07/15/22	A	Interest	K	T					
200. UST INFL IDX 2.375%01/25 DUE 01/15/25	A	Interest	J	T					
201. Estate #1									
202. - Wells Fargo cash acc't	A	Interest	M	T					

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Carnes, Julie E.	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)
203. - Atlanta Postal Credit Union cash acc't	A	Interest	M	T					
204. - Cornerstone Bank cash acc't	A	Interest	M	T					
205. - Coca-Cola common stock	A	Dividend	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
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		

Name of Person Reporting	Date of Report
Carnes, Julie E.	01/06/2014

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

Part VII, line 96, Column A should read as: ISHARES Core Total U.S. Bond Mkt ETF (formerly Ishares Barclays Aggregate Bond Fund)(AGG)

Name of Person Reporting	Date of Report
Carnes, Julie E.	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/ **Julie E. Carnes**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	1	663	232	Notes payable to banks-secured			
U.S. Government securities – see schedule		79	738	Notes payable to banks-unsecured			
Listed securities – see schedule	8	751	353	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned – see schedule	1	075	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		37	323				
Other assets itemize – see schedule		376	177				
				Total liabilities			0
				Net Worth	12	082	823
Total Assets	12	082	823	Total liabilities and net worth	12	082	823
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
U.S. Treasury Notes	$ 49,760
U.S. Treasury Inflation-Indexed Securities	29,978
Total U.S. Government Securities	$ 79,738

Listed Securities	
Allianz Fixed Income Shares Series C	$55,963
Allianz Fixed Income Shares Series M	53,967
American Century Inflation-Adjusted Bond Fund	31,928
American Century Mid Cap Value Fund	35,974
American Municipal Power bond	22,104
Athens, GA Housing Authority Bond	71,298
Baron Small Cap Fund	54,747
BlackRock Equity Dividend Fund	117,178
BlackRock Global Allocation Fund	122,605
BlackRock Multi-Asset Income Fund	95,679
BlackRock Strategic Income Opportunities Fund	90,241
Brown Advisory Growth Equity Fund	90,870
Charleston Educational Excellence Financing bond	28,685
Clayton County, GA bond	91,924
Cobb County, GA bond	54,286
Columbia Contrarian Core Fund	54,558
Dallas-Fort Worth bond	22,066
DWS RREEF Global Infrastructure Fund	81,379
Eaton Vance Richard Bernstein Equity Strategy Fund	78,511
EGShares Emerging Markets Consumer ETF	5,806
Fannie Mae bonds	42,841
Fayette County, GA bond	49,539
Federal Home Loan Mortgage Corp. bonds	1,446
Federated Total Return Bond Fund	45,466
Fidelity Contrafund	120,404
Franklin Growth Fund	63,070
Franklin Income Fund	70,324
Franklin Rising Dividends Fund	166,221
Fulton County, GA bond	30,639
Gainesville-Hall County, GA bond	51,196
Gainesville, GA bond	52,687
General Electric Corp. bond	26,352
Georgia Municipal Gas Authority bond	47,562
Georgia State Housing and Finance Authority Bond	52,870

Goldman Sachs Satellite Strategies Portfolio	288,089
Goldman Sachs Strategic Income Fund	88,291
Gwinnett County, GA bond	107,547
Harbor International Fund	57,476
Houston, TX bond	35,264
iShares 1-3 Year Credit Bond ETF	21,092
iShares 7-10 Year Treasury Bond ETF	10,519
iShares Aaa-A Rated Corporate Bond ETF	7,269
iShares Barclays TIPS Bond Fund ETF	10,331
iShares Core Total U.S. Bond Market ETF	53,215
iShares Gold Trust ETF	14,740
iShares MSCI EAFE ETF	26,838
iShares MSCI Germany Index Fund ETF	27,250
iShares MSCI United Kingdom Index ET	12,653
iShares Russell 2000 Index ETF	26,533
iShares S&P 100 ETF	55,003
iShares S&P U.S. Preferred Stock Index ETF	18,415
iShares Select Dividend ETF	56,382
Jacksonville, FL bonds	165,349
JPMorgan Income Builder Fund	52,809
JPMorgan Strategic Income Opportunities Fund	47,542
Kentucky State bonds	175,022
Liberty County, GA bonds	30,943
Loews Corp. bond	27,249
Loomis Sayles Strategic Income Fund	52,426
Lord Abbett Multi-Asset Income Fund	34,953
Lord Abbett Short Duration Income Fund	101,276
Los Angeles, CA bond	22,256
Maine Municipal Bond Bank	174,223
Manning & Napier World Opportunities Fund	51,054
Metropolitan West Total Return Bond Fund	53,963
Minnesota State bonds	45,985
New York, NY bonds	43,623
Oakmark International Fund	168,910
Ohio State bonds	187,004
Oppenheimer Developing Markets Fund	51,018
Oppenheimer Equity Income Fund	86,448
Parnassus Equity Income Fund	71,628
Pennsylvania State bonds	215,607
Phoenix, AZ bond	115,396
PIMCO 0-5 Year High Yield Corporate Bond Index ETF	15,316
PIMCO Foreign Bond Fund (Unhedged)	25,065
PIMCO Income Fund	64,678
PIMCO Unconstrained Bond Fund	132,769
PowerShares Db Commodity Index Tracking Fund	14,652
PowerShares S&P 500 Low Volatility Portfolio ETF	231,410

PowerShares QQQ Trust, Series 1 (ETF)	25,596
Principal Life bond	25,329
Pruco Life Annuity	751,841
Prudential Short Duration High Yield Income Fund	34,604
San Francisco, CA bonds	42,650
Schwab S&P 500 Index Fund	64,030
Scout International Fund	33,685
Sentinel Small Company Fund	29,429
SPDR Barclays Capital 1-3 Year U.S. Corporate Bond Index	19,120
SPDR Gold Shares ETF	23,224
SPDR EURO STOXX 50 ETF	46,719
SPDR S&P 500 ETF Trust	25,487
SPDR S&P Dividend ETF	127,085
State Bank of India bond	50,995
Tallahassee, FL bond	50,266
Tampa, FL bond	51,665
TCW Total Return Bond Fund	101,171
Templeton Global Bond Fund	74,765
Texas State bond	23,660
The Endowment Registered Fund, LP	431,530
Thornburg Investment Income Builder Fund	128,129
Thornburg Limited Term Income Fund	86,996
Transamerica MLP & Energy Income Fund	53,827
Vanguard Dividend Appreciation Fund	30,623
Vanguard Equity Income Fund	16,707
Vanguard FTSE Developed Markets ETF	16,172
Vanguard FTSE Emerging Markets ETF	5,595
Vanguard Growth ETF	239,989
Vanguard Global ex-U.S. Real Estate ETF	7,409
Vanguard REIT ETF	42,932
Vanguard Small Cap Value Fund	19,474
Vanguard Total Bond Market Index Fund	34,502
Vanguard Total Stock Market Fund	16,786
Vanguard Value ETF	48,822
Vanguard Whitehall Funds High Dividend Yield ETF	62,320
Verizon Global bonds	26,702
Virginia State bond	22,939
Washington County, OR bond	148,164
Washington State bonds	45,765
Western Asset Core Plus Bond Fund	98,842
Wisconsin State bond	28,526
WisdomTree Asia Local Debt Fund	10,423
WisdomTree Dividend ex-Financials Fund	34,385
WisdomTree Japan Hedged Equity Fund	25,827
WisdomTree Brazilian Real Fund	10,778
Total Listed Securities	$ 8,751,353

Real Estate Owned	
Personal residence	$ 755,000
Vacation home	320,000
Total Real Estate Owned	$ 1,075,000

Other Assets	
Thrift Savings Plan	$ 298,504
King & Spalding LLP Cash Balance Plan	77,673
Total Other Assets	$ 376,177

AFFIDAVIT

I, Julie E. Carnes, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 6, 2014
(DATE)

Julie E. Carnes
(NAME)

Susan T. Garner
(NOTARY)

SUSAN T GARNER
MY COMMISSION EXPIRES
NOTARY
PUBLIC
MARCH 1, 2016
CARROLL COUNTY, GEORGIA

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jill Anne Pryor

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.

   1201 West Peachtree Street, Northwest
   Suite 3900, One Atlantic Center
   Atlanta, Georgia 30309

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

   1963; Harrisburg, 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.

   1985 – 1988, Yale Law School; J.D., 1988
   1981 – 1985, College of William & Mary; B.A., 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.

   1989 – present
   Bondurant, Mixson & Elmore, LLP
   1201 West Peachtree Street, Northwest
   Suite 3900, One Atlantic Center
   Atlanta, Georgia 30309

Partner (1997 – present)
Associate (1989 – 1996)

(Since 2001, I have been the President, sole shareholder and sole employee of Jill A. Pryor, P.C., which is a partner in Bondurant, Mixson & Elmore, LLP.)

2007 – present
6616 Midnight Pass Road, LLC
1579 Monroe Drive, Suite F, # 511
Atlanta, Georgia 30324
Member (LLC was formed to own rental property, but currently owns none)

2007 – present
Silver City Land Co., LLC
1579 Monroe Drive, Suite F, # 511
Atlanta, Georgia 30324
Member (LLC owns undeveloped residential lots)

2006 – present
1088 Country Lane, LLC
1034 Robin Lane, Northeast
Atlanta, Georgia 30324
Member (LLC was formed to own rental property, but currently owns none)

2006 – present
1933 Kilburn Drive, LLC
1034 Robin Lane, Northeast
Atlanta, Georgia 30324
Member (LLC was formed to own rental property, but currently owns none)

2001 – present
Sussex Properties, LLC
1201 West Peachtree Street, Northwest
Suite 3900, One Atlantic Center
Atlanta, Georgia 30309
Member (LLC owns rental property)

2005 – 2008
Top Mall USA, LLC
1579 Monroe Drive, Suite F, # 511
Atlanta, Georgia 30324
Member (Internet sales business)

2006 – present
Zephyr Land Corporation
c/o Butterfield Bank

Third Floor
Montague Sterling Centre
East Bay Street
Post Office Box N-3242
Nassau, Bahamas
Director and President (Corporation owns residential beachfront lot)

1988 – 1989
United States Court of Appeals for the Eleventh Circuit
56 Forsyth Street, Northwest
Atlanta, Georgia
Judicial Clerk to Judge J.L. Edmondson

Summer 1988
Bondurant, Mixson & Elmore, LLP
1201 West Peachtree Street, Northwest
Suite 3900, One Atlantic Center
Atlanta, Georgia 30309
Summer Associate

1987 – 1988
Professor Akhil R. Amar
Yale Law School
127 Wall Street
New Haven, Connecticut 06511
Research Assistant (uncompensated)

Summer 1987
Alston & Bird, LLP
1201 West Peachtree Street, Northwest
Suite 4200, One Atlantic Center
Atlanta, Georgia 30309
Summer Associate

Summer 1987
Hunton & Williams, LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Summer Associate

Summer 1986
McGuireWoods LLP (formerly McGuire, Woods & Battle)
One James Center
901 East Cary Street

Richmond, Virginia 23219
Summer Associate

Summer 1985
The Ground Round
1300 Taylor Bridge Bypass
Camp Hill, Pennsylvania 17011
Waitress

Other Affiliations (Uncompensated)

2011 – present
Georgia Legal Services Program, Inc.
104 Marietta Street, Suite 250
Atlanta, Georgia 30303
Board of Directors (State Bar Representative)

1997 – present
Georgia Association for Women Lawyers
3855 Spalding Bluff Drive
Norcross, Georgia 30092
Advisory Board (2004 – 2011)
Immediate Past President (2001 – 2002)
President (2000 – 2001)
President-Elect (1999 – 2000)
Vice President - Community (1997 – 1999)

January 20, 2012 – February 16, 2012
Committee to Re-elect Judge Barnes, Inc.
Post Office Box 78831
Atlanta, Georgia 30357
Treasurer and Secretary, Board of Directors

2003 – January 19, 2012
Committee to Re-elect Judge Anne Elizabeth Barnes
Post Office Box 78831
Atlanta, Georgia 30357
Treasurer

2007 – 2011
Chastain Horse Park Non-profit Therapeutic Riding Program
4371 Powers Ferry Road
Atlanta, Georgia 30327
Board of Directors

2002 – 2010
Possible Woman Foundation International, Inc.
1409 Peachtree Street
Atlanta, Georgia 30309
Advisory Board of Directors (2006 – 2010)
Board of Directors (2002 – 2006)
Secretary (2002 – 2004)

2004 – 2007
State Bar of Georgia
Appellate Practice Section
104 Marietta Street, Northwest
Suite 100
Atlanta, Georgia 30303
Chair (2006 – 2007)
Vice Chair (2005 – 2006)
Secretary-Treasurer (2004 – 2005)

2003 – 2007
Northside Hospital Foundation
1000 Johnson Ferry Road
Atlanta, Georgia 30342
Board of Directors

2000 – 2003
Atlanta Women's Alliance
Post Office Box 11548
Atlanta, Georgia 30355
Founding 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 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.

   Professional:

   Recognized as a "Litigation Star" in Georgia in Benchmark Plaintiff (2012)

   Included in The Best Lawyers in America (2009 – 2011)

Recognized as one of "America's Leading Lawyers for Business." Chambers USA (2008 – 2011)

Selected as one of "The Legal Elite: Georgia's Most Effective Lawyers" for Business Litigation, *Georgia Trend* magazine (2004 – 2006, 2009 – 2010) (for 2007 – 2008, there was no Business Litigation section)

Selected as one of the "Top 100 Super Lawyers" (2010 – 2012) and one of the "Top 50 Female Super Lawyers" (2004 – 2012) in "Georgia Super Lawyers" published by Law & Politics Media and *Atlanta* magazine

Outstanding Woman in the Profession Achievement Award, Atlanta Bar Association Women in the Profession Committee (2006)

Kathleen Kessler Award, Georgia Association for Women Lawyers, given for "the highest degree of professionalism and dedication to service in the legal community" (2005)

Fellow, Litigation Counsel of America Trial Lawyer Honorary Society

Fellow, Lawyers Foundation of Georgia

Fellow, American Bar Foundation

Fellow, Atlanta Bar Foundation

Academic:

Senior Editor, *Yale Law Journal* (1987 – 1988)

Senior Editor, *Yale Law and Policy Review* (1987 – 1988)

Phi Beta Kappa

Omicron Delta Kappa

Mortar Board

Honors Program (multidisciplinary), College of William & Mary (1982)

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

American Association for Justice (formerly American Trial Lawyers Association)

American Bar Association
- Council of Appellate Lawyers
  - Executive Committee (2005 – 2007)
  - Membership Committee (2008 – 2010)
  - Programs Committee (2004 – 2005)
  - Rules Committee (2004 – 2005)
  - Host/Planning Committee for Annual Meeting Judges Dinner (2004)
- Atlanta Host Committee, 2004 Annual Meeting

American Civil Liberties Union of Georgia
- Legal Committee (1999 – 2005)

American Inns of Court, Joseph Henry Lumpkin Inn
- Barrister (1992 – 1994)

Atlanta Bar Association
- Chair, Judicial Selection and Tenure Committee (2008 – 2010)

Cobb County Bar Association

Court of Appeals of Georgia
- Chair, Centennial Celebration High School Oratorical Contest (2006)
- Centennial Celebration Committee (2005 – 2006)

Georgia Association for Women Lawyers
- President (2000 – 2001)
- Immediate Past President (2001 – 2002)
- President-Elect (1999 – 2000)
- Vice President - Community (1997 – 1999)
- Advisory Board (2004 – 2011)
- Scholarship Committee (1995 – 1996)

Georgia Trial Lawyers Association
- Editorial Committee, *The Verdict* magazine (1996 – 2000)

Lawyers Foundation of Georgia
- Strategic Planning Committee (2003 – 2010)
- Development Task Force (2002)
- Development Committee (2001)

Litigation Counsel of America Trial Lawyer Honorary Society
- Co-Founder, American Institute of Appellate Practice (2012 – present)

National Association of Women Lawyers

State Bar of Georgia
Board of Governors (2009 – present)
Business Court Committee (2008 – present)
Appellate Practice Section
Chair (2006 – 2007)
Vice Chair (2005 – 2006)
Secretary-Treasurer (2004 – 2005)
Access to Justice Committee (2008 – 2011)
Vice Chair (2011 – present)
Long Range Planning and Bar Governance Committee
Vice Chair (2008 – 2011)
Chair, Drafting Subcommittee (to draft best practices policies for the Bar and its affiliated organizations) (2009 – 2010)
Advisor, Committee on Women and Minorities in the Profession (2004 – 2005, 2008 – 2009)
Mentor, Younger Lawyers Division Leadership Academy (2007)
Charter member, Business Litigation Committee, Business Law Section (2007 – present)

United States Court of Appeals for the Eleventh Circuit
Lawyers Advisory Committee (1995 – 2010)
Eleventh Circuit Judicial Conference Planning Committee (2005 – 2007)
Facilitator, Georgia Meeting, Eleventh Circuit Judicial Conference (2005, 2007)

10. **Bar and Court Admission**:

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

Georgia, 1989

There has been no lapse in membership.

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

Supreme Court of the United States, 1994
United States Court of Appeals for the Eleventh Circuit, 1990
United States District Court for the Northern District of Georgia, 1989
United States District Court for the Middle District of Georgia, 2004

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.

American Heart Association Legal Campaign Firm Chair (1995 – 2000)

Atlanta Women in Business (1995 – approximately 1998)

Atlanta Women's Alliance
Founding Board Member (2000 – 2003)

Chastain Horse Park Non-profit Therapeutic Riding Program
Board of Directors (2007 – 2011)

Cystic Fibrosis Foundation Team Captain, Legal Division, "Great Strides Walk for the Cure" (1996, 1997)

Everybody Wins! Children's Literacy and Mentoring Program Volunteer (2002 – 2003)

Federal Employees Credit Union
Asset Liability Management Committee (1998, 2001)
Supervisory Committee (2000)
Credit Committee (1997 – 1999)
Personnel Committee (1995 – 1997)
Nominating Committee (1995)

Georgia Legal Services Program, Inc.
Board of Directors (State Bar Representative) (2011 – present)

Law Association for Women Students, Emory Law School, Mentor (1994 – 1995)

Lawyers Club of Atlanta (1994 – present)

Leadership Atlanta, Class of 2007; member (2007 – present)

Local Montessori School
Assistant Debate Coach (2007 – present)
Phoenix Society (2005 – present)
Parent Involvement Coordinator, Elementary 4 (2007 – 2008)
Facilities & Programs Task Force (2006 – 2007)

Class Fundraising Committee Representative (2004 – 2005, 2005 – 2006)
Silent Auction Committee (2004 – 2007)
Co-Chair, Silent Auction Committee (2003 – 2004)
Fundraising Committee (2001 – 2009)
Class Auction Project Committee (2001 – 2002)
Volunteer, Telephone Campaign for Annual Fund (2001 – 2002)

National Association of Female Executives

Northside Hospital Foundation
Board of Directors (2003 – 2007)

Possible Woman Foundation International, Inc.
Board of Directors (2002 – 2006)
Secretary (2002 – 2004)
Chair, Silent Auction Committee, Starry Night Fundraiser (2002 – 2003, 2003 – 2004)
Advisory Board (2006 – 2010)

Wildwood Urban Forest Group, Steering Committee (2000 – 2001)

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

To the best of my knowledge, none of the organizations listed in response to 11a above currently discriminates or previously discriminated on the basis of race, sex, religion or national origin.

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

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

J. Scott Key and Jill A. Pryor, *Selecting Witnesses, Preparing and Conducting Direct Examination*, *in* LexisNexis Practice Guide, Georgia Civil Trial Procedure (LexisNexis 2011). Copy supplied.

Point of View: John McCain's Birth Revives a Constitutional Conundrum, Legal Times, Apr. 14, 2008 (reprinted in multiple outlets). Copy supplied.

John E. Floyd and Jill A. Pryor, *State RICO Actions*, *in* 4 Georgia Jurisprudence, Business and Commercial Law, Business Torts and Trade Regulation (Thomson/West Publishing 2006). Copy supplied.

Ben E. Fox and Jill A. Pryor, *Trade Secrets*, *in* 4 Georgia Jurisprudence, Business and Commercial Law, Business Torts and Trade Regulation (Thomson/West Publishing 2006). Copy supplied.

Summary of Electronic Filing in the Eleventh Circuit Court of Appeals and in the Appellate Courts of Georgia, Florida and Alabama, The Appellate Review (Appellate Practice Section, State Bar of Georgia 2005). Copy supplied.

Co-Producer with Rebecca Godbey, *Paving the Way*, a video documentary of the history of women lawyers in Georgia, produced for the 75th Anniversary of the Georgia Association for Women Lawyers (2004). Video recording supplied.

President's Update: Get Involved with GAWL, Daily Report special supplement, July 2000. Copy supplied. I believe I wrote two or three more of these updates during my presidency from June 1, 2000 to May 31, 2001, but I have been unable to obtain copies of them from the publisher. I do have a draft of one that appears to have been created in October 2000 entitled, *President's Update: The Old (New?) Girls' Network*. Copy supplied.

Introduction for the Georgia Association for Women Lawyers (membership) Directory, October 2000. Copy supplied.

John E. Floyd and Jill A. Pryor, *State RICO Actions*, *in* 4 Georgia Jurisprudence, Business and Commercial Law, Business Torts and Trade Regulation (Lawyers Cooperative Publishing 1995). Copy supplied.

Note, *The Natural Born Citizen Clause and Presidential Eligibility: An Approach for Resolving Two Hundred Years of Uncertainty*, 97 Yale L.J. 881 (1988). Copy supplied.

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

On September 12, 2009, as Vice-Chair of the Long Range Planning and Bar Governance Committee of the State Bar of Georgia, I reported to the Bar's Board

of Governors on the Committee's draft Conflict of Interest, Confidentiality, Document Handling and Disclosure and Whistleblower Non-Retaliation policies proposed for adoption by the State Bar, which were adopted at that meeting as State Bar Standing Board Policies. Copies of the minutes of the Board of Governors meeting and of the policies are supplied.

On February 23, 2009, the State Bar's Business Court Committee on which I served recommended to the Bar's Board of Governors that it approve an amendment to Atlanta Judicial Circuit Rule 1004, the rule that established the Business Court. The Board of Governors approved the proposed amendment, which then went to the Supreme Court of Georgia for its consideration. The Supreme Court of Georgia adopted the amendment on September 1, 2010. Copies of the following are supplied: the Business Court Committee Chair's memorandum proposing the amendment that was published in the Board Book provided to the Board of Governors, the minutes of the Board of Governors meeting in which the amendment was approved, and Rule 1004 as amended.

I served on the Executive Committee for *It's About Time: Part-Time Practices and Policies in Atlanta Law Firms*, a survey published by the Georgia Association for Women Lawyers and the Atlanta Bar Association Women in the Profession Committee (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.

I have not testified before or given or provided to public bodies or public officials any 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.

November 18, 2011 – Panel discussion (moderator) on "Analyzing and Preparing a Civil RICO Case from a Defendant's Perspective" for the Institute of Continuing Legal Education in Georgia's RICO Seminar, Atlanta, Georgia. Paper and notes supplied.

September 14, 2011 – Presentation with my partner Michael Terry on "The Evolution of Case Management" at an In-House Counsel CLE Seminar presented by the *Daily Report*, Atlanta, Georgia. Outline and recording supplied.

April 29, 2011 – Panel discussion on mentoring for the Georgia Association for Women Lawyers' Leadership Academy. I have no notes, transcript or recording. The address of the sponsoring organization is 3855 Spalding Bluff Drive, Norcross, Georgia 30092.

November 16, 2010 – Panel discussion on mentoring for a lunch meeting of the Atlanta Bar Association's Women in the Profession Section, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is 229 Peachtree Street, Northeast, Suite 400, Atlanta, Georgia 30303.

November 9, 2010 – Presentation with my partner Nicole Iannarone on "Leveraging Technology in Litigation: How to Achieve Better Results and Reduce the Cost of Litigation" for the Association of Corporate Counsel, Georgia Chapter, Atlanta, Georgia. Slides and outline supplied.

December 10, 2009 – Panel discussion on "Recusal in Georgia Post-*Caperton*" for the Atlanta Bar Association CLE Committee's "CLE by the Hour" series. Written materials and recording supplied.

October 29, 2009 – Panel discussion on direct and cross examination for the Atlanta Bar Association's Council of Younger Lawyers' "Life of a Trial" series, Atlanta, Georgia. Speaking notes supplied.

October 2, 2009 – Panel discussion (moderator) on "Analyzing and Preparing a Civil RICO Case from a Defendant's Perspective" for the Institute of Continuing Legal Education in Georgia's RICO Seminar, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is Post Office Box 1885, Athens, Georgia 30603.

October 1, 2009 – Presentation with my partner Nicole Iannarone on "The Enforceability of Releases for Negligence Claims under Georgia Law" to the judges and staff of the Business Court of Fulton County, Georgia, as part of an educational series presented by the Business Litigation Committee of the Business Law Section, State Bar of Georgia. Written materials supplied.

May 28, 2009 – Panel discussion entitled, "Confessions of a Female Trial Team" (describing lessons learned from January 2007 jury trial in *Kellett v. PricewaterhouseCoopers*, Superior Court of Cobb County, Georgia) for the Georgia Association for Women Lawyers, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is 3855 Spalding Bluff Drive, Norcross, Georgia 30092.

April 15, 2009 – Lecture to legal drafting class at John Marshall Law School about a letter of intent that was central to a case I had tried, *McDavid v. Turner Broadcasting System, Inc.* Notes supplied.

May 8, 2008 – Panel discussion on "How to Transition from Associate to Partner: Learning to Think Like a Leader," presented at the LexisNexis Women in the Legal Profession Summit: Rainmaking, Negotiating and Collaborative Development Seminar, Atlanta, Georgia, presented by Mealey's (now known as "HB") Litigation Conferences. Notes and recording supplied.

April 18, 2008 – Panel discussion on "Firm Politics: Navigating the Road to Partnership" for the Georgia Association for Women Lawyers' Leadership Academy, Pine Mountain, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is 3855 Spalding Bluff Drive, Norcross, Georgia 30092.

February 29, 2008 – Speaker introductions for the Georgia Appellate Practice Seminar jointly sponsored by the Institute of Continuing Legal Education in Georgia and the Appellate Practice Section of the State Bar of Georgia, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is Post Office Box 1885, Athens, Georgia 30603.

February 6, 2008 – Presentation with my partner John Floyd on Georgia RICO to the judges and staff of the Business Court of Fulton County, Georgia, as part of an educational series presented by the Business Litigation Committee of the Business Law Section, State Bar of Georgia. Outline and written materials supplied.

February 5, 2008 – Panel discussion on January 2007 jury trial in *Kellett v. PricewaterhouseCoopers*, Superior Court of Cobb County, Georgia, jointly presented by the Georgia Association for Women Lawyers and "Sisters In Law," Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is 3855 Spalding Bluff Drive, Norcross, Georgia 30092.

May 9, 2007 – Presentation on "Appealing Interlocutory Orders" for the Institute of Continuing Legal Education in Georgia's Federal Appellate Practice Seminar, Atlanta, Georgia. Paper supplied.

March 2, 2007 – Speaker introductions for the Georgia Appellate Practice Seminar jointly sponsored by the Institute of Continuing Legal Education in Georgia and the Appellate Practice Section of the State Bar of Georgia, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is Post Office Box 1885, Athens, Georgia 30603.

December 8, 2006 – Presentation with my then-associate Nicole Iannarone, "Accountants and Lawsuits" (advice on how to prevent and defend accounting

malpractice lawsuits) at an in-house seminar for Frazier & Deeter, LLP, Atlanta, Georgia. Outline supplied.

November 28, 2006 – Speaker introduction at the Appellate Practice Section of the State Bar of Georgia's luncheon lecture with Therese S. Barnes, Clerk of the Supreme Court of Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is 104 Marietta Street, Northwest, Suite 100, Atlanta, Georgia 30303.

October 27, 2006 – Panel discussion on "Ethics and Professionalism on Appeal" at the Eleventh Circuit Appellate Practice Institute (ECAPI) sponsored by the Institute of Continuing Legal Education in Georgia and the Appellate Practice Sections of the Georgia, Florida and Alabama Bars in Atlanta, Georgia. Written materials and notes supplied.

October 6, 2006 – Speech at the Georgia Court of Appeals Centennial Celebration dinner about the High School Oratorical Contest that I chaired as a part of the Court's Centennial Celebration. Notes supplied.

September 9, 2006 – Introductory remarks, explanation of rules, announcements, and awards presentation at the Georgia Court of Appeals' High School Oratorical Contest for the Court's Centennial Celebration. I have no notes, transcript or recording. The address of the sponsoring organization is Justice Served, 342 North Main Street, Suite 203, Alpharetta, Georgia 30009.

June 20, 2006 – Panel discussion on "Nanny 911," childcare options for lawyers, for Georgia Association for Women Lawyers luncheon, Atlanta, Georgia. Outline and written materials supplied.

March 3, 2006 – Speaker introductions for the Georgia Appellate Practice Seminar jointly sponsored by the Institute of Continuing Legal Education in Georgia and the Appellate Practice Section of the State Bar of Georgia, Atlanta, Georgia. Notes, outline and remarks supplied.

November 4, 2005 – Panel discussion (moderator) on "Analyzing and Preparing a Civil RICO Case from a Defendant's Perspective" for the Institute of Continuing Legal Education in Georgia's RICO Seminar, Atlanta, Georgia. Outline supplied.

October 7, 2005 – Presentation on "The 2005 Amendments to Georgia's Class Action Statute: A Comparison with Former Georgia Law and Federal Law" for the Institute of Continuing Legal Education in Georgia's Class Actions Seminar, Atlanta, Georgia. Paper and slides supplied.

March 3, 2005 – Speaker introductions for the Georgia Appellate Practice Seminar jointly sponsored by the Institute of Continuing Legal Education in

Georgia and the Appellate Practice Section of the State Bar of Georgia, Atlanta, Georgia. Outline and notes supplied.

June 14, 2004 – Panel discussion on *It's About Time: Part-Time Practices and Policies in Atlanta Law Firms*, a survey published by Georgia Association for Women Lawyers and Atlanta Bar Association Women in the Profession Committee (2004), Atlanta, Georgia. Panel questions with notes supplied.

April 16, 2004 – Panel discussion on "Effective Community Leadership" for the Georgia Association for Women Lawyers' Leadership Training Seminar, Atlanta, Georgia. Outline supplied.

December 3, 2003 – Panel discussion (moderator) on "Effective Fundraising for Non-Profits" for the Atlanta Women's Alliance, Atlanta, Georgia. Notes supplied.

September 9, 2003 – Panel discussion (moderator) on "Extraordinary Meetings and Events" for the Atlanta Women's Alliance, Atlanta, Georgia. Remarks and panel questions supplied.

November 1, 2002 – Panel discussion (moderator) on "Analyzing and Preparing a Civil RICO Case from a Defendant's Perspective" at the Institute of Continuing Legal Education in Georgia's RICO Seminar, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is Post Office Box 1885, Athens, Georgia 30603.

October 8, 2002 – Presentation on "How to Hire a Lawyer." I do not recall the sponsoring organization. Outline supplied.

April 2, 2002 – Panel discussion on "How to Succeed in the Practice of Law: Bridging the Cultural Gap from School to Practice," Multi-Bar Leadership Council of Atlanta, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is 229 Peachtree Street, Northeast, Suite 400, Atlanta, Georgia 30303.

May 31, 2001 – Outgoing President's remarks at the Georgia Association for Women Lawyers Annual Meeting, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is 3855 Spalding Bluff Drive, Norcross, Georgia 30092.

November 15, 2000 – Presentation entitled, "Introduction to Civil Litigation" for Atlanta Bar Association's Legal Eagles Lunch and Learn Series. Outline supplied.

November 3, 2000 – Paper on "Defending RICO Claims: Using Motions to Dismiss and for Summary Judgment" and panel discussion (moderator) on

"Developing a Coherent Defense Strategy in Response to RICO Allegations" at the Institute of Continuing Legal Education in Georgia's RICO Seminar, Atlanta, Georgia. Outline and paper supplied.

October 6, 2000 – Introductory remarks at the Georgia Association for Women Lawyers Judicial Luncheon, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is 3855 Spalding Bluff Drive, Norcross, Georgia 30092.

June 1, 2000 – Incoming President's remarks at the Georgia Association for Women Lawyers Annual Meeting, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is 3855 Spalding Bluff Drive, Norcross, Georgia 30092.

June 17, 1999 – Presentation of the Georgia Women of Achievement Awards given by the Georgia Association for Women Lawyers at the State Bar Annual Meeting in Savannah, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is 3855 Spalding Bluff Drive, Norcross, Georgia 30092.

November 20, 1998 – Presentation with my then-associate David Brackett on "Closely Held Corporations: Litigating Minority Rights, Squeeze-Out Transactions, Battles for Control, and Piercing the Corporate Veil" for the Institute of Continuing Legal Education in Georgia's Corporate Litigation Seminar, Atlanta, Georgia. Paper supplied.

November 13, 1998 – Presentation on "Motions to Dismiss and for Summary Judgment in State and Federal RICO Cases" at the Institute of Continuing Legal Education in Georgia's RICO Seminar, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is Post Office Box 1885, Athens, Georgia 30603.

October 10, 1997 – Panel discussion on "Evaluation of a Potential RICO Case" at the Institute of Continuing Legal Education in Georgia's RICO Seminar, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is Post Office Box 1885, Athens, Georgia 30603.

December 13, 1996 – Presentation at "Evidence in Trial Practice" Seminar for National Business Institute, Atlanta, Georgia. Paper supplied.

February 1, 1996 – Presentation on "Fundamentals of Federal Court Practice" at Federal Civil Practice Seminar for National Business Institute, Atlanta, Georgia. I have no notes, transcript or recording, but the paper was probably similar to the 1995 version supplied below. The address of the sponsoring organization is 1218 McCann Drive, Altoona, Wisconsin 54720.

October 20, 1995 – Presentation on "Using Georgia RICO" for the Institute of Continuing Legal Education in Georgia's RICO Seminar, Atlanta, Georgia. Paper supplied.

May 29, 1995 – Presentation on "Eleventh Circuit Appellate Practice" at Federal Litigation Seminar for Lorman Business Center, Atlanta, Georgia. Paper supplied.

February 1995 – Presentation on "Fundamentals of Federal Court Practice" at Federal Court Practice Seminar for National Business Institute, Atlanta, Georgia. Paper supplied.

November 22, 1994 – Presentation on "Ethical Considerations in the Representation of Organizations" at the Institute for Continuing Legal Education in Georgia's Complex Litigation Seminar, Atlanta, Georgia. Paper supplied (labeled "The Distinction Between Direct and Derivative Claims").

June 1994 – Presentation on "Eleventh Circuit Appellate Practice" at Federal Litigation Seminar for Lorman Business Center, Atlanta, Georgia. I have no notes, transcript or recording, but the paper was probably similar to the 1995 version supplied above. The address of the sponsoring organization is Lorman Education Services, 2510 Alpine Road, Eau Claire, Wisconsin 54703.

May 1994 – Presentation on "Innovative Applications of Georgia's RICO Statute for the Civil Trial Lawyer" for the Georgia Trial Lawyers Association's annual Torts Seminar, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is 3350 Centennial Tower, 101 Marietta Street, Atlanta, Georgia 30303.

October 8, 1993 – Panel discussion (moderator) on "Special Considerations in the Trial of a RICO Case" for the Institute of Continuing Legal Education in Georgia's RICO Seminar, Atlanta, Georgia. I have no notes, transcript or recording. The address of the sponsoring organization is Post Office Box 1885, Athens, Georgia 30603.

October 2, 1992 – Paper on "Georgia and Other State Little RICO Statutes" and panel discussion on "Special Considerations in the Trial of a RICO Case" for the Institute of Continuing Legal Education in Georgia's RICO Seminar, Atlanta, Georgia. Paper supplied.

January 1992 – Presentation on "Other Motions, Including Motions to Compel, Motions for Sanctions, Motions for Temporary Injunctions and TROs, and Motions for Interlocutory Appeals" at the Institute for Continuing Legal Education in Georgia's Motions Seminar, Atlanta, Georgia. I have no notes, transcript or recording, but the paper was probably similar to the 1995 version

supplied above. The address of the sponsoring organization is Post Office Box 1885, Athens, Georgia 30603.

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.

Robin M. Hensley, *Making It Rain: How to Develop and Motivate Office Managing Partners*, New York Law Journal, Oct. 17, 2011. Copy supplied.

Meredith Hobbs, *Fall Hiring Stable but Not Robust*, The Daily Report, Sept. 12, 2011. Copy supplied.

Robin M. Hensley, *Seeing through the Mist, BD Resolutions*, Managing Partner, July/Aug. 2011. Copy supplied.

Michelle Hiskey, *Encouraging One Another*, The Daily Report, Mar. 31, 2011. Copy supplied.

Raising the Bar Testimonial, Feb. 22, 2010. Video recording supplied.

$281 Million Rides on Judges' View of Deal, The Daily Report, Nov. 18, 2009. Copy supplied.

R. Robin McDonald, *12 Young Lawyers to Watch*, The Daily Report, Aug. 17, 2009. Copy supplied.

Drew Zahn, *What Does "Natural-Born Citizen" Legally Mean?*, WorldNetDaily, Aug. 10, 2009. Copy supplied.

Colleen Magarian, *A 'Perry Mason' Moment in Fight over Teams*, National Law Journal, June 22, 2009. Copy supplied.

Nora Lockwood Tooher, *Verdicts and Settlements*, Lawyers Weekly USA, Jan. 13, 2009. Copy supplied.

Carl Hulse, *McCain's Canal Zone Birth Prompts Queries about Whether that Rules Him Out*, New York Times, Feb. 28, 2008. Copy supplied.

Jon Gillooly, *Defense Claims Fraud Case Win*, Marietta Daily Journal, Feb. 7, 2007. Copy supplied.

R. Robin McDonald, *PricewaterhouseCoopers Trial Enters Jury Deliberations Phase*, Corporate Counsel and In-House Counsel, Feb. 6, 2007. Copy supplied.

R. Robin McDonald. *Case Brings High Stakes, Big Players*. The Daily Report. Jan. 12, 2007 (reprinted in multiple outlets). Copy supplied.

Alyson M. Palmer. *Contest Winner Defends Courts*. The Daily Report. Sept. 12, 2006. Copy supplied.

Suzanne Wright. *Paradise Found at Work*. Atlanta Woman. Jan./Feb. 2005. Copy supplied.

John Hanusz. *Making Rain: Law Firms Are Turning to Sales Coaches to Shape Up Their Marketing Efforts*. The Daily Report. Sept. 13, 2004. Copy supplied.

Steven H. Pollak. *Dismissing the Judge Lest She Dismiss You*. The Daily Report. July 29, 2004. Copy supplied.

Ray Glier. *Robin Hensley Crafts Subtle Approach to Coaching Clients*. Atlanta Business Chronicle. June 11, 2004. Copy supplied.

Rhonda Cook. *High Court Will Hear Convict's Complaint*. Atlanta Journal and Constitution. Jan. 11, 2000. Copy supplied.

Eric Velasco. *Felons' Hopes for Earlier Releases Dim*. Macon Telegraph. Oct. 6, 1994. Copy supplied.

DA Applauds Parole Ruling. Rome News-Tribune. Oct. 6, 1994. Copy supplied.

Parole Not Guaranteed. The Augusta Chronicle. Oct. 6, 1994. Copy supplied.

Rhonda Cook. *Parole Board Can Go Against Own Guidelines, Court Says*. Atlanta Journal and Constitution. Oct. 5, 1994. Copy supplied.

Bill Rankin and Rhonda Cook. *Suit Could Lead to Release of 7,000 Inmates*. Atlanta Journal and Constitution. June 8, 1994. Copy supplied.

I was interviewed on the radio (National Public Radio, I think) in 1994 as part of a newscast about the *Sultenfuss v. Snow* case, in which I was appointed to represent a prisoner challenging the constitutionality of the Georgia Parole Board's application of its Parole Guidelines. I was informed by National Public Radio that it does not transcribe or archive newscasts.

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 never held political office or been a candidate or nominee for elective 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.

Before my nomination, I was asked to and had agreed to serve as one of the Co-Chairs for the Committee to Re-elect Judge Yvette Miller, a judge on the Court of Appeals of Georgia, and had agreed to host a campaign event for Judge Miller. I was also asked to and agreed to co-host a re-election campaign event for Georgia Court of Appeals judge Stephen Dillard. Both judges are incumbents running for re-election in non-partisan elections. Upon my nomination, however, I have terminated my participation in these and all other judicial campaign activities and have asked the judges and Georgia Supreme Court justices running for re-election

who had previously requested my support to remove my name from any lists of supporters on their campaign websites or elsewhere.

From 2003 until my nomination, I served as the Treasurer of the Committee to Re-elect Judge Anne Elizabeth Barnes, a judge on the Court of Appeals of Georgia. Judge Barnes was re-elected without opposition in 2004 and 2010. As Treasurer, I maintained the Committee's bank account, collected and deposited campaign contributions, paid for or reimbursed campaign expenditures out of the campaign account and filed campaign financial disclosure reports. After the Committee was incorporated on January 20, 2012 as the Committee to Re-elect Judge Barnes, Inc., I served as the Treasurer and Secretary and on the Board of Directors, but substantively my duties did not change. Upon my nomination, I tendered my resignation from all positions with Judge Barnes' re-election campaign.

Over the years I have been asked by Georgia judges on the state and superior courts, as well as the Court of Appeals and Supreme Court, if they could include my name on their lists of supporters or campaign committees, and I have said yes; however, except for the campaigns listed above, I have not played an active role in those campaigns. I believe that the judicial candidates whom I have supported in this way include the following: The Honorable Kimberly Esmond Adams, the Honorable Robert Benham, the Honorable John Ellington, the Honorable Ural Glanville, the Honorable Carol Hunstein, the Honorable David Nahmias, the Honorable Hugh Thompson, and the Honorable Wendy Shoob. There may be others I cannot recall.

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

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

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

I served as a law clerk to the Honorable J.L. Edmondson, United States Court of Appeals for the Eleventh Circuit, from September 1, 1988 to August 31, 1989.

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

I have never practiced law alone.

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

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Summer Associate

1989 – present
Bondurant, Mixson & Elmore, LLP
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Suite 3900, One Atlantic Center
Atlanta, Georgia 30309
Partner (1997 – Present)
Associate (1989 – 1996)

(Since 2001, I have been the President and an employee of Jill A. Pryor, P.C., which is a partner in Bondurant, Mixson & Elmore, LLP.)

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 1992 to 1996 I served as a Certified Arbitrator for the Fulton County Court-Annexed Arbitration Program, Georgia Office of Dispute Resolution, on a pro bono basis. I specifically recall only one matter that I arbitrated, which was a medical malpractice case. I do not recall the parties or the outcome.

b. Describe:

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

The general character of my law practice is business or commercial litigation, both at trial and on appeal. Some examples of the types of cases I handle include breach of contract, business torts (such as unfair competition, misappropriation of trade secrets, tortious interference with contract, breach of fiduciary duty and breach of restrictive covenants), fraud, federal and state racketeering (RICO), class actions and corporate control or shareholder disputes. My cases are often complex, many times involving multiple parties and multiple claims, and they usually involve high dollar amounts or high stakes for the litigants. The character of my practice has not changed substantially over the years, other than that my level of responsibility increased as I became more senior and as I originated my own cases.

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

My typical clients throughout my career have been corporations, partnerships or other business organizations or high net worth individuals. My practice has tended to focus in the areas of fraud, RICO, contracts, corporate control and shareholder litigation, as well as class actions and appellate practice. Since the mid-2000s, I have defended a number of claims brought under or involving the federal Fair Credit Reporting Act.

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

Virtually 100% of my practice has been in litigation and advice related to litigation. Throughout my career, I have appeared frequently in court for my type of practice. Presently, I have a higher percentage of cases in federal court than I have traditionally had. The current percentage is about 80% in federal court, 20% in state court.

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

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

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

I have tried eight cases to verdict, most of which have been multi-week trials. In one of these I was lead counsel; in the others I was "second chair" counsel to one of my firm's name partners. In addition, I have tried four cases in arbitration or special master proceedings (again as second chair to a name partner in the firm), for a total of 11 cases tried to conclusion.

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

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

I prepared an amicus brief at the request of and on behalf of the National Association for Criminal Defense Lawyers and the American Civil Liberties Union in the case of *Jones v. Garner*, 529 U.S. 244 (2000). Copy of brief 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) *McDavid v. Turner Broadcasting, Inc.*, Civ. Action File No. 2005CV101902, Superior Court of Fulton County, Georgia (Hon. Tom Campbell); 303 Ga. App. 593 (2010) (Hon. Debra Bernes, Hon. J.D. Smith, Hon. Herbert E. Phipps)

In this case, I served at trial as the second chair to my senior partner H. Lamar Mixson. We represented McDavid, a Texas businessman who claimed the breach of an oral contract to purchase the Atlanta Hawks and Atlanta Thrashers professional sports teams, along with the operating rights to Philips Arena, from defendant Turner Broadcasting System, Inc. ("TBS"). After many months of negotiations, including the preparation of extensive deal documentation, the parties were down to just a few issues. On a conference call, McDavid's chief negotiator proposed a resolution of these issues, which the Turner representatives accepted. The President of TBS then stated, "We have a deal." TBS subsequently announced that it had sold the assets to a group that included Ted Turner's son-in-law for the same price and on virtually the same terms as the deal that McDavid had negotiated. During the eight-week trial, I presented, among other witnesses, the direct examination of McDavid and of the damages expert upon whose testimony the jury's verdict appears to have been based. I also cross examined TBS's general counsel, who was a primary witness on whether an agreement had been reached, and TBS's primary damages expert. The jury found a binding agreement and awarded McDavid $281 million based on the testimony of McDavid's experts, who testified to the difference between the contract price that McDavid had negotiated (described by Time

Warner executives as a "fire sale" price) and the fair market value of the teams at the time of the breach.

In *Turner Broadcasting System, Inc. v. McDavid*, 303 Ga. App. 593 (2010), the Court of Appeals of Georgia unanimously affirmed the jury's verdict. I had final editing authority for the brief and argued the appeal. In its opinion, the Court of Appeals relied heavily on testimony adduced during my cross examination of TBS's general counsel.

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(2) *Bassett v. PricewaterhouseCoopers, LLP*, Civil Action File No. 02-1-8314-35, Superior Court of Cobb County, Georgia (Hon. Tom Pope)

The plaintiffs in this case, the Kellett brothers and some trusts they had created, brought claims of accounting fraud, negligent misrepresentation and Georgia RICO against PricewaterhouseCoopers ("PwC") arising out of a transaction in which the plaintiffs exchanged the stock of their nursing home company for stock in Mariner Healthcare Group, Inc. ("Mariner"), as part of an acquisition of the plaintiffs' company by Mariner. PwC was the auditor for Mariner. The plaintiffs also sued four former members of Mariner's management – Chief Executive Officer Stratton, Chief Financial Officer Hansen, Chief Operating Officer Diaz, and Senior Vice President for Reimbursement Stone -- for accounting fraud, breach of fiduciary duty, and Georgia RICO. The plaintiffs alleged that the defendants had fraudulently inflated the value of Mariner through improper accounting including, among other things, manipulation of the company's reserves against Medicare and Medicaid reimbursement income. They sought over $125 million in damages, trebled. I was lead counsel for Hansen, Diaz and Stone. The claims against Diaz were settled, and the case against the other defendants went to trial. At trial the plaintiffs were represented by the former Governor of the State of

Georgia, Roy Barnes, and the former Attorney General of Georgia, Michael Bowers. The trial, which took place in 2007, lasted for about five weeks. The jury awarded the plaintiff trusts for the Kelletts' children $10 million (but not the Kelletts themselves, who each were awarded $1) on the negligent misrepresentation claim. The jury rendered a defendants' verdict in favor of my clients and Stratton on all counts.

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3) *Mariner Health Care, Inc. v. PricewaterhouseCoopers, LLP*, Civil Action File No. 02VS037631F (State Court of Fulton County, Georgia) (Hon. Susan B. Forsling); 282 Ga. 217 (2006) (Hon. Ed Johnson, Hon. Yvette Miller, Hon. John Ellington)

I was lead counsel for the same management defendants as in the *Bassett* case listed above, this time in a case brought by the company that acquired Mariner Health Group, Inc., after it merged with the Kelletts' company. After my clients unsuccessfully moved to dismiss based on a forum selection clause, all parties began to engage in the massive discovery that would be required to try a case of this magnitude. After a number of discovery missteps by the plaintiffs, defendants, led by PricewaterhouseCoopers, moved for sanctions (dismissal of the complaint with prejudice) for discovery abuse. The day before the hearing on the motion for sanctions, the plaintiffs dismissed the action and filed a renewal action in the Superior Court of Fulton County. The defendants moved to strike the renewal action on various grounds, which the trial court granted. The Court of Appeals reversed, considering a number of issues of first impression. After the *Kellett* trial, the case settled.

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(4) *Campos v. ChoicePoint Inc.*, 237 F.R.D. 478 (N.D. Ga. Mar. 27, 2006) (Hon. William S. Duffey)

I was lead counsel for ChoicePoint Inc. and ChoicePoint Services Inc. (now LexisNexis Risk Solutions Inc.) in the defense of a putative class action brought by two consumers under the Fair Credit Reporting Act (FCRA). ChoicePoint was in the business of compiling and selling consumer insurance claim history and information, employment background checks, and tenant screening information that constitutes "consumer reports" under the FCRA. The plaintiffs alleged that ChoicePoint's policies and procedures requiring consumers to request their consumer reports separately from each of the various divisions of the company that compiled and sold the different types of reports violated the FCRA's requirement that a consumer obtain, upon request, a copy of his or her "file." The FCRA provides for the recovery of statutory damages up to $1,000 plus punitive damages and attorneys' fees to a consumer who succeeds in proving a "willful" violation. Plaintiffs sought to certify a class of all consumers who requested their files during the relevant time period. After a hearing, the district court certified a class of just over a thousand "curious" consumers who, like the plaintiffs, had requested their files to see what was in them. The district court refused, however, to certify a class of "adversely affected" consumers, who had been denied insurance or a job based on adverse information in a ChoicePoint consumer report. The adversely affected class was estimated to include 1 million people, making the potential statutory damages over $1 billion if a willful violation was shown. After the court's ruling on the class certification motion, the case was settled and the settlement was approved by the court.

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(5) *LexisNexis Screening Solutions Inc. v. USVerify, Inc.*, Civil Action File No. 1:11-CV-02137-JEC (United States District Court for the Northern District of Georgia) (Hon. Julie E. Carnes)

I serve as lead counsel for LexisNexis Screening Solutions Inc. ("LexisNexis") in this case, which was filed in June 2011. LexisNexis had a contract with defendant USVerify, Inc. ("USV") to jointly provide, under the LexisNexis brand, a service that would permit LexisNexis's employer customers to electronically create and store Form I-9 U.S. immigration forms for their employees and to communicate with the U.S. government's "E-Verify" system. When the parties terminated their contract, USV refused to return to LexisNexis its customers' I-9 and E-Verify forms, documents and other related data. LexisNexis filed an action in the Superior Court of Fulton County, Georgia for breach of contract along with a motion for interlocutory injunction to require USV to return immediately the customers' data to LexisNexis. LexisNexis was concerned, among other things, about the irreparable harm that its customers might suffer if the Department of Homeland Security or other government agencies were to audit them and they did not have access to their data, which they would be required to provide upon very short notice under penalty of fines and other sanctions. When the Superior Court set a hearing for two days later, USV removed the case to federal court. Chief Judge Julie E. Carnes immediately set a hearing for a few days hence. After the hearing and a couple of follow-up hearings, Judge Carnes entered an injunction requiring USV to turn over the data to LexisNexis. She further appointed a technical consultant to review USV's systems, determine the best method and format for transferring the data, and supervise the data transfer process and the subsequent deletion of the data from USV's systems. LexisNexis's remaining claims and USV's counterclaims were subsequently settled.

Opposing Counsel:

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(6) *EnduraCare Therapy Management, Inc. v. Drake*, 298 Ga. App. 809 (2009) (Hon. Sara Doyle, Hon. Ala G. Blackburn, Hon. A. Harris Adams)

I was hired as appellate counsel by EnduraCare Therapy Management, Inc. ("ETM") after a default judgment in the amount of $2 million in compensatory damages and $5 million in punitive damages had been entered against it. The case was a tragic one in which a woman had died in a nursing home as a result of what appeared to be a clear case of negligence in failing to diagnose and treat an infection. My client, however, was a physical therapy contract company that had not even entered into a contract with the nursing home until after the decedent's death. But because it had failed to answer the complaint (despite having been served), it had not had an opportunity to assert this defense. When I came into the case, the trial judge had denied ETM's motion to reopen the default. On appeal, we faced a very stringent standard for reversal: The pleadings had to affirmatively show, on their face, that the plaintiff was entitled to no relief. I briefed and argued the case in the Court of Appeals. The plaintiff had alleged that the nursing home was a corporation and that ETM was "an owner" of the nursing home. While the complaint generally alleged that "the defendants" were responsible for the negligent actions of the nursing home staff, the Court of Appeals reversed based on our argument that an "owner" (shareholder) of a corporation is not liable for the corporation's torts absent allegations sufficient to pierce the corporate veil or provide some other basis that would make the shareholder liable for the actions of the corporation's employees.

Co-counsel

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(7) *Glinton v. And R. Inc.*, 271 Ga. 864 (1999), 173 F.3d 1352 (11th Cir. 1999), and 211 F.3d 586 (11th Cir. 2000)

Plaintiffs who had borrowed money from Georgia pawnbrokers at extremely high interest rates brought suit against the pawnbrokers alleging the transactions were illegal and void because they violated Georgia's criminal usury statute, O.C.G.A. § 7-4-18. The pawnbrokers, one of whom was our client (And R. Inc.), moved to dismiss the complaints on the ground that the transactions complied with Georgia's pawnbroker statute, O.C.G.A. § 44-12-130 *et seq.*, and such transactions are not controlled by the criminal usury statute. The district court decided that the two statutes conflict and cannot be harmonized and that the pawnbroker statute governs the subject transactions rather than the criminal usury statute. The court granted defendants' motions and dismissed the cases. Plaintiffs appealed and the cases were consolidated on appeal. I argued the appeal on behalf of the appellees in the Court of Appeals for the Eleventh Circuit.

The Eleventh Circuit certified the following questions to the Georgia Supreme Court: "Can the statutory scheme regulating pawnbrokers, § 44-12-130-138 be read harmoniously with the criminal usury statute, O.C.G.A. § 7-4-18, so that both apply to 'pawn transactions' as defined in O.C.G.A. § 44-12-130(3), or are such transactions meant to be governed exclusively by O.C.G.A. § 44-12-130-138?" and "Is the permissible rate of interest and fees charged in 'pawn transactions' as defined in O.C.G.A. § 44-12-130(3) governed solely by O.C.G.A. § 44-12-131, or does the criminal usury statute, O.C.G.A. § 7-4-18, apply to modify allowable charges so that the interest charged in these transactions violates Georgia law?" *Glinton v. And R Inc.*, 173 F.3d 1352 (11th Cir. 1999).

I then argued the certified questions on behalf of the appellees in the Georgia Supreme Court, which ruled that the statutes could not be reconciled and that the criminal usury statute is inapplicable to pawn transactions. *Glinton v. And R. Inc.*, 271 Ga. 864 (1999). Based on the Georgia Supreme Court's answers to the certified questions, the Eleventh Circuit affirmed the district court's order dismissing the plaintiffs' complaints. Glinton v. And R Inc., 211 F.3d 586 (11th Cir. 2000).

<u>Co-counsel</u>

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(8) *SEB S.A. v. Sunbeam Corp.*, 148 Fed. Appx. 774 (11th Cir. 2005) (Hon. Stanley F. Birch, Hon. Ed Carnes, Hon. James C. Hill); 476 F.3d 1317 (11th Cir. 2007) (Hon. William H. Pryor, Jr., Hon. Peter T. Fay, Hon. William H. Steele); 302 Fed. Appx. 870 (11th Cir. 2008) (Hon. Joel F. Dubina, Hon. Susan H. Black, Hon. Peter T. Fay)

I served as co-counsel for the appellees in this case, which was an appeal from a jury verdict in a dispute over a product supply agreement between two corporations. Sunbeam Products, Inc. and our client, Pentalpha Enterprises, Inc. ("Pentalpha"). I helped write and edit the briefs and prepare my co-counsel for oral argument.

Sunbeam Products, Inc. and its parent company Sunbeam Corporation, Inc. sued Pentalpha and its parent company Global-Tech Appliances, Inc. for indemnification for claims brought by a third party against Sunbeam Products for infringement of the third party's product by a product manufactured by Pentalpha. Pentalpha cross claimed against Sunbeam for breach of the product supply agreement and fraudulent inducement. The jury awarded Sunbeam over $2 million on its indemnification claim and awarded Pentalpha over $6 million on its breach of contract claim. On appeal, Sunbeam argued that the district court erred in denying it judgment as a matter of law on Pentalpha's breach of contract claim and in denying its motion for a new trial because of the admissions of allegedly improper testimony. Pentalpha cross-appealed, arguing that the district court erred in denying it pre-verdict interest on its breach of contract award, in failing to admit certain evidence that would have increased its damages, and in denying Global-Tech judgment as a matter of law on Sunbeam's claim against it. The Court of

Appeals affirmed in all respects except that it reversed the district court denial of prejudgment interest to Pentlapha and remanded for the district court to calculate that interest.

Following the remand, Pentalpha again appealed, raising the issue of when prejudgment interest ends and post judgment interest begins to accrue. The Eleventh Circuit again reversed and remanded with instructions to the district court regarding how the interest should be calculated. On remand, the district court awarded Sunbeam additional prejudgment interest on its judgment against Pentalpha. Pentalpha appealed a third time, and the Eleventh Circuit reversed the district court's award of additional interest to Sunbeam.

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(9) *Blue View Corp. v. Bell*, 298 Ga. App. 277 (2009) (Hon. J.D. Smith, Hon. Herbert E. Phipps, Hon. Debra H. Bernes)

Our firm was hired as appellate counsel for Blue View Corporation after a $7 million default judgment had been entered against it for intentional infliction of emotional distress based on an allegedly wrongful foreclosure. The trial court granted the company's motion to set aside the default, but then reentered the same judgment. I briefed the case and argued it in the Court of Appeals. The Court of Appeals reversed the judgment on the ground that the pleadings affirmatively showed that the plaintiffs were entitled to no relief because they alleged that Blue View had filed a foreclosure action against the plaintiffs' property but then withdrawn it before the foreclosure occurred. This was a "bet the company" case for our client.

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(10) *Hospital Authority of Rockdale County v. GS Capital Partners V Fund, L.P.*, Civil Action No. 09-CIV-8716 (PAC) (S.D.N.Y. Jan. 20, 2011) (Hon. Paul A. Crotty)

Along with my senior partner Jerome Elmore and co-counsel, I represent the community Hospital Authority of Rockdale County ("Rockdale") in a breach of contract action against several Goldman Sachs investment funds. With the hospital on the brink of default on its bond and debt covenants, Rockdale engaged in a bid process to find a buyer for the hospital. Rockdale selected as a purchaser a private entity known as Signature Hospital Corporation ("Signature"). Although Signature had very strong management, it was a relatively new entity without a track record or significant financial resources of its own from which it could complete the purchase. For this deal that had no financing contingency, Signature touted its financial backing by Goldman Sachs. Prior to voting on the proposed transaction and agreeing to submit it to the Attorney General of Georgia for approval, Rockdale insisted upon a commitment from Goldman Sachs that it would fund or cause to be provided the entire purchase price for the hospital. Goldman provided a funding commitment letter directly to Rockdale, the seller. After a hearing before the Attorney General but before the Attorney General issued its findings, Goldman Sachs told Rockdale that it was not going to fund or provide the entire purchase price because of instability in the financial markets that had made it unable to syndicate the funding as it had planned to do. Goldman Sachs's repudiation of its commitment terminated the transaction. Rockdale ended up having to sell the hospital much later in time for much less consideration, resulting in damages of more than $20 million. The district court denied the defendants' motion to dismiss and discovery is nearing completion.

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212-859-8000

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.)

    My most significant legal work includes the large cases I successfully have tried to juries, appeals I have briefed and argued that established significant points of law, cases in which I have been successful in counseling clients how to solve their problems without resorting to litigation or early in the litigation process, and pro bono cases, especially those in which I was appointed by the court to assist persons who otherwise would not have representation. It also includes my involvement in the legal community, such as serving on the Lawyers Advisory Committee of the Eleventh Circuit, a committee appointed by the Chief Judge to advise the Court on proposed changes to the Court's Rules; as the President of the Georgia Association for Women Lawyers; as the Chair of the State Bar's Appellate Practice Section; as the Chair of the Atlanta Bar's Judicial Selection and Tenure Committee, which reports to the Governor's Judicial Nominating Committee about potential judicial appointees; and as a delegate to the State Bar's Board of Governors.

    I have not performed any lobbying activities for any clients or organizations.

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

    I have not taught any courses.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

My law firm's partnership agreement specifies how compensation for partners leaving the firm will be determined. Should I be confirmed, this process would be followed and, subsequently, I would not be owed any additional compensation 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.

    No.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My husband, Edward Krugman, is a partner in my current law firm. I would recuse myself from any of his cases. In addition, for at least some period of time, I would recuse myself from any cases being handled by my current law firm; however, I would continue to recuse myself from any cases in which my law firm had a financial interest in, or other interest that could be affected substantially by, the outcome of the case as long as my husband is a partner there. It is possible that potential conflicts of interest might arise with regard to cases involving my current or former clients. Specifically, my current clients LexisNexis Risk Solutions Inc. and LexisNexis Screening Solutions Inc. have litigation pending in the district courts of the Eleventh Circuit. I would not participate in those matters as a judge.

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

If confirmed, I would follow the Code of Conduct for United States Judges, as well as any other applicable ethical rules or 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.

In addition to my Bar organization and legal community involvement, which has supported the work of many organizations providing legal help to disadvantaged individuals or groups, I have listed below some of the pro bono activities in which I have been involved over the years:

I have been asked and have agreed to assist one of my partners, as a Special Assistant District Attorney for Cobb County, in a high profile criminal prosecution that will likely involve Georgia RICO claims if the case proceeds. I served as Special Assistant District Attorney General in Glynn County, Georgia, in prosecuting a criminal trial calendar at the request of a friend who was an Assistant District Attorney there.

I am currently representing a former client pro bono in an attempt to negotiate the resolution of a pending foreclosure action against her small business, which became delinquent on its lines of credit when a significant portion of its inventory got lost in U.S. Customs for several months during the peak sales season.

I advised and assisted Georgia Legal Services Program lawyers with the drafting of briefs and motions in an appeal in a collective action brought by farm workers working under H-2A visas who allege that they have been underpaid in violation of the Fair Labor Standards Act and in breach of their contracts with the employer.

I helped prepare Kenneth Starr to argue on behalf of the National Geographic Society before the Eleventh Circuit sitting en banc in *Greenberg v. National Geographic Society*, a copyright case.

I advised the United States Bankruptcy Chapter 13 Trustee for the Northern District of Georgia regarding briefing and oral argument in a case before the Eleventh Circuit Court of Appeals.

I assisted a neighborhood association with legal issues in connection with a proposed development on neighboring land.

I supervised an associate in my law firm who served as co-counsel in a challenge to the constitutionality of a local ordinance under which protestors were denied the opportunity to protest outside the Augusta National golf course during the Masters Tournament.

I prepared an amicus brief in the United States Supreme Court in a case in which a prisoner challenged the retroactive application of a regulation extending the time between parole reconsideration hearings for inmates serving life sentences.

I represented prisoners in a number of appeals on appointment by the Eleventh Circuit Court of Appeals. One case resulted in remand for an evidentiary hearing in United States District Court. After I won the panel decision in another case, I briefed and argued it before the Eleventh Circuit sitting en banc.

I served as a volunteer in the Domestic Violence Temporary Protective Order Project, sponsored by the Atlanta Volunteer Lawyers Foundation, the Georgia Association for Women Lawyers, and the Fulton County Solicitor's Victim Assistance Office.

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 do not believe there is a selection commission for this position. I was asked by a local attorney about my interest in the position and then interviewed by a representative of the White House Counsel's Office on October 11, 2011. Since November 2, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 8, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On February 16, 2012, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2011

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Pryor, Jill A.	Court of Appeals-Eleventh Circuit	02/16/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Court of Appeals Judge (Active)	☑ Nomination, Date 02/16/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2011 to 01/18/2012
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
1201 West Peachtree Street, NW Suite 3900 Atlanta, GA 30309	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. President	Jill A. Pryor, PC (Jill A. Pryor, PC, is a partner in Bondurant Mixson & Elmore, LLP)
2. Member	Sussex Properties, LLC (VII, line 3)
3. President, Director	Zephyr Land Corporation (VII, line 16)
4. Member	Silver City Land Co., LLC (VII, line 17)
5. Trustee	Trust #1 (VII, line 15)
6. Member, Board of Directors	Georgia Legal Services Program, Inc.
7. Member	1088 Country Lane, LLC
8. Member	1933 Kilburn Drive, LLC
9. Member	6616 Midnight Pass Road, LLC
10. Member	Top Mall USA, LLC
11. Member	The Look You Love, LLC

FINANCIAL DISCLOSURE REPORT Page 2 of 11	Name of Person Reporting Pryor, Jill A.	Date of Report 02/16/2012

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 3 of 11	Name of Person Reporting Pryor, Jill A.	Date of Report 02/16/2012

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2011	Bondurant, Mixson & Elmore, LLP via Jill A. Pryor, PC - wages and distributions	$548,130.00
2. 07/2011	LexisNexis Publishing - compensation for writing book chapter	$2,500.00
3. 2010	Bondurant, Mixson & Elmore, LLP via Jill A. Pryor, PC - wages and distributions	$5,851,155.00
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	Bondurant, Mixson & Elmore, LLP via Edward B. Krugman, PC - wages and distributions
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 4 of 11	Name of Person Reporting Pryor, Jill A.	Date of Report 02/16/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Citi	Mortgage on rental property #2 - VII line 2	M
2.	Morgan Stanley	Line of credit secured by investment accounts; used to pay off mortgage on rental property #3- VII line 3	O
3.	Wells Fargo	Mortgage on rental property #4 - VII line 4	N
4.	Bank of America	Mortgage on rental property #5 - VII line 5	M
5.	SunTrust	Line of credit on rental property #5 - VII line 5	None

FINANCIAL DISCLOSURE REPORT Page 5 of 11	Name of Person Reporting Pryor, Jill A.	Date of Report 02/16/2012

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

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

A. Description of Assets (including trust assets)	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. Rental property #1, Atlanta, Fulton County, Georgia	D	Rent	M	W	Exempt				
2. Rental property #2, Atlanta, Fulton County, Georgia	E	Rent	N	W	Exempt				
3. Rental property #3, Atlanta, Fulton County, Georgia	G	Rent	O	W	Exempt				
4. Rental property #4, Sarasota, Sarasota County, Florida	E	Rent	M	W	Exempt				
5. Rental property #5, Sarasota, Sarasota County, Florida	E	Rent	N	W	Exempt				
6. Vacation home #2, Sarasota, Sarasota County, Florida	E	Rent	N	Q	Exempt				
7. First Citizens bank accounts	A	Interest	K	T	Exempt				
8. SunTrust bank accounts	A	Interest	N	T	Exempt				
9. Bank of America bank account	A	Interest	J	T	Exempt				
10. Wells Fargo bank account	A	Interest	J	T	Exempt				
11. Wells Fargo bank account (Sussex Properties, LLC)	A	Interest	J	T	Exempt				
12. Associated Credit Union account	A	Interest	J	T	Exempt				
13. Citibank cash accounts	B	Interest	N	T	Exempt				
14. Atlantic Capital Bank account	A	Interest	J	T	Exempt				
15. Trust #1 - AXA Equitable Whole Life insurance policy	C	Dividend	L	T	Exempt				
16. Undeveloped residential lot, Eleuthera, Bahamas		None	N	W	Exempt				
17. Undeveloped lots, Elko, Lyons and Humboldt Counties, Nevada		None	L	W	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 11

Name of Person Reporting	Date of Report
Pryor, Jill A.	02/16/2012

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

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

A. Description of Assets (including trust assets)	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)
18. IBM Corp. stock	A	Dividend	L	T	Exempt				
19. Intel Corp. stock	A	Dividend	K	T	Exempt				
20. Microsoft Corp. stock	A	Dividend	K	T	Exempt				
21. Coca-Cola Co. stock	A	Dividend	J	T	Exempt				
22. Xerox Corp. stock	A	Dividend	J	T	Exempt				
23. American Funds AMCAP Fund	A	Dividend	M	T	Exempt				
24. BlackRock Equity Dividend Fund I	C	Dividend	M	T	Exempt				
25. Calamos Growth & Income Fund - I	B	Dividend	L	T	Exempt				
26. Credit Suisse Commmodity Return Strategy Fund - A		None	M	T	Exempt				
27. Dodge & Cox Income Fund	C	Dividend	M	T	Exempt				
28. Dodge & Cox International Stock Fund	B	Dividend	L	T	Exempt				
29. Dreyfus Liquid Assets Inc.	A	Dividend	J	T	Exempt				
30. Federated International Strategic Value Dividend Fund - I	A	Dividend	L	T	Exempt				
31. Fidelity Advisor Floating High Rate Income Fund - A	C	Dividend	M	T	Exempt				
32. Fidelity High Income Fund	D	Dividend	M	T	Exempt				
33. First Eagle Global Fund - I	C	Dividend	N	T	Exempt				
34. Harbor Capital Appreciation Fund	A	Dividend	J	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 11

Name of Person Reporting	Date of Report
Pryor, Jill A.	02/16/2012

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

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

A. Description of Assets (including trust assets)	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)
35. iShares S&P Global Energy Sector (ETF)	A	Dividend	K	T	Exempt				
36. IVA WorldwideFund - I	B	Dividend	M	T	Exempt				
37. Janus Overseas Fund - I		None	M	T	Exempt				
38. JP Morgan Strategic Income Opportunities Select Fund	A	Dividend	L	T	Exempt				
39. Lazard Emerging Markets Open Fund	C	Dividend	M	T	Exempt				
40. MainStay Epoch Global Equity Yield Fund - A	C	Dividend	M	T	Exempt				
41. Merger Fund	A	Dividend	L	T	Exempt				
42. MFS Value Fund - R3	B	Dividend	M	T	Exempt				
43. Neuberger Berman Equity Income Trust - I	D	Dividend	N	T	Exempt				
44. PIA Short Term Securities Fund	A	Dividend	J	T	Exempt				
45. PIMCO Total Return Fund - P	B	Dividend	L	T	Exempt				
46. Prudential Jennison Natural Resources Fund - Z		None	L	T	Exempt				
47. T. Rowe Price Capital Appreciation Fund	B	Dividend	M	T	Exempt				
48. TCW Emerging Markets Income Fund - N	B	Dividend	K	T	Exempt				
49. TCW Total Return Bond Fund - N	B	Dividend	L	T	Exempt				
50. Templeton Global Bond Fund - A	D	Dividend	M	T	Exempt				
51. Templeton Global Bond Fund - Adv	B	Dividend	K	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT
Page 8 of 11

Name of Person Reporting	Date of Report
Pryor, Jill A.	02/16/2012

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

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. Tweedy Browne Global Value Fund	A	Dividend	J	T	Exempt				
53. Vanguard Intermediate Term Tax-Exempt Fund - Inv	D	Dividend	M	T	Exempt				
54. Vanguard Limited-Term Tax-Exempt Fund	B	Dividend	M	T	Exempt				
55. Vanguard Mid-Cap ETF	D	Dividend	K	T	Exempt				
56. Vanguard Small Cap ETF	A	Dividend	K	T	Exempt				
57. Wells Fargo Advantage Ultra S/T Muni Income Fund - Inv	B	Dividend	N	T	Exempt				
58. Wells Fargo Stable Value Fund - C	A	Dividend	M	T	Exempt				
59. Multi-Manager Core Bond Annuity		None	L	T	Exempt				
60. EQ/International Core Plus Annuity		None	K	T	Exempt				
61. EQ/Montag Caldwell Growth Annuity		None	K	T	Exempt				
62. EQ/GAMCO Small Company Value Annuity		None	J	T	Exempt				
63. EQ/Van Kampen Common Stock Annuity		None	K	T	Exempt				
64. EQ/Morgan Stanley Mid Cap Growth Annuity		None	J	T	Exempt				
65. Excelerate Discovery, LLC		None	K	U	Exempt				
66. TrustPoint International, LLC		None	K	U	Exempt				
67. River's Edge Landing, LLC		None	M	U	Exempt				
68. Ledbetter Lake Investors, LLC		None	N	U	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
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 Pryor, Jill A.	Date of Report 02/16/2012

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

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

A. Description of Assets (including trust assets)	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)
69. Dasher's Bay at Effingham, LLC		None	L	U	Exempt				
70. Fidelity Advisor 529 Portfolio 2013		None	M	T	Exempt				
71. Fidelity Advisor 529 Portfolio 2025		None	L	T	Exempt				
72. MS HP Millenium USA II LP ID		None	M	T	Exempt				
73. MS HP OZ DP II Fund LP ID		None	L	T	Exempt				
74. SkyBridge Multi Advisor Hedge Fund Portfolio Series G		None	M	U	Exempt				

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

FINANCIAL DISCLOSURE REPORT Page 10 of 11	Name of Person Reporting Pryor, Jill A.	Date of Report 02/16/2012

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

Part I, line 3 - This entity owns an undeveloped lot described in Part VII, line15
Part I, line 4 - This entity owns the undeveloped lots described in Part VII, line 16
Part I, lines 7-9 - These entities were set up to own individual rental properties, but the properties have not been tranferred to them. They have no assets.
Parti, lines 10-11 - These entities have no assets.
Part VII, line 6 - appraisal 04/2011

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting Pryor, Jill A.	Date of Report 02/16/2012

IX. CERTIFICATION.

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

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

Signature

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		893	991	Notes payable to banks-secured		593	246
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	4	713	833	Notes payable to relatives			
Unlisted securities – see schedule	1	526	603	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule	2	027	431
Real estate owned – see schedule	5	259	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		450	000				
Cash value-life insurance		89	625				
Other assets itemize:							
				Total liabilities	2	620	677
				Net Worth	10	312	875
Total Assets	12	933	552	Total liabilities and net worth	12	933	552
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	$ 4,324
IBM Corp. stock	85,400
Intel Corp. stock	25,106
Microsoft Corp. stock	42,616
Xerox Corp. stock	1,626
American Funds AMCAP Fund -R4	204,520
BlackRock Equity Dividend Fund –I	188,114
Calamos Growth & Income Fund –I	93,343
Credit Suisse Commodity Return Strategy Fund -A	114,645
Dodge & Cox Income Fund	217,599
Dodge & Cox International Stock Fund	99,399
Dreyfus Liquid Assets Inc	6,018
Federated International Strategic Value Dividend Fund -I	50,652
Fidelity Advisor Floating Rate High Income Fund –A	147,993
Fidelity High Income Fund	205,615
First Eagle Global Fund -I	288,331
Harbor Capital Appreciation Fund	13,228
iShares S&P Global Energy Sector (ETF)	49,845
IVA Worldwide Fund –I	150,603
Janus Overseas Fund –I	101,641
JP Morgan Strategic Income Opportunities Select Fund	84,078
Lazard Emerging Markets Open Fund	130,958
MainStay Epoch Global Equity Yield Fund –A	141,740
Merger Fund	89,237
MFS Value Fund -R3	206,164
Neuberger Berman Equity Income Trust –I	279,356
PIA Short Term Securities Fund	1,530
PIMCO Total Return Fund -P	73,746
Prudential Jennison Natural Resources Fund –Z	57,596
T. Rowe Price Capital Appreciation Fund	152,926
TCW Emerging Markets Income Fund -N	44,914
TCW Total Return Bond Fund -N	62,877
Templeton Global Bond Fund -A	194,460
Templeton Global Bond Fund -Adv	46,513
Tweedy Browne Global Value Fund	8,526
Vanguard Intermediate-Term Tax-Exempt Fund -Inv	177,422
Vanguard Limited-Term Tax-Exempt Fund	123,037
Vanguard Mid-Cap ETF	36,770
Vanguard Small Cap ETF	44,405
Wells Fargo Advantage Ultra S/T Muni Income Fund -Inv	376,303
Wells Fargo Stable Value Fund -C	153,762
Multi-Manager Core Bond Annuity	51,327

EQ/International Core Plus Annuity	18,454
EQ/Montag Caldwell Growth Annuity	28,358
EQ/GAMCO Small Company Value Annuity	6,764
EQ/Van Kampen Common Stock Annuity	24,687
EQ/Morgan Stanley Mid Cap Growth Annuity	7,305
Total Listed Securities	$4,713,833

Unlisted Securities	
Excelerate Discovery, LLC	$ 50,000
Fidelity Advisor 529 Portfolio 2013	187,266
Fidelity Advisor 529 Portfolio 2025	94,473
MS HP Millennium USA II LP ID	206,227
MS HP OZ DP II Fund LP ID	95,269
SkyBridge Multi Advisor Hedge Fund Portfolios Series G	190,269
TrustPoint International, LLC	50,000
Ledbetter Lakes Investors, LLC	415,000
Dasher's Bay at Effingham, LLC	88,555
River's Edge Landing, LLC	149,544
Total Unlisted Securities	$1,526,603

Real Estate Owned	
Personal residence	$ 1,950,000
Parents' residence (50% interest)	100,000
Vacation home #1	522,000
Vacation home #2	390,000
Rental property #1	210,000
Rental property #2	285,000
Rental property #3	700,000
Rental property #4	250,000
Rental property #5	350,000
Undeveloped lot #1	52,500
Undeveloped lot #2	450,000
Total Real Estate Owned	$5,259,500

Real Estate Mortgages Payable	
Personal residence	$ 968,702
Parents' residence	118,000
Vacation home #1	226,175
Rental property #2	176,967
Rental property #4	324,709
Rental property #5	212,878
Total Real Estate Mortgages Payable	$2,027,431

AFFIDAVIT

I, Jill Anne Pryor, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

02/17/2012
(DATE)

(NAME)

Valerie P. Russell
(NOTARY) 9-8-15

933634 1

BONDURANT MIXSON & ELMORE LLP

January 3, 2013

JILL A. PRYOR

Writer's Direct Dial
(404) 881-4131
pryor@bmelaw.com

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 February 16, 2012 to be United States Circuit Judge for the Eleventh Circuit Court of Appeals. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

Q. 6. Employment

Other Affiliations (Uncompensated)

November 2012 – present
American Institute of Appellate Practice
c/o Litigation Counsel of America
641 Lexington Avenue, 15th Floor
New York, New York 10022
Chair Elect

If confirmed, I will resign my position with the American Institute of Appellate Practice.

August 2012 – present
Attorney at Law Magazine
4647 North 32nd Street
Suite B 280
Phoenix, Arizona 85018
Atlanta Edition Advisory Board

Q. 8. Honors and Awards

I was included in The Best Lawyers in America for 2012 and 2013.

I was recognized by Chambers USA again in 2012.

Q. 9. Bar Associations

I became the Chair Elect of the Litigation Counsel of America's American Institute of Appellate Practice in November of 2012.

Q. 12.d. Published Writings and Public Statements

March 29, 2012 – Panel Discussion (moderator) on "Advanced Technologies That Will Change the Practice of Law Forever" for the Association of Corporate Counsel, Georgia Chapter's Value Challenge Event, Atlanta, Georgia. Outline supplied.

Q. 17. Litigation

(10) Summary judgment motions are currently pending in this case.

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,

Jill A. Pryor

Enclosures

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

Advanced Technologies That Will Change the Practice of Law Forever

Intro

Last year at this event I moderated a breakout session on what drives the high costs of litigation. When I asked for the audience's thoughts on what the biggest cost-drivers are, almost in unison all of the corporate counsel answered, "Discovery." The amount of electronic information will only continue to increase, and without changes in the way cases are managed, the costs will continue to increase as well.

So what can be done about this?

While technology may have created this problem, it may also be able to help solve the problem.

There are new types of software being developed and used to not only reduce the amount of time discovery takes and the cost of it, but also improve the overall *quality* of discovery –meaning that it improves the chances of capturing all of the relevant, responsive documents with the smallest number of non-responsive ones.

As with any revolutionary technology, it requires that we re-think the way we've always done things. It inspires fear and skepticism. We think to ourselves, I don't understand how this works. Is it really better or even as good as the way we've always done document review & production? Will I get into trouble with the judge or opposing counsel for using it? Will my team be able to use it? How much does it cost, and will it really save me enough money to make the investment worthwhile?

Our goal today is to help you begin to answer some of these questions with the hope that you can then begin a dialogue, within your companies and with your outside counsel, about how this advanced technology could help you.

Introduction of panel

Our panelists today represent three key players in the e-discovery arena: the expert consultant, the in-house lawyer/client and the outside counsel.

Our expert e-discovery consultant is Howard Sklar.

Howard Sklar, Recommind, Inc.

Howard Sklar is Senior Corporate Counsel at Recommind, Inc. Howard represents Recommind to corporations and law firms. Prior to joining Recommind, Howard was Global Trade and Anti-Corruption Strategist at Hewlett-Packard Co., running HP's global anti-corruption compliance program and providing counsel on compliance with US sanctions laws. Before HP, Howard was Vice President, Compliance and Global Anti-Corruption Leader at American Express Co. Howard was the chief of compliance for three operating divisions at American Express comprising 22,000 employees in 40 countries. Howard is a member of the US Court of Appeals 7th Circuit eDiscovery Committee and is a participant in the Early Case Assessment and Education subcommittees. [Howard holds a Juris Doctor, *cum laude*, from the Washington College of Law at The American University and a BA in History from Tufts University.]

Representing the client's point of view is Skip Lockard.

Orlyn "Skip" Lockard, Siemens

Skip Lockard is a Senior Counsel with Siemens Corporation based in Alpharetta, Georgia, and manages U.S. litigation for all divisions in the Siemens Industry Sector. His portfolio includes matters ranging from construction to product liability and complex commercial disputes. Prior to joining Siemens, Skip was a partner with Alston & Bird LLP in Atlanta, where he counseled Fortune 500 and other companies in the chemical, energy, mining, building product, and consumer product industries in complex litigation matters, including product liability, environmental, mass tort, and class action cases nationwide.

Our outside counsel representative is my partner Steven Rosenwasser.

Steven Rosenwasser represents both plaintiffs and defendants in business tort (breach of contract/fiduciary duty/partnership), fraud and antitrust matters. He is frequently called upon to represent individuals and classes in complex disputes at the trial court and appellate levels. His cases often involve vast amounts of electronic document discovery.

Steven has built a successful track record in the court room and as a negotiator. In 2008, along with colleagues from the firm, he obtained a $281 million jury verdict against Turner Broadcasting System that was rated the No. 2 verdict in the United States by *LawyersUSA*. He has also successfully defended companies against multi-million dollar claims. Steven has been recognized as being "On The Rise" by the *Fulton County Daily Report*, a recognition given to only 12 attorneys in Georgia under the age of 40.

Steven is a frequent lecturer and author on business litigation topics including electronic discovery, effective trial techniques, and class actions.

Questions

1. First we'll need to explain the technology we'll be talking about. Howard, what is it and how does it work? When is it used?

2. Skip, your company recently entered into a partnership with Howard's company, Recommind. Would you explain how the partnership works and the potential benefits of it for you as corporate counsel?

3. Steve, from the perspective of outside counsel, what do you see as some of the benefits this technology might possibly offer you or your firm? [Steve briefly discusses his background with handling large discovery cases, brief history of firm's investigation into PC, and potential benefits it offers litigators and law firms.]

Howard, do you have anything to add to what Skip and Steve said as far as the efficiencies this technology brings?

4. We will get to discovery, but one of the things I find intriguing about these products is their potential for use in early case assessment (ECA), before discovery even begins or pre-suit, for that matter. Let's say Skip's company is sued in a potentially large and complex antitrust case. He consults Howard on using the technology to evaluate the claims. Howard, what would you discuss with Skip?

Skip, what would you be concerned about at this point? [What is your assessment of the investment/return?]

[If not covered earlier: How did your company make the decision to partner with Recommind (cost vs. benefit)]?

5. Suppose Skip feels the claims are valid enough to retain outside counsel and retains Steve. The case proceeds and now we are preparing for discovery. Howard, would you explain how we move into the discovery process?

What are some ways that we can proactively seek to control or manage discovery by taking advantage of this technology? (Howard, Skip)

[If not covered --Who should do the first pass and how?]

6. Steve, what are some of your concerns about the use of this technology? Skip, do you have any concerns from your perspective?

Howard – response?

7. Do you need to get your opposing counsel's agreement to use PC to select your documents for production? What are your best arguments for getting opposing counsel to agree? (All)

If opposing counsel consents, do you also need the judge's approval?

What if opposing counsel does not consent? Do you go to the judge anyway?

How do you explain PC to a technology-challenged judge?

As you know, there has only been one court decision on the use of PC in discovery, and that is Magistrate Judge Peck's ruling in the *DaSilva* case. Howard, would you briefly explain what Judge Peck ruled?

Skip and Steve, what do you think other courts will do? What needs to happen to achieve wide spread approval for using PC?

What happens if the other side/judge doesn't consent in a given case? In our imaginary case, can Steve still use PC in any way on Skip's documents?

--Can use PC to suggest keywords to propose to other side/court.

[Going back to opposing counsel, what if opposing counsel wants to use its own PC software on Skip's original universe of documents? Howard, have you ever seen that happen?]

8. Let's assume the judge approves, opposing counsel is on board and PC is used correctly, is there still a need to lay eyes on every document? Steve? [If so, what are you worried about missing?]

9. If PC does what it is supposed to do, how much money can it potentially save? Does it eliminate the need for outsourcing/contract reviewers? (All)

10. Who should foot the bill for PC in a standard hourly fee arrangement between the client and outside counsel? (All)

11. Will Skip force outside firms to use PC technology? Will he switch firms if they won't? (Skip)

12. Are there litigation situations where PC won't work or is impractical? Can a case be too small? (Howard, then others)

13. Howard, how do you answer potential client or firms who don't want to be the first to use this? I assume most clients will not want to be the test case. How do you achieve a proof of concept?

14. Howard, what are some of the more unusual uses of the technology that you have seen?

15. Would you want to face an opponent who is using PC when you are not?

Audience questions/comments

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
Pryor, Jill A.	Court of Appeals-Eleventh Circuit	01/03/2013
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**
Court of Appeals Judge (Active)	☑ Nomination Date 01/03/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 12/21/2012
7. Chambers or Office Address		
1201 West Peachtree Street, NW Suite 3900 Atlanta, GA 30309		

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. President	Jill A. Pryor, PC (Jill A. Pryor, PC is a partner in Bondurant Mixson & Elmore, LLP)
2. Member	Sussex Properties, LLC (VII lines 3 & 11)
3. President, Director	Zephyr Land Corporation (VII line 16)
4. Member	Silver City Land Co., LLC (VII lines 17-35)
5. Trustee	Trust #1 (VII line 15)
6. Member, Board of Directors	Georgia Legal Services Program, Inc.
7. Member	1088 Country Lane, LLC
8. Member	1933 Kilburn Drive, LLC
9. Member	6616 Midnight Pass Road, LLC
10. Member	Top Mall USA, LLC
11. Member	The Look You Love, LLC
12. Chair Elect	American Institute of Appellate Practice, Litigation Counsel of America

FINANCIAL DISCLOSURE REPORT Page 2 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/03/2013

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 3 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/03/2013

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	Bondurant Mixson & Elmore, LLP via Jill A. Pryor, PC - wages and distributions	$269,730.90
2. 2011	Bondurant Mixson & Elmore, LLP via Jill A. Pryor, PC - wages and distributions	$605,779.00
3. 2011	LexisNexis Publishing - compensation for writing book chapter	$2,500.00
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	Bondurant Mixson & Elmore, LLP via Edward B. Krugman, PC - wages and distributions
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 4 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/03/2013

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.	Flagstar	Mortgage on rental property #2 (VII line 2)	M
2.	Morgan Stanley	Line of credit secured by investment accounts; used to pay off mortgage on rental property #3(VII line 3)	O
3.	Wells Fargo	Mortgage on rental property #4 (VII line 4)	N
4.	Bank of America	Mortgage on rental property #5 (VII line 5)	M
5.	SunTrust	Line of credit secured by rental property #5	None
6.	SunTrust	Partner's share of Bondurant Mixson & Elmore, LLP's line of credit (7.09%)	None

FINANCIAL DISCLOSURE REPORT
Page 5 of 13

Name of Person Reporting	Date of Report
Pryor, Jill A.	01/03/2013

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. Rental property #1, Atlanta, Fulton County, Georgia	D	Rent	M	W	Exempt				
2. Rental property #2, Atlanta, Fulton County, Georgia	E	Rent	N	W	Exempt				
3. Rental property #3, Atlanta, Fulton County, Georgia	G	Rent	O	W	Exempt				
4. Rental property #4, Sarasota, Sarasota County, Florida	D	Rent	N	W	Exempt				
5. Rental property #5, Sarasota, Sarasota County, Florida	E	Rent	N	W	Exempt				
6. Vacation home #2, Sarasota, Sarasota County, Florida	D	Rent	N	W	Exempt				
7. First Citizens bank accounts	A	Interest	L	T	Exempt				
8. SunTrust bank accounts	A	Interest	L	T	Exempt				
9. Bank of America bank accounts	A	Interest	J	T	Exempt				
10. Wells Fargo bank account	A	Interest	J	T	Exempt				
11. Wells Fargo bank account (Sussex Properties, LLC)	A	Interest	J	T	Exempt				
12. Associated Credit Union account	A	Dividend	J	T	Exempt				
13. Citibank cash accounts	A	Interest	N	T	Exempt				
14. Atlantic Capital bank account	A	Interest	J	T	Exempt				
15. Trust #1 -AXA Equitable Whole Life insurance policy	A	None	L	T	Exempt				
16. Undeveloped residential lot #1, Eleuthera, Bahamas		None	N	W	Exempt				
17. Undeveloped residential lot #2, Taos County, New Mexico (X)		None	J	W	Exempt				

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

FINANCIAL DISCLOSURE REPORT Page 6 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/03/2013

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)
18. Undeveloped residential lot #3, Elko County, Nevada		None	J	W	Exempt				
19. Undeveloped lot #4, Lyons County, Nevada		None	J	W	Exempt				
20. Undeveloped lot #5, Humboldt County, Nevada		None	J	W	Exempt				
21. Undeveloped lot #6, Humboldt County, Nevada		None	J	W	Exempt				
22. Undeveloped lot #7, Humboldt County, Nevada		None	J	W	Exempt				
23. Undeveloped lot #8, Humboldt County, Nevada		None	J	W	Exempt				
24. Undeveloped lot #9, Humboldt County, Nevada		None	J	W	Exempt				
25. Undeveloped lot #10, Humboldt County, Nevada		None	J	W	Exempt				
26. Undeveloped lot #11, Humboldt County, Nevada		None	J	W	Exempt				
27. Undeveloped lot #12, Humboldt County, Nevada		None	J	W	Exempt				
28. Undeveloped lot #13, Humboldt County, Nevada		None	J	W	Exempt				
29. Undeveloped lot #14, Humboldt County, Nevada		None	J	W	Exempt				
30. Undeveloped lot #15, Humboldt County, Nevada		None	J	W	Exempt				
31. Undeveloped lot #16 Humboldt County, Nevada		None	J	W	Exempt				
32. Undeveloped lot #17, Humboldt County, Nevada		None	J	W	Exempt				
33. Undeveloped lot #18, Humboldt County, Nevada		None	J	W	Exempt				
34. Undeveloped lot #19, Humboldt County, Nevada		None	J	W	Exempt				

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 13

Name of Person Reporting	Date of Report
Pryor, Jill A.	01/03/2013

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)
35. Undeveloped residential lot #20, Elko County, Nevada		None	J	W	Exempt				
36. IBM Corp. stock	B	Dividend	L	T	Exempt				
37. Intel Corp. stock	A	Dividend	K	T	Exempt				
38. Microsoft Corp. stock	B	Dividend	K	T	Exempt				
39. Coca-Cola Co. stock	A	Dividend	J	T	Exempt				
40. Xerox Corp. stock	A	Dividend	J	T	Exempt				
41. Berkshire Hathaway C1-B stock (X)		None	L	T	Exempt				
42. Cisco Systems stock (X)	A	Dividend	K	T	Exempt				
43. WisdomTree Trust Emerging Markets EQT (X)	B	Dividend	K	T	Exempt				
44. Google inc C1-A stock (X)		None	K	T	Exempt				
45. Telefonica SA ADR (X)	A	Dividend	J	T	Exempt				
46. American Funds AMCAP Fund	B	Dividend	N	T	Exempt				
47. American International Group stock (X)		None	K	T	Exempt				
48. BlackRock Equity Dividend Fund I	D	Dividend	M	T	Exempt				
49. Credit Suisse Commodity Return Strategy Fund - A		None	L	T	Exempt				
50. Dodge & Cox Income Fund	C	Dividend	M	T	Exempt				
51. Dodge & Cox International Stock Fund		None	L	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT Page 8 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/03/2013

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

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. FPA Crescent Fund - I (X)		None	M	T	Exempt				
53. Federated International Strategic Value Dividend Fund - I	C	Dividend	M	T	Exempt				
54. Fidelity High Income Fund	D	Dividend	M	T	Exempt				
55. First Eagle Global Fund - I	C	Dividend	N	T	Exempt				
56. Harbor Capital Appreciation Fund	A	Dividend	J	T	Exempt				
57. Henderson European Focus Fund - I (X)		None	L	T	Exempt				
58. Buffalo Small Cap Fund (X)		None	L	T	Exempt				
59. Janus Overseas Fund - I	B	Dividend	K	T	Exempt				
60. Lazard Emerging Markets Open Fund		None	M	T	Exempt				
61. Mainstay Epoch Global Equity Yield Fund - A	C	Dividend	M	T	Exempt				
62. MFS Value Fund - R3	D	Dividend	N	T	Exempt				
63. Northern Small Cap Value (X)		None	L	T	Exempt				
64. PIA Short Term Securities Fund	A	Dividend	J	T	Exempt				
65. PIMCO Total Return Fund - P	B	Dividend	L	T	Exempt				
66. T. Rowe Price Capital Appreciation Fund	C	Dividend	M	T	Exempt				
67. TCW Emerging Markets Income Fund - N	C	Dividend	M	T	Exempt				
68. TCW Total Return Bond Fund - N	D	Dividend	N	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4) — A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000
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 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/03/2013

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)
69. Templeton Global Bond Fund - A	D	Dividend	M	T	Exempt				
70. Templeton Global Bond Fund - Adv	D	Dividend	M	T	Exempt				
71. Tweedy Browne Global Value Fund		None	J	T	Exempt				
72. Vanguard Intermediate Term Tax-Exampt Fund - Inv	C	Dividend	L	T	Exempt				
73. Vanguard Limited Term Tax-Exampt Fund	C	Dividend	M	T	Exempt				
74. Vanguard Mid Cap ETF	A	Dividend	L	T	Exempt				
75. Vanguard Small Cap ETC	A	Dividend	K	T	Exempt				
76. Wells Fargo Advantage Ultra S/T Muni Income Fund - Inv	A	Dividend	M	T	Exempt				
77. Wells Fargo Emerging Markets Equity - Adm (X)	A	Dividend	M	T	Exempt				
78. Wells Fargo Stable Value Fund - C		None	L	T	Exempt				
79. AXA Equitable Multi-Manager Core Bond Annuity		None	L	T	Exempt				
80. EQ/International Core Plus Annuity		None	K	T	Exempt				
81. EQ/Montag Caldwell Growth Annuity		None	K	T	Exempt				
82. EQ/GAMCO Small Company Value Annuity		None	J	T	Exempt				
83. EQ/Van Kampen Common Stock Annuity		None	K	T	Exempt				
84. EQ/Morgan Stanley Mid Cap Growth Annuity		None	J	T	Exempt				
85. Excelerate Discovery, LLC		None	K	U	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT Page 10 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/03/2013

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)
86. TrustPoint International, LLC		None	K	U	Exempt				
87. River's Edge Landing, LLC		None	M	U	Exempt				
88. Ledbetter Lake Investors, LLC		None	N	U	Exempt				
89. Dasher;s Bay at Effingham, LLC		None	L	U	Exempt				
90. Fidelity Advisor 529 Portfolio 2013		None	M	T	Exempt				
91. Fidelity Advisor 529 Portfolio 2025		None	M	T	Exempt				
92. MS HP Millenium USA II LP ID		None	M	T	Exempt				
93. HPC Starboard Value LTD CL D (X)		None	M	T	Exempt				
94. MS HP OZ DP II Fund LP ID		None	M	T	Exempt				
95. SkyBridge Multi-Advisor Hedge Fund Portfolio Series G	C	Dividend	M	T	Exempt				
96. Calamos Growth & Income Fund - I (Y)									
97. Dreyfus Liquid Assets, Inc.(Y)									
98. Fidelity Advisor Floating High Rate Income Fund - A (Y)									
99. iShares S&P Golbal Energy Sector (ETF) (Y)									
100. IVA Worldwide Fund - I (Y)									
101. JP Morgan Strategic Income Opportunities Select Fund (Y)									
102. Merger Fund (Y)									

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

FINANCIAL DISCLOSURE REPORT Page 11 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/03/2013

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)
103. Neuberger Berman Equity Income Trust - I (Y)									
104. Prudential Jennison Natural Resources Fund - Z (Y)									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$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		

Name of Person Reporting	Date of Report
Pryor, Jill A.	01/03/2013

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

Part I, line 2 - This entity owns a residential apartment building described in Part VII, line 3 and the bank account descibed in Part VII, line 11.
Part I, line 3 - This entity owns the undeveloped residential lot described in Part VII, line 16.
Part I, line 4 - This entity owns the undeveloped lots described in Part Vii, lines 17-35.
Part I, lines 7-9 - These entities were set up to own individual rental properties, but the properties have not been transferred to them. They have no assets.
Part I, lines 10-11- These entities have no assets.

Name of Person Reporting	Date of Report
Pryor, Jill A.	01/03/2013

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/ Jill A. Pryor

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		620	614	Notes payable to banks-secured		575	284
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	4	920	230	Notes payable to relatives			
Unlisted securities – see schedule	1	773	025	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	1	989	955
Real estate owned – see schedule	5	160	235	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		468	000				
Cash value-life insurance		97	817				
Other assets itemize:							
				Total liabilities	2	565	239
				Net Worth	10	474	682
Total Assets	13	039	921	Total liabilities and net worth	13	039	921
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	$ 4,744
IBM Corp. stock	74,093
Intel Corp. stock	20,518
Microsoft Corp. stock	38,136
Xerox Corp. stock	1,426
American Intl Group stock	26,577
Berkshire Hathaway Cl-B stock	51,918
Cisco Systems stock	20,275
WisdomTree Trust Emerging Markets EQT	35,648
Google Inc Cl-A stock	29,617
Telefonica SA ADR	12,163
Vanguard Small Cap ETF	37,302
Vanguard Mid Cap ETF	54,406
American Funds AMCAP Fund -R4	269,601
BlackRock Equity Dividend Fund –I	221,449
Buffalo Small Cap Fund	72,381
Credit Suisse Commodity Return Strategy Fund - A	95,528
Dodge & Cox Income Fund	177,156
Dodge & Cox International Stock Fund	89,324
Federated International Strategic Value Dividend Fund -I	126,252
Fidelity High Income Fund	241,599
First Eagle Global Fund -I	323,568
FPA Crescent Fund - I	172,038
Harbor Capital Appreciation Fund	14,831
Henderson European Focus Fund - I	67,342
Janus Overseas Fund –I	47,122
Lazard Emerging Markets Open Fund	139,546
MainStay Epoch Global Equity Yield Fund – I	124,556
MFS Value Fund -R3	312,955
Northern Small Cap Value	85,451
PIA Short Term Securities Fund	1,951
PIMCO Total Return Fund -P	67,442
T. Rowe Price Capital Appreciation Fund	234,162
TCW Emerging Markets Income Fund - I	131,405
TCW Total Return Bond Fund - I	321,353
Templeton Global Bond Fund – A	219,015
Templeton Global Bond Fund - Adv	127,528
Tweedy Browne Global Value Fund	10,125
Vanguard Intermediate-Term Tax-Exempt Fund -Inv	89,243
Vanguard Limited-Term Tax-Exempt Fund	174,450
Wells Fargo Advantage Ultra S/T Muni Income Fund -Inv	191,527
Wells Fargo Emerging Markets Equity – Adm	130,146

Wells Fargo Stable Value Fund - C	86,325
AXA Equitable Multi-Manager Core Bond Annuity	52,668
EQ/International Core Plus Annuity	20,759
EQ/Montag Caldwell Growth Annuity	31,501
EQ/GAMCO Small Company Value Annuity	7,495
EQ/Van Kampen Common Stock Annuity	28,001
EQ/Morgan Stanley Mid Cap Growth Annuity	7,612
Total Listed Securities	$4,920,230

Unlisted Securities	
Excelerate Discovery, LLC	$ 50,000
Fidelity Advisor 529 Portfolio 2013	200,037
Fidelity Advisor 529 Portfolio 2025	109,129
MS HP Millennium USA II LP ID	218,240
HPC Starboard Value LTD CL D	159,867
MS HP OZ DP II Fund LP ID	104,893
SkyBridge Multi Advisor Hedge Fund Portfolios Series G	227,760
TrustPoint International, LLC	50,000
Ledbetter Lakes Investors, LLC	415,000
Dasher's Bay at Effingham, LLC	88,555
River's Edge Landing, LLC	149,544
Total Unlisted Securities	$1,773,025

Real Estate Owned	
Personal residence	$ 1,875,000
Parents' residence (50% interest)	100,000
Vacation home #1	522,000
Vacation home #2	390,000
Rental property #1	210,000
Rental property #2	285,000
Rental property #3	700,000
Rental property #4	250,000
Rental property #5	350,000
Undeveloped lot #1	450,000
Undeveloped lot #2	200
Undeveloped lot #3	4030
Undeveloped lot #4	730
Undeveloped lot #5	1,400
Undeveloped lot #6	2,625
Undeveloped lot #7	1,400
Undeveloped lot #8	1,400
Undeveloped lot #9	1,400
Undeveloped lot #10	1,400
Undeveloped lot #11	1,400
Undeveloped lot #12	1,400
Undeveloped lot #13	1,400

Undeveloped lot #14	1,400
Undeveloped lot #15	1,400
Undeveloped lot #16	1,400
Undeveloped lot #17	1,400
Undeveloped lot #18	1,400
Undeveloped lot #19	1,400
Undeveloped lot #20	1,050
Total Real Estate Owned	$5,160,235

Real Estate Mortgages Payable	
Personal residence	$ 960,300
Parents' residence	114,205
Vacation home #1	225,401
Rental property #2	170,175
Rental property #4	313,685
Rental property #5	206,219
Total Real Estate Mortgages Payable	$1,989,955

January 10, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United State Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on February 16, 2012, to be United States Circuit Judge for the Eleventh Circuit Court of Appeals, as well as my January 3, 2013, letter updating the Questionnaire, which is incorporated here by reference. Incorporating the additional information below, I certify that the information contained in those documents is, to the best of my knowledge, true and accurate.

Q. 8. Honors and Awards

I was recognized in the following publications: Super Lawyers 2013 (Top 100 Lawyers and Top 50 Women Lawyers), Chambers USA 2013 (Litigation: General Commercial), Benchmark Plaintiff 2013 (Georgia Local Litigation Star), and Best Lawyers 2014 (Commercial Litigation, Litigation – Intellectual Property).

Q. 12.d. Published Writings and Public Statements

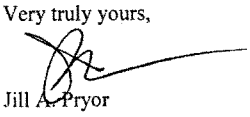
February 17, 2013: Panel Discussion on "E-Discovery And The Use of Technology in Litigation" for the Atlanta Bar Association's annual Caribbean Continuing Education Seminar, Marriott Resort, Palm Beach, Aruba. Notes supplied.

Q. 17. Litigation

(10) *Hospital Authority of Rockdale County v. GS Capital Partners V Fund, L.P.*, Civil Action No. 09-CIV-8716 (PAC) (S.D.N.Y.): The district court denied the defendants' motion for summary judgment and granted the plaintiff's motion for summary judgment on the counterclaims. The case was settled before trial.

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,



Jill A. Pryor

cc:
The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United State Senate
Washington, DC 20510

5 cases addressing predictive coding

Da Silva Moore v. Publicis Groupe (S.D.N.Y. Feb. 2012): gender discrimination case in front of Judge Peck, who had published an article on predictive coding making a case for its use in appropriate cases. Defendant wanted to use predictive coding to cull down over 3 million documents from the parties' agreed-upon custodians. Plaintiff eventually agreed to the use of predictive coding but disagreed about how it should be implemented. The court found this an easier case than where a party objected to the use of computer-assisted review. The court permitted the use of predictive coding according to an ESI protocol negotiated by the parties, engaging in a discussion comparing computer-assisted review to traditional key word searching. The court concluded:

> "This Opinion appears to be the first in which a Court has approved of the use of computer-assisted review. That does not mean computer-assisted review must be used in all cases, or that the exact ESI protocol approved here will be appropriate in all future cases that utilize computer-assisted review. Nor does this Opinion endorse any vendor (the Court was very careful not to mention the names of the parties' vendors in the body of this Opinion, although it is revealed in the attached ESI Protocol), nor any particular computer-assisted review tool. What the Bar should take away from this Opinion is that computer-assisted review is an available tool and should be seriously considered for use in large-data-volume cases where it may save the producing party (or both parties) significant amounts of legal fees in document review."

Kleen Products v. Packaging Corp. of America (E.D. Ill. Sept. 2012): antitrust action, defendant had completed its document review. Instead of showing a specific problem with the review, plaintiff said that because defendant had used Boolean keyword searching, with its known deficiencies, the result was unacceptable. Plaintiff asked the judge to force the defendant to do the entire review over again using content-based advanced analytics (predictive coding). Judge Nolan held a couple days of evidentiary hearings, during which both sides presented witnesses. Some odd and/or inaccurate things were said (*e.g.*, "iterative keyword search is a form of predictive coding"). Citing the Sedona Conference and the principle that normally "[r]esponding parties are best situated to evaluate the procedures, methodologies, and techniques appropriate for preserving and producing their own electronically stored information," Judge Nolan pressed the parties to reach agreement. They reached an agreement whereby the plaintiff would withdraw its demand that the defendant use predictive coding with regard to previously collected documents, and the parties would confer regarding the procedure for documents requested after a certain date.

Global Aerospace Inc. v. Landow Aviation, LP (Circuit Court of Loudoun Co., Va., Apr. 2012): case about a fallen aircraft hanger. Defendants proposed using predictive coding for "the processing and production of electronically stored information." Plaintiff objected. The court ruled that the defendants could use predictive coding, taking the approach that the producing party could use its preferred method and then if the other side had a problem with the production itself, it should raise the objection then. In other words, unless there is an identifiable problem with the production, the parties never reach a technology challenge. The problem with this approach is that there might be no way of knowing (let alone proving) that there is actually a problem with the production, despite the fact that the methodology might have been entirely unsound.

In re Actos Prods. Liab. Litig. (MDL) (W.D. La. July 2012): the court entered a Case Management Order: Protocol Relating to the Production of Electronically Stored Information that included a detailed Search Methodology Proof of Concept for the use of predictive coding/advanced computer analytics.

Hooters (Delaware Chancery Court): decision on summary judgment about sale of Hooters restaurant chain. At the end of the decision, the judge said (seemingly out of the blue), I think this would be a great case in which to use predictive coding, because these kinds of cases are very document intensive; parties should use it absent a showing of good cause not to use it.

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
Pryor, Jill A.	Court of Appeals-Eleventh Circuit	01/10/2014
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**
Court of Appeals Judge (Active)	☑ Nomination Date 01/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/15/2013
7. Chambers or Office Address		
1201 West Peachtree Street, NW Suite 3900 Atlanta, GA 30309		

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. President	Jill A. Pryor, PC (Jill A. Pryor, PC is a partner in Bondurant Mixson & Elmore, LLP)
2. Member	Sussex Properties, LLC (VII lines 3 & 11)
3. President, Director	Zephyr Land Corporation (VII line 17)
4. Member	Silver City Land Co., LLC (VII lines 18-36)
5. Trustee	Trust #1 (VII line 16)
6. Member, Board of Directors	Georgia Legal Services Program, Inc.
7. Member	1088 Country Lane, LLC
8. Member	1933 Kilburn Drive, LLC
9. Member	6616 Midnight Pass Road, LLC
10. Member	Top Mall USA, LLC
11. Member	The Look You Love, LLC
12. Chair Elect	American Institute of Appellate Practice, Litigation Counsel of America

FINANCIAL DISCLOSURE REPORT Page 2 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/10/2014

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 3 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/10/2014

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	Bondurant Mixson & Elmore, LLP via Jill A. Pryor, PC - wages and distributions	$711,382.00
2. 2012	Bondurant Mixson & Elmore, LLP via Jill A. Pryor, PC - wages and distributions	$544,140.00
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	Bondurant Mixson & Elmore, LLP via Edward B. Krugman, PC - wages and distributions
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 4 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/10/2014

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.	Flagstar	Mortgage on rental property #2 (VII line 2)	M
2.	Morgan Stanley	Line of credit secured by investment accounts; used to pay off mortgage on rental property #3(VII line 3)	O
3.	Wells Fargo	Mortgage on rental property #4 (VII line 4)	N
4.	Bank of America	Mortgage on rental property #5 (VII line 5)	M
5.	SunTrust	Partner's share of Bondurant Mixson & Elmore, LLP's line of credit (6.90%)	None

FINANCIAL DISCLOSURE REPORT
Page 5 of 13

Name of Person Reporting	Date of Report
Pryor, Jill A.	01/10/2014

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. Rental property #1, Atlanta, Fulton County, Georgia	D	Rent	M	W	Exempt				
2. Rental property #2, Atlanta, Fulton County, Georgia	E	Rent	N	W	Exempt				
3. Rental property #3, Atlanta, Fulton County, Georgia	G	Rent	O	W	Exempt				
4. Rental property #4, Sarasota, Sarasota County, Florida	D	Rent	N	W	Exempt				
5. Rental property #5, Sarasota, Sarasota County, Florida	E	Rent	N	W	Exempt				
6. Vacation home #2, Sarasota, Sarasota County, Florida	D	Rent	N	W	Exempt				
7. First Citizens bank accounts	A	Interest	K	T	Exempt				
8. SunTrust bank accounts	A	Interest	J	T	Exempt				
9. Bank of America bank accounts	A	Interest	J	T	Exempt				
10. Wells Fargo bank account	A	Interest	J	T	Exempt				
11. Wells Fargo bank account (Sussex Properties, LLC)	A	Interest	J	T	Exempt				
12. Associated Credit Union account	A	Dividend	J	T	Exempt				
13. State Bank bank accounts	A	Interest	J	T	Exempt				
14. Citibank cash accounts	A	Interest	N	T	Exempt				
15. Atlantic Capital bank account	A	Interest	J	T	Exempt				
16. Trust #1 -AXA Equitable Whole Life insurance policy	C	Dividend	L	T	Exempt				
17. Undeveloped residential lot #1, Eleuthera, Bahamas		None	N	W	Exempt				

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

FINANCIAL DISCLOSURE REPORT Page 6 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/10/2014

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)
18. Undeveloped residential lot #2, Taos County, New Mexico		None	J	W	Exempt				
19. Undeveloped residential lot #3, Elko County, Nevada		None	J	W	Exempt				
20. Undeveloped lot #4, Lyons County, Nevada		None	J	W	Exempt				
21. Undeveloped lot #5, Humboldt County, Nevada		None	J	W	Exempt				
22. Undeveloped lot #6, Humboldt County, Nevada		None	J	W	Exempt				
23. Undeveloped lot #7, Humboldt County, Nevada		None	J	W	Exempt				
24. Undeveloped lot #8, Humboldt County, Nevada		None	J	W	Exempt				
25. Undeveloped lot #9, Humboldt County, Nevada		None	J	W	Exempt				
26. Undeveloped lot #10, Humboldt County, Nevada		None	J	W	Exempt				
27. Undeveloped lot #11, Humboldt County, Nevada		None	J	W	Exempt				
28. Undeveloped lot #12, Humboldt County, Nevada		None	J	W	Exempt				
29. Undeveloped lot #13, Humboldt County, Nevada		None	J	W	Exempt				
30. Undeveloped lot #14, Humboldt County, Nevada		None	J	W	Exempt				
31. Undeveloped lot #15, Humboldt County, Nevada		None	J	W	Exempt				
32. Undeveloped lot #16 Humboldt County, Nevada		None	J	W	Exempt				
33. Undeveloped lot #17, Humboldt County, Nevada		None	J	W	Exempt				
34. Undeveloped lot #18, Humboldt County, Nevada		None	J	W	Exempt				

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

Name of Person Reporting	Date of Report
Pryor, Jill A.	01/10/2014

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)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Undeveloped lot #19, Humboldt County, Nevada		None	J	W	Exempt				
36. Undeveloped residential lot #20, Elko County, Nevada		None	J	W	Exempt				
37. IBM Corp. stock	B	Dividend	K	T	Exempt				
38. Intel Corp. stock	A	Dividend	K	T	Exempt				
39. Microsoft Corp. stock	B	Dividend			Exempt				
40. Coca-Cola Co. stock	A	Dividend	J	T	Exempt				
41. Xerox Corp. stock	A	Dividend	J	T	Exempt				
42. NewsCorp C1-B stock		None	K	T	Exempt				
43. Berkshire Hathaway C1-B stock		None	L	T	Exempt				
44. Cisco Systems stock	A	Dividend	K	T	Exempt				
45. WisdomTree Trust Emerging Markets EQT		None			Exempt				
46. Vodafone Gp PLCADS New stock	A	Dividend	K	T	Exempt				
47. Google inc C1-A stock		None	K	T	Exempt				
48. Telefonica SA ADR	A	Dividend	J	T	Exempt				
49. American Funds AMCAP Fund - R4	A	Dividend			Exempt				
50. American Funds AMCAP Fund - R6		None	N	T	Exempt				
51. American International Group stock	A	Dividend	L	T	Exempt				

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

Name of Person Reporting	Date of Report
Pryor, Jill A.	01/10/2014

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)
52. BlackRock Equity Dividend Fund I	C	Dividend	N	T	Exempt				
53. Credit Suisse Commodity Return Strategy Fund - A		None	M	T	Exempt				
54. Dodge & Cox Income Fund	D	Dividend	M	T	Exempt				
55. Dodge & Cox International Stock Fund	C	Dividend	N	T	Exempt				
56. FPA Crescent Fund - I	B	Dividend	N	T	Exempt				
57. Federated International Strategic Value Dividend Fund - I	C	Dividend	M	T	Exempt				
58. Fidelity High Income Fund	D	Dividend	N	T	Exempt				
59. First Eagle Global Fund - I	D	Dividend	N	T	Exempt				
60. Harbor Capital Appreciation Fund	A	Dividend	K	T	Exempt				
61. Henderson European Focus Fund - I	A	Dividend	L	T	Exempt				
62. Buffalo Small Cap Fund		None	M	T	Exempt				
63. Janus Overseas Fund - I		None			Exempt				
64. Lazard Emerging Markets Open Fund	C	Dividend	M	T	Exempt				
65. Mainstay Epoch Global Equity Yield Fund - A	C	Dividend	M	T	Exempt				
66. MFS Value Fund - R3	C	Dividend			Exempt				
67. MFS Value Fund - R4		None	N	T	Exempt				
68. Northern Small Cap Value	B	Dividend	M	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Pryor, Jill A.	01/10/2014

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)
69. PIA Short Term Securities Fund	A	Dividend	J	T	Exempt				
70. PIMCO Total Return Fund - P	A	Dividend			Exempt				
71. T. Rowe Price Capital Appreciation Fund	C	Dividend	N	T	Exempt				
72. TCW Emerging Markets Income Fund - N	D	Dividend	M	T	Exempt				
73. TCW Total Return Bond Fund - N	D	Dividend	M	T	Exempt				
74. Templeton Global Bond Fund - A	D	Dividend			Exempt				
75. Templeton Global Bond Fund - Adv	C	Dividend	N	T	Exempt				
76. Tweedy Browne Global Value Fund	A	Dividend	J	T	Exempt				
77. Vanguard Intermediate Term Tax-Exampt Fund - Inv	C	Dividend	L	T	Exempt				
78. Vanguard Limited Term Tax-Exampt Fund	C	Dividend	M	T	Exempt				
79. Vanguard Mid Cap ETF	A	Dividend			Exempt				
80. Vanguard Small Cap ETC		None			Exempt				
81. Wells Fargo Advantage Ultra S/T Muni Income Fund - Inv	A	Dividend	M	T	Exempt				
82. Wells Fargo Emerging Markets Equity - Adm	A	Dividend	N	T	Exempt				
83. Wells Fargo Adv St Muni bond Fund	B	Dividend	M	T	Exempt				
84. Wells Fargo Stable Value Fund - C		None			Exempt				
85. AXA Equitable Multi-Manager Core Bond Annuity		None			Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
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FINANCIAL DISCLOSURE REPORT
Page 10 of 13

Name of Person Reporting	Date of Report
Pryor, Jill A.	01/10/2014

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				
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86. EQ/International Core Plus Annuity		None	K	T	Exempt				
87. EQ/Montag Caldwell Growth Annuity		None			Exempt				
88. EQ/GAMCO Small Company Value Annuity		None	J	T	Exempt				
89. EQ/Van Kampen Common Stock Annuity		None			Exempt				
90. EQ/Morgan Stanley Mid Cap Growth Annuity		None	J	T	Exempt				
91. EQ/Quality Bond Plus Annuity		None	K	T	Exempt				
92. EQ/Large Cap Growth Plus Annuity		None	K	T	Exempt				
93. EQ/Large Cap Value Plus Annuity		None	K	T	Exempt				
94. Excelerate Discovery, LLC		None	K	U	Exempt				
95. TrustPoint International, LLC		None	K	U	Exempt				
96. River's Edge Landing, LLC		None	M	U	Exempt				
97. Ledbetter Lake Investors, LLC		None	N	U	Exempt				
98. Dasher;s Bay at Effingham, LLC		None	L	U	Exempt				
99. Fidelity Advisor 529 Portfolio 2013		None	M	T	Exempt				
100. Fidelity Advisor 529 Portfolio 2025		None	M	T	Exempt				
101. MS HP Millenium USA II LP ID		None	M	T	Exempt				
102. HPC Starboard Value LTD CL D (X)		None	M	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT Page 11 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/10/2014

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)
103. MS HP OZ DP II Fund LP ID		None	M	T	Exempt				
104. SkyBridge Multi-Advisor Hedge Fund Portfolio Series G	C	Dividend	N	T	Exempt				

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 12 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/10/2014

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

Part I, line 2 - This entity owns a residential apartment building described in Part VII, line 3 and the bank account descibed in Part VII, line 11.
Part I, line 3 - This entity owns the undeveloped residential lot described in Part VII, line 17.
Part I, line 4 - This entity owns the undeveloped lots described in Part Vii, lines 18-36.
Part I, lines 7-9 - These entities were set up to own individual rental properties, but the properties have not been transferred to them. They have no assets.
Part I, lines 10-11- These entities have no assets.

FINANCIAL DISCLOSURE REPORT Page 13 of 13	Name of Person Reporting Pryor, Jill A.	Date of Report 01/10/2014

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/ Jill A. Pryor

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		696	645	Notes payable to banks-secured		553	292
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	5	496	669	Notes payable to relatives			
Unlisted securities – see schedule	1	892	669	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	1	931	760
Real estate owned – see schedule	5	235	235	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		482	000				
Cash value-life insurance		97	817				
Other assets itemize:							
				Total liabilities	2	485	052
				Net Worth	11	415	983
Total Assets	13	901	035	Total liabilities and net worth	13	901	035
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	$ 5,066
IBM Corp. stock	49,539
Intel Corp. stock	24,697
News Corp. Cl-B stock	31,777
Xerox Corp. stock	1,200
American Intl Group stock	53,551
Berkshire Hathaway Cl-B stock	63,942
Cisco Systems stock	21,369
Vodafone Gp PLC ADS New stock	25,640
Google Inc Cl-A stock	45,167
Telefonica SA ADR	14,304
American Funds AMCAP Fund – R6	299,427
BlackRock Equity Dividend Fund –I	255,503
Buffalo Small Cap Fund	160,865
Credit Suisse Commodity Return Strategy Fund - A	103,219
Dodge & Cox Income Fund	216,391
Dodge & Cox International Stock Fund	270,171
Federated International Strategic Value Dividend Fund -I	128,455
Fidelity High Income Fund	265,391
First Eagle Global Fund –I	376,946
FPA Crescent Fund – I	283,776
Harbor Capital Appreciation Fund - I	20,292
Henderson European Focus Fund - I	88,234
Lazard Emerging Markets Open Fund	161,014
MainStay Epoch Global Equity Yield Fund – I	139,704
MFS Value Fund – R4	301,544
Northern Small Cap Value	159,148
PIA Short Term Securities Fund	1,945
T. Rowe Price Capital Appreciation Fund	286,633
TCW Emerging Markets Income Fund - I	112,367
TCW Total Return Bond Fund - I	167,862
Templeton Global Bond Fund - Adv	401,328
Tweedy Browne Global Value Fund	10,280
Vanguard Intermediate-Term Tax-Exempt Fund -Inv	82,850
Vanguard Limited-Term Tax-Exempt Fund	167,369
Wells Fargo Adv Ultra S/T Muni Income Fund - Adm	108,933
Wells Fargo Adv St Muni Bond Fund – Adm	135,994
Wells Fargo Emerging Markets Equity – Adm	284,461
EQ/Quality Bond Plus Annuity	50,593
EQ/Large Cap Growth Plus Annuity	39,365
EQ/Large Cap Value Plus Annuity	36,299

EQ/International Core Plus Annuity	23,630
EQ/GAMCO Small Company Value Annuity	10,205
EQ/Morgan Stanley Mid Cap Growth Annuity	10,223
Total Listed Securities	$ 5,496,669

Unlisted Securities	
Excelerate Discovery, LLC	$ 50,000
Fidelity Advisor 529 Portfolio 2013	208,246
Fidelity Advisor 529 Portfolio 2025	130,938
MS HP Millennium USA II LP ID	243,612
HPC Starboard Value LTD CL D	178,317
MS HP OZ DP II Fund LP ID	118,987
SkyBridge Multi Advisor Hedge Fund Portfolios Series G	259,470
TrustPoint International, LLC	50,000
Ledbetter Lakes Investors, LLC	415,000
Dasher's Bay at Effingham, LLC	88,555
River's Edge Landing, LLC	149,544
Total Unlisted Securities	$ 1,892,669

Real Estate Owned	
Personal residence	$ 1,875,000
Parents' residence (50% interest)	150,000
Vacation home #1	522,000
Vacation home #2	390,000
Rental property #1	225,000
Rental property #2	285,000
Rental property #3	700,000
Rental property #4	250,000
Rental property #5	350,000
Undeveloped lot #1	450,000
Undeveloped lot #2	200
Undeveloped lot #3	4030
Undeveloped lot #4	730
Undeveloped lot #5	1,400
Undeveloped lot #6	2,625
Undeveloped lot #7	1,400
Undeveloped lot #8	1,400
Undeveloped lot #9	1,400
Undeveloped lot #10	1,400
Undeveloped lot #11	1,400
Undeveloped lot #12	1,400
Undeveloped lot #13	1,400
Undeveloped lot #14	1,400
Undeveloped lot #15	1,400
Undeveloped lot #16	1,400

Undeveloped lot #17	1,400
Undeveloped lot #18	1,400
Undeveloped lot #19	1,400
Undeveloped lot #20	1,050
Total Real Estate Owned	$ 5,225,235

Real Estate Mortgages Payable	
Personal residence	$ 939,370
Parents' residence	113,800
Vacation home #1	220,518
Rental property #2	156,613
Rental property #4	303,760
Rental property #5	197,699
Total Real Estate Mortgages Payable	$ 1,931,760

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Leslie Joyce Abrams

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

   United States District Judge for the Middle District of Georgia

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
   Northern District of Georgia
   75 Spring Street
   Suite 600
   Atlanta, Georgia 30303

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

   1974; Madison, Wisconsin

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.

   1999 – 2002, Yale Law School; J.D., 2002

   1997 – 1998, University of Michigan, Rackham School of Public Policy

   1993 – 1997, Brown University; B.A., 1997

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

2010 – Present
United States Attorney's Office
Northern District of Georgia
75 Spring Street
Suite 600
Atlanta, Georgia 30303
Assistant United States Attorney, Criminal Division

2007 – 2010, 2003 – 2006
Skadden, Arps, Slate, Meagher, and Flom LLP
1440 New York Avenue, Northwest
Washington, District of Columbia 20005
Associate

2006 – 2007
Kilpatrick Stockton LLP (now Kilpatrick Townsend and Stockton LLP)
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309
Associate

2002 – 2003
United States District Court for the District of Maryland
Chambers of Judge Marvin J. Garbis
101 West Lombard Street
Baltimore, Maryland 21201
Law Clerk to Judge Marvin J. Garbis

Summer 2002, Summer 2001, Summer 2000
Powell, Goldstein, Frazer, and Murphy LLP (now Bryan Cave LLP)
One Atlantic Center
Fourteenth Floor
1201 West Peachtree Street
Atlanta, Georgia 30309
Summer Associate

2000 – 2002
Westlaw (Thompson Reuters)
530 Fifth Avenue
Seventh Floor
New York, New York 10036
Student Representative

2000 – 2002
BarBri (formerly owned by Thompson Reuters)
9400 North Central Expressway

Suite 613
Dallas, Texas 75231
Student Representative

2000
Yale Law School
127 Wall Street
New Haven, Connecticut 06520
Internship with Professor Lea Brilmayer (August – December 2001)
Teaching Assistant for Professor Owen Fiss (May – January 2001)
Research Assistant for Professor Reva Segal (January – May 2000)

May – August 1999
TheScience.com (Defunct)
New Haven, Connecticut 06520
Intern

February – May 1999
National Black Business Council
1100 Wayne Avenue
Suite 150
Silver Spring, Maryland 20910
Intern

June 1998 – February 1999
Greenlining Institute
1918 University Avenue
Second Floor
Berkeley, California 94704
Consumer Protection Fellow

January – June 1998
Martha Cook House
University of Michigan
906 South University Avenue
Ann Arbor, Michigan 48109
Residential Counselor

Other affiliations (uncompensated):

2012 – Present
Central United Methodist Church
501 Mitchell Street
Atlanta, Georgia 30314
Board of Trustees

2008 – 2010
YWCA of the National Capital Area
2303 Fourteenth Street, Northwest
Suite 100
Washington, District of Columbia 20009
Board of Directors (2008 – 2010)
Secretary (2009 – 2010)

2008 – 2010
Washington Lawyers' Committee for Civil Rights and Urban Affairs
11 Dupont Circle, Northwest
Suite 400
Washington, District of Columbia 20036
Associate 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 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.

   United States Attorney's Award for Performance as Community Outreach Coordinator (2013)
   Young Leaders Conference, Council for Italy and the United States (2012)
   Selected for LEAD Atlanta Class of 2007 (2007)
   Earl Warren Legal Training Fellowship (1999)
   Rackham Merit Fellowship (1997 – 1998)
   Institute for the Recruitment of Teachers Fellowship (1996)
   Mellon Minority Undergraduate Fellowship (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.

   American Bar Association
   District of Columbia Bar
   Gate City Bar Association
   Georgia Association of Black Women Attorneys
   Georgia Bar
   National Association of Assistant United States Attorneys
   National Bar Association

National Black Prosecutors Association
Washington Lawyers' Committee for Civil Rights and Urban Affairs
Associate Trustee (2008 – 2010)

10. **Bar and Court Admission**:

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

Georgia, 2003

District of Columbia, 2004

I resigned my membership in the Bar of the District of Columbia in 2012 because I no longer practice in the District of Columbia and do not anticipate practicing there in the near–future.

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 Georgia, 2003

United States District Court for the District of Maryland, 2003

United States Court of Appeals for the Fourth Circuit, 2003

United States District Court for the District of Columbia, 2004

United States District Court for the Northern District of Georgia, 2006

United States Court of Appeals for the Eleventh Circuit, 2010

My admission to the United States District Court for the District of Maryland is no longer active because I no longer practice or live in the Maryland area.

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 Inns of Court, Bleckley Inn (2011 – 2013)
Barrister

Delta Sigma Theta Sorority, Incorporated (1996 – Present)

YWCA of the National Capital Area (2008 – 2010)
Board of Directors (2008 – 2010)
Secretary (2009 – 2010)

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

Delta Sigma Theta Sorority, Incorporated is a national service organization that admits only women. To my knowledge, none of the other organizations discriminates on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

As a member of Yale Law Women, I co-authored, "YLS Faculty and Students Speak about Gender: A Report on Faculty-Student Relations at Yale Law School," which was issued in April 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 not prepared or contributed to the preparation of any reports, memoranda or policy statements on behalf of any bar association, committee, conference, or organization of which I was or am a member.

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

On February 16, 2010, Special Counsel Robert S. Bennett and Deputy Special Counsel Amy Sabrin presented a "Report of Investigation Pursuant to D.C. Council Resolution 18–217" to the City Council of the District of Columbia. I was a member of the legal team that prepared the report and presentation. Copy supplied.

During my fellowship at the Greenlining Institute from 1998 to1999, I spoke at several meetings of the California Public Utilities Commission regarding proposed rate changes and financial assistance for low-income customers. I have no notes, transcripts or recordings.

On July 9, 1998, as a Fellow at the Greenlining Institute, I read a statement on behalf of Harry C. Alford, National Black Chamber of Commerce at the Federal Reserve Board's Public Meeting regarding Nations Bank and Bank of America. Transcript excerpt 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.

From 2011 to 2012, I served as the Community Outreach Coordinator for the United States Attorney's Office for the Northern District of Georgia. In this capacity, I gave a speech at the Metro Transition Center in Atlanta, Georgia on November 16, 2011. I believe that I may have given a similar speech on another occasion, but I do not recall the organization or the date of the speech. Transcript supplied.

Annually, between 2001 and 2007, I was a guest facilitator at the Emerging Leaders Workshop at North Carolina Agricultural and Technical State University, Greensboro, NC. Although I do not recall the exact dates, I gave speeches and sat on panels during these events. Generally, I spoke about the process of applying for graduate school and fellowships. I also spoke about my educational background and career path. I have no notes, transcript or recording. The event was run by The Honors Program, North Carolina Agricultural and Technical State University, 310 Gibbs Hall, 1601 East Market Street, Greensboro, NC 27411.

Sometime in 2000 and 2001, I also served as a facilitator at the National Emerging Leaders Conference at the Virginia Polytechnic Institute and State University, Blacksburg, VA. Although I do not recall the exact dates, I gave speeches and sat on panels during these events. Generally, I spoke about the process of applying for graduate school and fellowships. I also spoke about my educational background and career path. I have no notes, transcripts or recordings. The National Emerging Leaders Conference no longer exists.

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.

Marian Burros & Sarah Abruzzese, The Obama Team's New Street, POLITICO (D.C), Jan. 14, 2009. Copy supplied.

Barbara Ruben, The Montgomery's Different Look Works on Many Levels, WASH. POST (D.C.), Sept. 3, 2005. Copy supplied.

Benny Evangelista, Group Says Probe Found Sumitomo Bias, S.F. CHRON. (Cal.) Oct. 16, 1998. Copy supplied.

Sometime between January and May of 1997, I appeared on the Maury Povich show to discuss a case that I had been working on, *Mississippi v. Kambule*. I have been unable to obtain a copy of the recording.

John Carlin, A Time to Die in Mississippi, INDEP. (Miss.), Mar. 9, 1997. Copy supplied.

Ben Gose, Interracial Dating Angers Many Black Women at Brown U., BROWN DAILY HERALD (R.I.), May 10, 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 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 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 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 and in 2008, I volunteered for the presidential/vice-presidential campaign of President Barack Obama and Vice-President Joseph Biden. I knocked on doors and worked at telephone banks.

In 2009, I volunteered for Lisa Border's campaign for mayor of Atlanta, Georgia. I worked at a telephone bank and drove voters to the polls.

In 2006, I volunteered for my sister's—Stacey Abrams'—campaign for the Georgia House of Representatives (District 84). I knocked on doors, worked at a telephone bank, and drove voters to the polls.

In 2004, I volunteered for the presidential/vice-presidential campaign of John Kerry and John Edwards. I worked at telephone banks.

In 2000, I volunteered for the presidential/vice-presidential campaign of Al Gore and Joe Lieberman. I drove voters to the polls.

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 2002 to August 2003, I served as a law clerk to District Judge Marvin J. Garbis of the United States District Court for the District of Maryland.

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.

2003 – 2006, 2007 – 2010
Skadden, Arps, Slate, Meagher, and Flom LLP
1440 New York Avenue, Northwest
Washington, District of Columbia 20005
Associate

2006 – 2007
Kilpatrick Stockton LLP (now Kilpatrick Townsend and Stockton LLP)
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309
Associate

2010 – Present
United States Attorney's Office
Northern District of Georgia
75 Spring Street
Suite 600
Atlanta, Georgia 30303
Assistant United States Attorney, Criminal Division

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 2003 to 2006 and 2007 to 2010, I was an associate at Skadden, Arps, Slate, Meagher and Flom, LLP in the District of Columbia. My practice during this period was primarily a corporate litigation practice that focused on government corruption investigations, internal investigations of publicly traded companies, defense of SEC enforcement actions, securities litigation, and complex civil litigation. My experience included preparing witnesses for testimony before investigative agencies and representing witnesses during such testimony, day-to-day case management of multi-million dollar litigation matters, drafting and arguing motions in federal court, and conducting internal investigations.

From 2006 to 2007, I was an associate at Kilpatrick Stockton, LLP in Atlanta, Georgia. My practice during this period was primarily a corporate litigation practice that focused on complex civil litigation. While at Kilpatrick, I represented clients in depositions, managed multi-million dollar litigation matters, prepared presentations for arbitration proceedings, and drafted pleadings and briefs.

Since October 2010, I have been an Assistant United States Attorney for the Northern District of Georgia, where I have prosecuted a wide range of cases at various stages. I have participated in approximately 80 cases since joining the office. My experience includes trying cases before juries; litigating suppression issues through briefing and hearings; resolving cases through guilty pleas; drafting sentencing memoranda and presenting evidence and argument during sentencing hearings; handling preliminary, identity, and detention hearings; presenting cases to the grand jury; responding to § 2255 motions through briefs and presenting evidence during related hearings; presenting evidence during supervised release revocation proceedings; and drafting appellate briefs and arguing before the U.S. Court of Appeals for the Eleventh Circuit.

During my first six months, my cases included firearm offenses, drug crimes, and immigration crimes. I then joined the Economic Crimes Section where I primarily prosecuted financial crimes, including violations of the tax laws, bank and wire fraud, financial aid fraud, and circulating counterfeit currency. In 2011, while also serving as the Community Outreach Coordinator for the Northern District of Georgia at the request of the U.S. Attorney, I continued to prosecute crimes committed by the most

violent offenders in the highest crime areas of the Northern District of Georgia. In 2012, I joined the Major Crimes Section where I have continued to prosecute violent crimes and crimes against children.

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

In my corporate litigation practice at Skadden Arps from 2003 to 2006 and 2007 to 2010, my typical clients consisted of large corporations, such as LandAmerica, Radian Group, Bank of America/Merrill Lynch, and AFLAC. From 2006 to 2007, while practicing at Kilpatrick Stockton, my typical clients were also large corporations, such as Google and Equifax, as well as individuals and a family trust.

As an Assistant United States Attorney, I represent the federal government. I have had a focus on economic and violent 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.

Approximately 90% of my practice has been in litigation. Between 2003 and 2010, I appeared in court only occasionally because my corporate practice was primarily focused on government corruption investigations, internal investigations of publicly traded companies, defense of SEC enforcement actions, and securities litigation. I represented clients who gave voluntary testimony before investigative agencies including the New York Attorney General and the SEC. I also had some state and federal court appearances through my pro bono work. Since October 2010, I have appeared in federal district court frequently as an Assistant United States Attorney. I also handle my own habeas motions and appeals and have had one oral argument before the U.S. Court of Appeals for the Eleventh Circuit.

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: 75%
   2. criminal proceedings: 25%

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

I have tried two cases to verdict. Both were federal criminal trials. In one matter, I was sole counsel and in the other I was co-counsel. I also have presented approximately 17 cases to the grand jury and handled approximately seven suppression hearings, five supervised release revocation hearings, three preliminary hearings, and one hearing on a § 2255 motion. Each of these hearings required the presentation of witnesses and evidence before a district court or magistrate judge. I have provided the percentages for the two cases I tried to verdict.

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, along with three other attorneys at Skadden Arps, filed an amicus brief on behalf of the American Bar Association in *Roper v. Simmons*, No. 03-633, 2005 U.S. LEXIS 2200 (2005). Copy supplied.

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

a. the date of representation;

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

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

I have listed the cases in reverse chronological order.

(1) *United States v. Hintz*, 1:03-CR-337 (N.D. Ga. Mar. 7, 2003)

In 2003, the defendant was convicted of bank fraud and sentenced to 57 months incarceration, followed by five years of supervised release. He then filed a direct appeal, which was denied, and a collateral attack on the conviction and sentence under § 2255. While the § 2255 motion was pending, the defendant was released

from prison. Subsequent to his release, the defendant violated the terms of his supervised release by committing new criminal conduct and failing to follow the terms of his supervision. I inherited this case from the original prosecutor and handled the initial § 2255 motion, the revocation proceeding, an appeal of the revocation, and the subsequent § 2255 motion. This case required numerous hearings, including a revocation hearing during which the government had to prove the new criminal conduct by a preponderance of the evidence. The defendant's supervised release was revoked and his § 2255 motions and direct appeals have been denied. Defendant recently appealed the denial of his latest § 2255 motion.

Dates of Representation: October 2010 – Present

Court: United States District Court for the Northern District of Georgia, Judge Clarence Cooper

Co-counsel
William R. Toliver
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Northern District of Georgia
75 Spring Street
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404-581-6187

Opposing Counsel:
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770-424-6808

Brian Mendelsohn
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Atlanta, Georgia 30303
404-688-7530

Noni A. Mayfield
N.A.M. & Associates, LLC
4760 Hastings Terrace
Alpharetta, Georgia 30005
678-591-1117

(2) *United States v. Parker*, Crim. No. 1:12-CR-166 (N.D. Ga. April 2, 2012)

The defendant was charged with being a felon in possession of a firearm. He was arrested after police chased a fleeing fugitive into the defendant's home. When the officers entered the home, they saw two firearms and evidence of illegal drug possession in plain sight. The officers secured the scene and obtained a search warrant. The defendant, a previously convicted felon, gave voluntary statements admitting that he knew the firearms were in his home and showing possession; however, he later moved to suppress the evidence and the statements. After an initial suppression hearing, the magistrate judge asked for oral argument on whether exigent circumstances permitted law enforcement to chase a fleeing fugitive into the home of a third-party when the fugitive was wanted for a minor probation violation. The defendant pled guilty after the oral argument but before the magistrate judge issued his report and recommendation. I handled the suppression hearing and briefing in this matter, as well as the oral argument, plea hearing, and sentencing hearing.

Dates of Representation: October 2012 – February 2014

Court: United States District Court for the Northern District of Georgia, Judge Richard W. Story

Opposing Counsel:
W. Matthew Dodge
Victoria M. Calvert
Federal Defender Program Inc.
Suite 1500, Centennial Tower
101 Marietta Street, Northwest
Atlanta, Georgia 30303
404-688-7530

(3) *United States v. Wade*, 1:10-CR-337 (N.D. Ga. July 7, 2011)

The defendant was indicted in a single–count indictment for being a felon in possession of ammunition. The defendant, who had an extensive criminal record and was on parole, sent threatening text and picture messages to the fiancé of a former girlfriend. In the photographs, the defendant, who was prohibited from possession a firearm, is seen holding an assault rifle and in possession of a handgun. However, when state parole officers searched his residence, they were only able to locate the ammunition. After a suppression hearing that did not result in the suppression of any evidence, the case went to trial. After a jury trial, the defendant was convicted. The defendant was sentenced to 195 months. He appealed his conviction and sentence. The Eleventh Circuit Court of Appeals affirmed the conviction and sentence in an unpublished opinion (*United States v. Wade*, No. 13-12075 (11th Cir. Jan. 8, 2014)). I was sole counsel in this case from start to finish,

including presentation to the grand jury, the suppression hearing, trial, sentencing, and appeal.

Dates of Representation: July 2011 – January 2014

Court: United States District Court for the Northern District of Georgia, Judge Willis B. Hunt

Opposing Counsel:
David D. Marshall
Attorney at Law
P.O. Box 669067
Marietta, Georgia 30066
404-213-1358

(4) *United States v. Hutchinson*, Crim. No. 1:12-CR-409 (N.D. Ga. Dec. 26, 2013)

The defendant in this case was charged in a 24-count indictment with ten counts of employing, using, persuading, inducing, enticing and coercing minors to engage in sexually explicit conduct for the purpose of producing child pornography, five counts of coercing and enticing minors to engage in sexual activity, two counts of transferring obscene materials to minors, one count of receiving child pornography, and one count of possessing child pornography. The defendant, who was 27 but pretended to be a teenage boy, used a social media site to contact the victims, young girls ranging from 11 to 16 years old. He then coerced the girls to send him sexually explicit photographs and images of them engaging in various forms of sexual conduct. The defendant also raped three of the victims and coerced three sets of siblings to molest one another and send images of the acts. Following a suppression hearing and related motions practice, the defendant pled guilty on the eve of trial. He was sentenced to life in prison. As co-counsel in this case, I participated in the suppression briefing and hearing and the plea and sentencing hearings.

Dates of Representation: May 2012 – December 2013

Court: United States District Court for the Northern District of Georgia, Judge Timothy C. Batten

Co-counsel:
Yonette Buchanan, Assistant United States Attorney
United States Attorney's Office
Northern District of Georgia
75 Spring Street
Suite 600
Atlanta, Georgia 30303
404-581-6095

Opposing Counsel:
Victoria Marie Calvert
Jeffrey Lyn Ertel
Federal Defender Program
Suite 1500
Centennial Tower
101 Marietta Street, Northwest
Atlanta, Georgia 30303
404-688-7530

(5) *United States v. Wilson*, Crim. No. 1:13-CR-272 (N.D. Ga. July 1, 2013)

The defendant was charged with conspiracy to commit Hobbs Act robbery, attempted possession of marijuana, and possession of a firearm during the commission of a violent crime. The defendant traveled from Baltimore to Atlanta to participate in a robbery of a drug dealer with the intention of selling the stolen drugs in Baltimore. The robbery crew posed as police officers during the robberies. During the course of the robbery at issue in the indictment, there was a shootout on a residential street and the victim was kidnapped and pistol whipped. I was co-counsel during the jury trial and conducted 12 direct examinations, one cross-examination, and presented the closing argument. The defendant was convicted on all counts.

Dates of Representation: December 2, 2013 – December 19, 2013

Court: United States District Court for the Northern District of Georgia, Judge Timothy C. Batten

Co-counsel:
Kim Dammers, Assistant United States Attorney
United States Attorney's Office
Northern District of Georgia
75 Spring Street
Suite 600
Atlanta, Georgia 30303
404-581-6187

Opposing Counsel:
Dennis C. O'Brien
Office of Dennis C. O'Brien
248 Washington Avenue
Marietta, Georgia 30060
770-424-6808

(6) *United States v. Estrada*, 530 F. App'x 852 (11th Cir. 2013)

After a jury trial during which the defendant represented himself, the defendant was

convicted of conspiracy to possess marijuana and cocaine with the intent to distribute and money laundering. The defendant appealed, arguing that the district court failed to conduct a thorough inquiry as to whether he validly waived his right to counsel before allowing the defendant to represent himself. The defendant repeatedly refused to answer the district court's questions when the court attempted to determine if he was knowingly and voluntarily waiving his right to counsel and repeatedly made incomprehensible arguments and repeated sovereign citizen rhetoric when questioned by the district court. The lead attorney at trial briefed the appeal for the Government, and, after the Court of Appeals set the case for oral argument, the matter was assigned to me. I successfully argued the case before the Eleventh Circuit Court of Appeals, which upheld the conviction and sentence.

Dates of Representation: May 2013 – August 2013

Court: Eleventh Circuit Court of Appeals, Judges Berry A. Edenfield, Peter T. Fay, and Beverly B. Martin

Opposing Counsel:
Stephen R. Scarborough
The Candler Building
127 Peachtree Street, Suite 905
Atlanta, Georgia 30303
404-523-2044

(7) *United States v. Hodnett*, 1:12-CR-121 (N.D. Ga. Apr. 19, 2012)

The defendant was charged in an information with financial aid fraud, conspiracy to commit mail fraud, and mail fraud. The defendant operated a scheme by which she fraudulently applied for federal student financial aid by using the personal identifying information of individuals who either were ineligible to receive federal financial aid or did not intend to use the funds for educational purposes. Approximately $600,000 in financial aid was distributed as a result of the scheme. The defendant pled guilty to the information and was sentenced to one year and a day of imprisonment. As co-counsel in this case, I prepared the information and handled the sentencing hearing.

Dates of Representation: January 2011 – August 2012

Court: United States District Court for the Northern District of Georgia, Judge Marvin H. Shoob

Co-counsel:
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United States Attorney's Office
Northern District of Georgia
75 Spring Street

Suite 600
Atlanta, Georgia 30303
404-581-6187

Opposing Counsel:
Suzanne Hashimi
Federal Defender Program Inc.
Suite 1500, Centennial Tower
101 Marietta Street, Northwest
Atlanta, Georgia 30303
404-688-7530

(8) *In re LandAmerica Financial Group, Inc., et al.*, Case No. 08-35994 (Bankr. E.D. Va. Nov. 26, 2008)

LandAmerica Financial Group, Inc., declared bankruptcy in 2008. Skadden Arps represented the officers and directors of LandAmerica. The bankruptcy trustees argued that the officers and directors breached their fiduciary duties to the company by buying and holding auction rate securities. I assisted in the preparation of a motion to dismiss on the grounds than the officers and directors were protected by the business judgment rule and a statute that exculpates directors from liability to the company absent willful misconduct. Our motion to dismiss was denied, and the matter was settled after I left Skadden Arps in 2010.

Dates of Representation: November 2008 – October 2010

Court: United States Bankruptcy Court for the Eastern District of Virginia, Judge Kevin R. Huennekens

Co-counsel:
Amy Sabrin (Retired)
Formerly Skadden, Arps, Slate, Meagher and Flom, LLP

Saul Pilchen (Retired)
Formerly Skadden, Arps, Slate, Meagher and Flom, LLP

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Jared R. Clark
Bingham McCutchen LLP
399 Park Avenue
New York, New York 10022–4689
212-705-7000

(9) *In re Radian Securities Litigation*, 612 F.Supp.2d 594 (E.D. Pa. 2009)

This was a consolidated class action in which the plaintiffs, who purchased Radian securities in 2007, alleged that the defendants, Radian Group, Inc. and individual officers, committed securities fraud through various public statements. The defense team filed a motion to dismiss the class action complaint because the plaintiffs' allegations of fraud did not satisfy the heightened pleading requirements of the Private Securities Litigation Reform Act in that they failed to show a strong inference of scienter and because the defendants' statements constituted forward-looking statements that are nonactionable under the PSLRA's safe harbor provision. The district court agreed with the defendants and granted the motion to dismiss. I assisted in the drafting and filing of the motions to dismiss the consolidated complaint and a subsequent amended complaint, which was also dismissed. I also argued a portion of the matter before the district court.

Dates of Representation: November 2008 – April 2010

Court: United States District Court for the Eastern District of Pennsylvania, Judge Mary A. McLaughlin

Co-counsel:
Richard Brusca (Retired)
Formerly Skadden, Arps, Slate, Meagher and Flom, LLP

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David Smith
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215-751-2000

Opposing Counsel:
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Deborah R Gross
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John Wanamaker Building
Suite 450
100 Penn Square East
Philadelphia, Pennsylvania 19107
215-561-3600

David A. Rosenfeld
Robbins Geller Rudman & Dowd LLP
58 South Service Road, Suite 200
Melville, New York 11747
631-367-7100

(10) *Terzenbach v. LandAmerica Financial Group, Inc.*, 3:2008cv00757, (E.D. Va. Nov. 18, 2008)

This was a shareholder lawsuit against the Special Board of Directors of LandAmerica Financial Group. The plaintiffs alleged that the Special Board of Directors breached their fiduciary duties in relation to a proposed sale of the company to a competitor. I was the senior associate representing the Special Board of Directors. As part of this representation, I responded to discovery requests and prepared board members for depositions. The plaintiffs voluntarily dismissed this case in 2009.

Dates of Representation: November 2008 – January 2009

Court: United States Bankruptcy Court for the Eastern District of Virginia, Judge Robert E. Payne

Lead Counsel:
Amy Sabrin (Retired)
Formerly Skadden, Arps, Slate, Meagher and Flom, LLP

Saul Pilchen (Retired)
Formerly Skadden, Arps, Slate, Meagher and Flom, LLP

Opposing Counsel:
Elizabeth Kathleen Tripodi
Finkelstein Thompson LLP
1077 30th St Northwest
Suite 150
Washington, District of Columbia 20007
202-337-8000

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.)

As an Assistant United States Attorney in the Northern District of Georgia, I have prosecuted approximately 40 cases that have resulted in pleas, approximately ten § 2255 proceedings, five supervised release revocation hearings, and a number of preliminary, identity, detention and bond revocation hearings. While not trials, many of these hearings required the presentation of evidence and the examination of witnesses. I also have written numerous briefs at the trial level and to the Eleventh Circuit Court of Appeals, including responses to habeas motions and direct appeals.

In addition, in 2011 the United States Attorney asked me to serve as the Community Outreach Coordinator for the Northern District of Georgia. In this position, I helped develop the Office's youth outreach and prisoner reentry programs. In the area of youth outreach, I planned and oversaw a youth justice summit that brought area youth and local and federal law enforcement together to discuss crime and prevention, helped organize and teach a Street Law program at an area high school, and developed relationships between the United States Attorney's Office and area schools. With regard to reentry, I spearheaded a partnership with the Urban League and various state and local law enforcement entities that developed a course for recently released offenders to learn job and life skills in an effort to reduce recidivism. The New Beginnings Program has graduated approximately 50 ex-offenders whose progress is being tracked by the Urban League and Morehouse School of Medicine.

As part of my private practice, I represented companies in agency investigations. For example, I represented Radian Group, Inc., during the Securities and Exchange (SEC) investigation of the company's public disclosures regarding Credit–Based Asset Servicing and Securitization (C–BASS). I was the senior associate on this matter and was responsible for conducting the internal investigation and responding to numerous discovery requests. I also represented employees and directors who gave voluntary testimony in this matter. In addition, I prepared a presentation to the SEC. The Commission subsequently closed the investigation with no action.

Similarly, from 2004 through 2006 and in 2008, I defended LandAmerica Financial Group, Inc., in a series of investigations by various state Attorneys General and departments of insurance into the title insurance business, including from the Attorneys General of Colorado, New York, and Massachusetts and the Departments of Insurance for California, Colorado, Maryland, Arizona, Virginia, Nevada, North Carolina, Pennsylvania, Connecticut, Hawaii, Idaho, and Tennessee. My responsibilities included responding to these requests, as well as representing company executives who voluntarily gave testimony. I also assisted LandAmerica in responding to an inquiry by United States Department of Housing and Urban Development. No formal charges were brought as a result of any of these investigations.

I have not performed any lobbying activities or registered as a lobbyist.

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

    I have not taught any courses.

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

    I do not have any deferred income arrangements, stock options, uncompleted contracts, or other future benefits I expect to derive from 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.

    No.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My sister is the Minority Leader of the Georgia House of Representatives. Given her position, it is possible that a conflict-of-interest could arise. If I am confirmed, I would follow the federal recusal statutes and the Code of Conduct for United States Judges. If necessary, I would seek advice from the Code of Conduct Committee of the Judicial Conference. I would err on the side of disqualification.

    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 would follow the federal recusal statutes and the Code of Conduct for United States Judges. If necessary, I would seek advice from the Code of Conduct Committee of the Judicial Conference. I would err on the side of disqualification.

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

    As an Assistant United States Attorney, I am restricted in the outside practice of law. However, I have regularly participated in community outreach activities of the United States Attorney's Office. In addition to serving as the Office's Community Outreach Coordinator from 2011 to 2012, I have coached a mock trial competition, judged several mock trial competitions, and served as a judge of a middle school essay contest.

    While I was in private practice, I regularly did pro bono work, providing in excess of 1,500 hours of pro bono legal services. To give one illustrative example, from July 2009 to February 2010, I was part of a team of lawyers from Skadden Arps and Hogan and Hartson LLP that conducted a pro bono investigation for the District of Columbia City Council into certain contracts and grants. As part of the investigation, I reviewed documents, interviewed witnesses, took depositions, drafted portions of the final report, and assisted in the preparation of the final presentation to the City Council. I also met

with ethics specialists and in order to help develop recommendations for a Code of Ethics for the District of Columbia City Council.

26. **Selection Process**:

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

On or about December 17, 2013, I was asked by an official from the Office of Legal Policy at the Department of Justice whether I would be interested in being considered to serve as a judge for the District Court in the Middle District of Georgia. I replied that I would be, and I have been in contact with officials from the Office of Legal Policy since that date. On February 12, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On March 11, 2014, 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
Abrams, Leslie J.	U.S. District Court, Middle District of Georgia	03/11/2014
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	☑ Nomination Date 03/11/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/1/2013 to 02/20/2014
7. Chambers or Office Address		
C.B. King U.S. Courthouse 201 West Broad Avenue Albany, Georgia 31701		

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 Abrams, Leslie J.	Date of Report 03/11/2014

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 Abrams, Leslie J.	Date of Report 03/11/2014

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.	Sallie Mae Corporation	Federal Student Loans	L
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Abrams, Leslie J.	03/11/2014

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 Cash Accounts	A	Interest	J	T					
2. Associated Credit Union Cash Accounts	A	Interest	J	T					
3.									
4.									
5.									
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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		

Name of Person Reporting	Date of Report
Abrams, Leslie J.	03/11/2014

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Abrams, Leslie J.	Date of Report 03/11/2014

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/ Leslie J. Abrams

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		5	682	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		9	279
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		163	732
Real estate owned – personal residence		115	000	Other unpaid income and interest			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		12	823	Education loans		67	694
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		25	229				
				Total liabilities		240	705
				Net Worth		(81	971)
Total Assets		158	734	Total liabilities and net worth		158	734
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							

AFFIDAVIT

I, Leslie J. Abrams, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3/11/14
(DATE)

Leslie Abrams
(NAME)

(NOTARY)

J. ETIENNE
NOTARY PUBLIC
FULTON COUNTY
MY COMM. EXPIRES JANUARY 9, 2016

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Michael Patrick Boggs

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

   United States District Judge for the Northern District of Georgia

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.

   Court of Appeals of Georgia
   Fourth Floor, Suite 434
   State Judicial Building
   Atlanta, Georgia 30334

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

   1962; Largo, Florida

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, Mercer University Walter F. George School of Law; JD, 1990

   1983–1985, Georgia Southern College; BA, 1985

   1982–1983, Waycross College; AA, 1983

   1981–1982, Georgia Institute of Technology; no degree

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

   2012–Present
   Court of Appeals of Georgia

Fourth Floor, Suite 434
State Judicial Building
Atlanta, Georgia 30334
Judge

2005–2012
First Superior Court District of Georgia, Waycross Judicial Circuit
800 Church Street, Suite 218
Waycross, Georgia 31501
Superior Court Judge (2005–2012)
Presiding Felony Drug Court Judge (2008–2012)

1998–2005
Michael P. Boggs, PC
214 Screven Avenue
Waycross, Georgia 31501
Sole Practitioner

2001–2004
Georgia General Assembly
Georgia State Capitol
34 Capitol Square
Atlanta, Georgia 30334
State Representative

1995–1998
Landers & Boggs, LLP
306 Isabella Street
Waycross, Georgia 31501
Partner

1992–1995, Summer 1988
Thomas & Settle
800 Plant Avenue
Waycross, Georgia 31501
Associate Attorney (1992–1995)
Summer Associate (Summer 1988)

1991–1992
McKenzie, Martin, Taylor & McConnaughey
6201 Powers Ferry Road
Atlanta, Georgia 30339
Associate Attorney

1990–1991, Summer 1989
McKenzie & McPhail

Concourse Parkway, Suite 2000
Atlanta, Georgia 30328
Associate Attorney (1990–1991)
Summer Associate (Summer 1989)

1985–1987
United States Congressman J. Roy Rowland (D-Ga.)
Cannon House Office Building
Washington, D.C. 20515
Legislative Aide

Other Affiliations (Uncompensated- unless otherwise indicated)

2014-Present
Council of State Governments
Justice Center
100 Wall Street
20th Floor
New York, NY 10005
Board of Directors

2012–Present
Citizens to Elect Judge Mike Boggs, Inc.
Court of Appeals Re-Election Committee
1438 North River Oaks Drive
Blackshear, Georgia 31516
Principal

2010–Present
Okefenokee Swamp Park
5700 Okefenokee Swamp Park Road
Waycross, Georgia 31503
Board of Directors

2006–Present
Baptist Village Retirement Community
2650 Carswell Avenue
Waycross, Georgia 31501
Ethics Committee Member

2005–Present
James M. Dye Foundation, Inc.
Affiliated with South Georgia State College
(Formerly the Waycross College Foundation, Inc.)
2001 South Georgia Parkway

Waycross, Georgia 31503
Board of Trustees

2008–2012
Waycross Judicial Circuit Drug Court Program, Inc.
First Judicial Administrative District of Georgia, Waycross Judicial Circuit
800 Church Street, Suite 218
Waycross, Georgia 31501
Founding Board Member
Director/President (2008–2012)

2005–2011
Council of Superior Court Judges
18 Capitol Square, SW
Atlanta, Georgia 30334
Secretary/Treasurer (2011)
Legislative Support Team (2009–2011)

2005–2010 (compensated)
The Patterson Bank
930 Memorial Drive
Waycross, Georgia 31501
Board of Directors (monthly stipend)

2007–2010
Okefenokee Technical College Foundation, Inc.
1701 Carswell Avenue
Waycross, Georgia 31503
Board of Trustees

1994–2009
Waycross YMCA
1634 Plant Avenue
Waycross, Georgia 31501
Board of Directors

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

I have not served in the United States military. I am registered for Selective Service.

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

Grass Roots Justice Award, Georgia Justice Project (2013)
(Received by me on behalf of the Criminal Justice Reform Council)
Leadership Georgia, Graduate (2009)
Golden Eagle Award, Boy Scouts of America (Okefenokee Chapter) (2008)
Special Recognition Award, Magnolia House Shelter (2007)
Foundation Regents Award for Excellence, University System of Georgia (2004)
Commitment to Justice Award, District Attorneys' Association of Georgia (2004)
Leadership Award, Georgia Sheriffs' Association (2004)
Community Service Award, YMCA of Waycross (2004)
Legislative Award, Association of County Commissioners of Georgia (2003)
Selected as one of "40 under 40" rising stars in Georgia, *Georgia Trend* magazine (2002)
Distinguished Citizen Award, Lions Club (2002)
Selected as "Outstanding Freshman Member of the Georgia General Assembly,"
Georgia Legislative Alumni Association (2001)
Leadership Waycross, Graduate (1993)
Order of Barristers, Mercer University School of Law (1990)
Moot Court Board, Mercer University School of Law (1989–1990)
ABA/LSD Moot Court Competition Team, Mercer University School of Law (1989)

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

Atlanta Bar Association
Council of Superior Court Judges
Secretary/Treasurer (2011)
Legislative Support Team, Vice-Chairman (2009–2011)
Court of Appeals of Georgia
Court Personnel Committee
Planning, Facilities Management, and Court Security Committee, Chair
Legislation Committee
Court Rules Committee
Georgia Council on Criminal Justice Reform
Co-Chair (2013)
Governor's Judicial Nominating Commission
Judicial Council of Georgia, Standing Committee on Accountability Courts
Funding Subcommittee
Special Council on Criminal Justice Reform for Georgians
Co-Chair (2012)
State Bar of Georgia
Constitutional Law Section, 225th Anniversary Symposium Steering Committee
Waycross Bar Association
President (1996)

10. **Bar and Court Admission**:

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

Georgia, 1990.

There has been no lapse in membership.

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

Supreme Court of the United States, 1995
United States Court of Appeals for the Eleventh Circuit, 1996
United States District Court for the Southern District of Georgia, 1992
United States District Court for the Middle District of Georgia, 1991
United States District Court for the Northern District of Georgia, 1990
Supreme Court of Georgia, 1991
Court of Appeals of Georgia, 1991
Superior Courts of Georgia, 1990

I allowed my membership in the United States Court of Appeals for the Eleventh Circuit to lapse in 2001 because I was no longer practicing in that court. Otherwise, there have been no lapses in membership.

11. **Memberships**:

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

American Cancer Society (1992)
Central Baptist Church (1999–Present)
    Deacon (2005–2008)
Lawyers Club of Atlanta (2012–Present)
Leadership Georgia Alumni Association (2010–Present)
Okefenokee Country Club (1995–Present)
Okefenokee Swamp Park OSPREY Society (2011–Present)
Waycross Rotary Club (1995–2010)
YMCA of Waycross (1994–2009)

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

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.

"Georgia's Juvenile Justice System: High Costs, Low Returns," Lawyers Club of Atlanta Newsletter, May 2013. Copy supplied.

Letter to the Editor, "Partisan Rancor In 2004," *Waycross Journal-Herald*, April 21, 2004. Copy supplied.

Letter to the Editor, "State Water Council Awaits Perdue's OK," *Waycross Journal-Herald*, April 8, 2004. Copy supplied.

Letter to the Editor, "Medicaid Funds - $172 Million Allocated For Poor," *Waycross Journal-Herald*, March 31, 2004. Copy supplied.

Letter to the Editor, "Save Our Water - House Bill Protects Water Supply," *Waycross Journal-Herald*, March 24, 2004. Copy supplied.

Letter to the Editor, "Georgia Outdoors - Hunting, Fishing Resolution OKd," *Waycross Journal-Herald*, February 4, 2004. Copy supplied.

Letter to the Editor, "Jobs, Prisons Face Cuts In '05 Budget," *Waycross Journal-Herald*, January 27, 2004. Copy supplied.

Letter to the Editor, "Budget Woes - Perdue Proposes $800M In Cuts," *Waycross Journal-Herald*, January 21, 2004. Copy supplied.

Letter to the Editor, "Boggs' Forecast - 4.4% Revenue Growth Inadequate," *Waycross Journal-Herald*, December 23, 2003. Copy supplied.

Letter to the Editor, "Deer Get Break In Georgia," *Waycross Journal-Herald*, May 30, 2003. Copy supplied.

Letter to the Editor, "Waycross State Lab On-Track," *Waycross Journal-Herald*, May 1, 2003. Copy supplied.

Letter to the Editor, "Budget Woes - Revenue Deficit At $600 Million,"*Waycross Journal-Herald*, April 24, 2003. Copy supplied.

Letter to the Editor, "Protecting Water - House Bill Bans Rural Transfers," *Waycross Journal-Herald*, March 5, 2003. Copy supplied.

Letter to the Editor, "Bare Bones Budget - $3.7 Million Spending Cut OKd," *Waycross Journal-Herald*, February 21, 2003. Copy supplied.

Letter to the Editor, "Perdue Retreats - Property Taxes Won't Jump $155," *Waycross Journal-Herald*, February 11, 2003. Copy supplied.

Letter to the Editor, "FY 2004 Budget," *Waycross Journal-Herald*, January 22, 2003. Copy supplied.

Letter to the Editor, "Deer Season, Limit Extended By Law," *Waycross Journal-Herald*, June 12, 2002. Copy supplied.

Letter to the Editor, "Long Session Ends With Maps, Budget," *Waycross Journal-Herald*, April 20, 2002. Copy supplied.

Letter to the Editor, "Lawmakers Reduce Spending By 2.5%," *Waycross Journal-Herald*, March 26, 2002. Copy supplied.

Letter to the Editor, "Hunting Bills OKd By House," *Waycross Journal-Herald*, February 15, 2002. Copy supplied.

Letter to the Editor, "$100 Million Lost To Enron," *Waycross Journal-Herald*, January 30, 2002. Copy supplied.

Letter to the Editor, "Boggs Reports Barnes Submits Lean FY '03 Budget," *Waycross Journal-Herald*, January 26, 2002. Copy supplied.

Letter to the Editor, "New Law Says 'No' To Video," *Waycross Journal-Herald*, September 14, 2001. Copy supplied.

Letter to the Editor, "Georgia's Lawmakers Increase Homestead Exemption In 2001," *Waycross Journal-Herald*, June 29, 2001. Copy supplied.

Letter to the Editor, "Little-Known State Bills Offer Help to Women, Kids, Seniors," *Waycross Journal-Herald*, May 22, 2001. Copy supplied.

Letter to the Editor, "Boggs Wins $63,500 In Grants For Stadium, Forestry

Museum," *Waycross Journal-Herald*, March 16, 2001. Copy supplied.

Letter to the Editor, "Teacher Pay, School Additions Lead Governor's 2002

Budget," *Waycross Journal-Herald*, January 17, 2001. 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.

I served on the Governor's Special Council on Criminal Justice Reform for Georgians in 2011, as an appointee of Supreme Court Chief Justice Carol W. Hunstein. I was appointed by the Governor to co-chair the council in 2012 and to co-chair the Georgia Council on Criminal Justice Reform in 2013. We conducted a detailed analysis of Georgia's sentencing and corrections data and made recommendations to the Legislature to improve Georgia's adult and juvenile criminal justice systems. The Legislature adopted the majority of the 2011 and 2012 recommendations in 2012 and 2013 in House Bills 1176, 242 and 349. The recommendations of the 2013 council were published and delivered to the Georgia General Assembly on January 10, 2014.

Report of the Georgia Council on Criminal Justice Reform, January 2014. Copy supplied.

Report of the Special Council on Criminal Justice Reform for Georgians, December 2012. A summary of the work of the council can also be found in an Issue Brief by *Pew Center on the States,* Georgia's 2013 Juvenile Justice Reform (Washington, D.C.: The Pew Charitable Trusts, July 2013). Copies of the Report and Issue Brief are supplied.

Report of the Special Council on Criminal Justice Reform for Georgians, November 2011. A summary of the work of the council can also be found in an Issue Brief by the *Pew Center on the States,* 2012 Georgia Public Safety Reform (Washington, D.C.: The Pew Charitable Trusts, July 2012). Copies of the Report and Issue Brief are supplied.

I served as the founding director and presiding judge of the Waycross Judicial Circuit Drug Court Program from 2008 to 2012. During that time, I authored the following documents:

Waycross Judicial Circuit Felony Drug Court Operations & Policy Manual (September 2010). Copy supplied.

Waycross Judicial Circuit Felony Drug Court Program Participant Handbook (June 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.

December 18, 2013: Meeting Co-Chair, Criminal Justice Reform, Georgia Council on Criminal Justice Reform public meeting, Atlanta, Georgia. I co-chaired a public meeting of the Governor's council during which I made remarks concerning the anticipated recommendations of the council. I have no notes, transcript or recording.

October 10, 2013: Meeting Co-Chair, Criminal Justice Reform, Georgia Council on Criminal Justice Reform public meeting, Atlanta, Georgia. I co-chaired a public meeting of the Governor's council during which I made remarks concerning the progress of the council workgroups and generally discussed prisoner re-entry, civil forfeiture and implementation performance measure policy recommendations. I have no notes, transcript or recording.

August 15, 2013: Meeting Co-Chair, Criminal Justice Reform, Georgia Council on Criminal Justice Reform public meeting, Atlanta, Georgia. I co-chaired a public meeting of the Governor's council during which I made remarks concerning the progress of the council workgroups and generally discussed prisoner re-entry, civil forfeiture and implementation performance measure policy recommendations. I have no notes, transcript or recording.

December 13, 2012: Meeting Co-Chair, Juvenile Justice Reform, Special Council on Criminal Justice Reform public meeting, Atlanta, Georgia. I co-chaired a public meeting of the Governor's council during which I made remarks concerning Georgia's need for juvenile justice reform. I have no notes, transcript or recording, but press coverage is supplied.

October 5, 2012: Meeting Co-Chair, Criminal Justice Reform, Special Council on Criminal Justice Reform public meeting, Atlanta, Georgia. I co-chaired a public meeting of the council during which I made remarks concerning Georgia's need for juvenile justice reform. I have no notes, transcript or recording, but press coverage is supplied.

September 18, 2012: Meeting Co-Chair, Criminal Justice Reform, Special Council on Criminal Justice Reform public meeting, Atlanta, Georgia. I co-chaired a public meeting of the council during which I made remarks concerning the State's need for juvenile justice reform. I have no notes, transcript or recording, but press coverage is supplied.

July 16, 2012: Meeting Co-Chair, Juvenile Justice Reform, Special Council on Criminal Justice Reform public meeting, Atlanta, Georgia. I co-chaired a public meeting of the council during which I made remarks concerning the State's need for juvenile justice reform. I have no notes, transcript or recording, but press coverage is supplied.

2011–2012: In my capacity as a member and co-chair of the Governor's Special Council on Criminal Justice Reform for Georgians in 2011 and 2012, I had the occasion to testify before committees of the Georgia Legislature in presenting the work of the council. These presentations concerned recommendations for legislative or regulatory changes to the adult and juvenile criminal justice codes and the adoption of a new Juvenile Code in Georgia. The testimony was provided extemporaneously and not from written text. I relied exclusively upon the reports of the council for my remarks. Video recordings are available at http://youtube.com/watch?v=Hhykj1mZzJ4; http://youtube.com/watch?v=-pmQr8TZ6q4 and http://youtube.com/watch?v=exMRXWN1F5M.

Fall 2011: In my capacity as a member of the Governor's Special Council on Criminal Justice Reform for Georgians in 2011, I attended various public meetings of the council during which time I may have made remarks regarding the adult criminal justice public policy reform matters being considered by the council. I have no notes, transcript or recording.

November 4, 2011: In my capacity as a member of the Special Council on Criminal Justice Reform for Georgians, I was asked to give a report on the progress of the council to the Accountability Courts Committee of the Judicial Council of Georgia. I have no notes, transcript or recording.

August 26, 2011: I was asked by the Chief Justice to speak to the Judicial Council of Georgia on my conversations with a state legislator on his desire to introduce legislation calling for a state constitutional amendment to permit dedicated funding to the Georgia Public Defenders Standards Council (GPDSC) for indigent defense. In my capacity as Secretary and Treasurer of the council of Superior Court Judges, I reported that the council of Superior Court Judges was supportive. I have no notes, transcript or recording.

In approximately 2011, I testified before the Charlton County Commission concerning my request that they name the county courtroom in honor of the judicial circuit's former chief judge of the superior courts. I have no notes, transcript or recording.

In approximately 2010, I testified before the Pierce County Board of Commissioners in my capacity as a superior court judge, and as the presiding judge of the Waycross Judicial Circuit Drug Court Program. I urged the board to consider using the drug-testing capabilities of the drug court for pre-employment and random employee drug screening. I have no notes, transcript or recording.

In approximately 2010, I testified before the Coffee County Board of Commissioners in my capacity as a superior court judge, and as the presiding judge of the Waycross Judicial Circuit Drug Court Program. I updated the commission on the progress of the drug court and requested office space for the drug court in the county's abandoned law enforcement center. I have no notes, transcript or recording.

On two separate occasions between 2005 and 2010, I testified before the Waycross City Commission in my capacity as a superior court judge. I testified at the request of the Waycross City Chief of Police concerning the police department's re-certification process. I have no notes, transcript or recording.

In approximately 2009, I testified before the Ware County Board of Commissioners in my capacity as a superior court judge, and as the presiding judge of the Waycross Judicial Circuit Drug Court Program. I urged the board to consider using the drug-testing capabilities of the drug court for pre-employment and random employee drug screening. I have no notes, transcript or recording.

I served as a State Representative in the Georgia General Assembly from 2001 to 2004. During my tenure, I sponsored legislation, which required me to testify before House and Senate committees in order to explain the bills and urge committee approval. The testimony was provided extemporaneously and not from written text. Examples of legislation I sponsored covered topics including, but not limited to: strengthening laws combating sexual exploitation of children and internet child pornography; expanding and improving the law on criminal offenses against minor victims; updating the State Sexual Offender Registry requirements; creating a State Court in Charlton County; permitting certain local judicial officers to run as nonpartisan candidates; providing for increased homestead tax relief in Ware County; requiring criminal background checks on bail bondsmen; creating a residential contractors licensing law; limiting the use of the Georgia Bureau of Investigation nomenclature; providing additional jury duty exemptions for caregivers and the elderly; modernizing laws on the availability of subpoenas and warrants for certain electronic communications; adopting electronic voting practices and procedures; rewriting Georgia's Probate Code and Article 9 of the Uniform Commercial Code; and creating a local Board of Elections in Ware County. This testimony occurred at the Georgia General Assembly which is located at 34 Capitol Square, Atlanta, Georgia 30334.

In approximately 2000, I testified before the Waycross City Commission concerning their proposed closing of a public right-of-way. 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.

October 16, 2013: Program Speaker, Criminal Justice Reform - Reentry, Alabama Reentry Conference conducted by the council of State Governments Justice

Center, Birmingham, Alabama. The panel discussion was on Georgia's 2011 and 2012 criminal justice reform initiatives and the ongoing work of the 2013 Council regarding our anticipated recommendations for an improved state-wide reentry program to assist convicted felons in Georgia. I have no notes, transcript or recording. The address for the council of State Governments Justice Center is 100 Wall Street, 20th Floor, New York, NY 10005.

September 24, 2013: Program Speaker, "A Tale of Two States: What Can Florida Learn From Georgia's Criminal and Juvenile Justice Reforms?," St. Petersburg College Institute for Strategic Policy Solutions and Florida State University Project on Accountable Justice, Tallahassee, Florida. The panel discussion was on the work of Georgia's 2011 and 2012 Criminal Justice Reform Council and how Florida might adopt some of the public policy changes enacted in Georgia. I have no notes, transcript or recording, but press coverage is supplied. The address for the Project on Accountable Justice at Florida State University is Research Foundation Complex, 3200 Commonwealth Blvd, Suite 7, Tallahassee, Florida 32303.

August 1, 2013: Program Speaker, "Criminal Justice Reform Update," Parole Association of Georgia, Annual Training Conference, Athens, Georgia. I have no notes, transcript or recording. The address for the Parole Association of Georgia is P.O. Box 5164, Douglasville, Georgia 30154.

July 11, 2013: Panel Speaker, "Criminal and Juvenile Justice Policy Forum," Pew Safety Performance Project – The Pew Charitable Trusts, Atlanta, Georgia. Audio recording available at: http://www.youtube.com/watch?v=Tnc-Qrz0IAI.

June 6, 2013: Keynote Speaker, "Criminal Justice Reform Successes in Georgia," Lanier County Lions Club, Lakeland, Georgia. The speech was on criminal justice reform in Georgia. I have no notes, transcript or recording, but press coverage is supplied. The address for the Lanier County Lions Club is 852 West Thigpen Street, Lakeland, Georgia 31635.

May 23, 2013: Lunch and Learn Program Speaker, Court of Appeals Jurisdiction and Procedure Overview, Greenberg Traurig, LLP, Atlanta, Georgia. The speech was on the work of the Court of Appeals of Georgia, our general jurisdiction, caseload and appellate procedure. I have no notes, transcript or recording. The address for Greenberg Traurig is Terminus 200, 3333 Piedmont Road NE, Suite 2500, Atlanta, Georgia 30305.

April 24, 2013: Judge, Public remarks. The remarks, thanking the community for their hospitality and discussing the workload of the court, were made to the courtroom audience on the occasion of the Court of Appeals of Georgia oral arguments in Waycross, Georgia. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

April 17, 2013: Panel Speaker, "2012 Georgia Juvenile Justice Reform," Annie E. Casey Foundation – Juvenile Detention Alternatives Initiative (JDAI) Inter-Site Conference, Atlanta, Georgia. The panel discussion was on Juvenile Justice Reform in Georgia to leaders from other states interested in, or involved in, reform efforts. I have no notes, transcript or recording. The address for the Annie E. Casey Foundation is 701 St. Paul Street, Baltimore, Maryland 21202.

April 15, 2013: Judge, Public remarks, Ware County High School, Waycross, Georgia. The remarks, discussing the work of the Court of Appeals, including our jurisdiction and caseload, were made to high school students in anticipation of the upcoming visit of the Court to Ware County for oral arguments. I have no notes, transcript or recording, but press coverage is supplied. The address for Ware County High School is 700 Victory Drive, Waycross, Georgia 31503.

March 14, 2013: Speaker, Georgia Appellate Practice Overview, Institute of Continuing Legal Education (ICLE), University of Georgia, General Practice & Trial Institute, Amelia Island, Florida. The presentation was a general review of Georgia Appellate Practice. I have no notes, transcript or recording. The address for ICLE is P.O. Box 1885, Athens, Georgia 30603.

March 13, 2013: Judge, Court of Appeals Overview, Leadership Waycross class at the Georgia Court of Appeals, Atlanta, Georgia. I spoke about the work of our court and the obligation of judges to be faithful to their oath, laws, and the Constitution. I have no notes, transcript or recording, but press coverage is supplied. The address for Leadership Waycross is c/o Waycross-Ware County Chamber of Commerce, 315-B, Plant Avenue, Waycross, Georgia 31501.

February 23, 2013: Speaker, "Criminal Justice Reform: The Next Chapter," Institute of Continuing Legal Education (ICLE), University of Georgia, Georgia Bar Media & Judiciary Conference, Atlanta, Georgia. The panel discussion was on criminal justice reform. I have no notes, transcript or recording. The address for ICLE is P.O. Box 1885, Athens, Georgia 30603.

February 21, 2013: Program Speaker, "Juvenile Justice and Civil Code Reforms in HB242," Georgia Center Right Coalition, Atlanta, Georgia. The speech was on recently enacted juvenile justice reforms. I have no notes, transcript or recording. The Georgia Center Right Coalition has no physical address.

January 28, 2013: Panel Speaker, "Update on recent appellate decisions affecting law enforcement," Georgia Sheriffs' Association, Court of Appeals, Atlanta, Georgia. Notes supplied.

January 12, 2013: Speaker, "Criminal Justice Reform and Update on Juvenile Code Re-Write," State Bar of Georgia, Midyear Bar Meeting and Board of Governors Meeting, Atlanta, Georgia. I have no notes, transcript or recording. The address for the State Bar of Georgia is 104 Marietta Street, NW, Suite 100, Atlanta, Georgia 30303.

January 10, 2013: Speaker, "Nuts & Bolts of a Civil Trial," Institute of Continuing Legal Education (ICLE), University of Georgia, Atlanta, Georgia. I delivered remarks on perfecting rights of appeal at the trial court. I have no notes, transcript or recording. The address for ICLE is P.O. Box 1885, Athens, Georgia 30603.

November 17, 2012: Panel Judge, Mercer Law School Third Annual Legal Ethics and Professionalism Moot Court Competition, Macon, Georgia. I judged the final round of the competition. I have no notes, transcript or recording. The address for the Mercer University School of Law is 1021 Georgia Avenue, Macon, Georgia 31207.

October 22, 2012: Panel Speaker, "Drug Courts in Georgia: Current Status and Future Development," Georgia Association of Community Service Boards, Annual Conference, St. Simons Island, Georgia. The panel discussion was on the topic of drug courts, their current status in Georgia, and how Georgia's community service boards can assist with the delivery of services. I have no notes, transcript or recording. The address for the Georgia Association of Community Service Boards is 3150 Golf Ridge Boulevard, Suite 202, Douglasville, Georgia 30135.

October 13, 2012: Program Speaker, "Criminal Justice Reform Act," Georgia State NAACP State Convention and Civil Rights Conference, Atlanta, Georgia. The speech was on Georgia's recently enacted criminal justice reform. I have no notes, transcript or recording. The address for the Atlanta Branch of the NAACP is 100 Edgewood Avenue, Suite 1080, Atlanta, Georgia 30303.

October 12, 2012: Speaker, "Criminal Justice Reform," Atlanta Bar Association, Litigation Section, Atlanta, Georgia. The speech was on Georgia's recently enacted criminal justice reform. I have no notes, transcript or recording, but press coverage is supplied. The address for the Atlanta Bar Association is 400 International Tower, 229 Peachtree Street, NE, Atlanta, Georgia 30303.

September 24, 2012: Keynote Speaker, "Criminal Justice Reform in Georgia," Georgia State University, Center for the Advancement of Leadership Skills Conference, Atlanta, Georgia. The speech was on Georgia's recently enacted criminal justice reform and leadership. I have no notes, transcript or recording. The address for Georgia State University's Andrew Young School of Policy Studies is P.O. Box 3965, Atlanta, Georgia 30302.

July 28, 2012: Master of Ceremonies, Remarks at the Judge Steve Jackson portrait unveiling event, Folkston, Georgia. I presided over the ceremony dedicating the county courtroom in honor of my former colleague and chief judge of the Waycross Circuit. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

April 27, 2012: Law Day Keynote Speaker, "No Courts, No Access, No Freedom," Gwinnett County Georgia Bar Association, Duluth, Georgia. Notes supplied.

April 20, 2012: Luncheon Speaker, Juvenile Justice Reform, Gwinnett County Bar Association, Duluth, Georgia. The speech was on Georgia's recently enacted criminal justice reform. I have no notes, transcript or recording. The address for the Gwinnett Bar Association is P.O. Box 576, Lawrenceville, Georgia 30046.

April 19, 2012: Luncheon Speaker, Criminal Justice Reform, DeKalb County Bar Association, Decatur, Georgia. The speech was on Georgia's recently enacted criminal justice reform. I have no notes, transcript or recording. The address for the DeKalb County Bar Association is P.O. Box 3136, Decatur, Georgia 30031.

April 4, 2012: Luncheon Speaker, Court of Appeals Overview, Henry County Bar Association, McDonough, Georgia. The speech was on the Georgia Court of Appeals, constitutional jurisdiction, and a general overview of the appellate process. I have no notes, transcript or recording. The address for the Henry County Bar Association is P.O. Box 3223, McDonough, Georgia 30253.

March 30, 2012: Luncheon Speaker, Court of Appeals Overview, Rome Bar Association, Rome, Georgia. The speech was on the Georgia Court of Appeals, constitutional jurisdiction, and a general overview of recently enacted criminal justice reform. I have no notes, transcript or recording. The address for the Rome Bar Association is P.O. Box 952, Rome, Georgia 30161.

March 26, 2012: Luncheon Speaker, Court of Appeals Overview, Brunswick Bar Association, Brunswick, Georgia. The speech was on the Georgia Court of Appeals, constitutional jurisdiction, and a general overview of the appellate process. I have no notes, transcript or recording. The address for the Brunswick Bar Association is P.O. Box 21828, St. Simons Island, Georgia 31522.

March 20, 2012: Luncheon Speaker, Court of Appeals Overview, Augusta Bar Association, Augusta, Georgia. The speech was on the Georgia Court of Appeals, constitutional jurisdiction, and a general overview of the appellate process. I have no notes, transcript or recording. The address of the Augusta Bar Association is P.O. Box 2426, Augusta, Georgia 30903.

March 16, 2012: Luncheon Speaker, Court of Appeals Overview, Bulloch County Bar Association, Statesboro, Georgia. The speech was on the Georgia Court of Appeals, constitutional jurisdiction, and a general overview of the appellate process. I have no notes, transcript or recording. The address for the Bulloch County Bar Association is P.O. Box 1700, Statesboro, Georgia 30458.

March 15, 2012: Luncheon Speaker, Court of Appeals Overview, Valdosta Bar Association, Valdosta, Georgia. The speech was on the Georgia Court of Appeals,

constitutional jurisdiction, and a general overview of Criminal Justice Reform. I have no notes, transcript or recording. The address for the Valdosta Bar Association is P.O. Box 5559, Valdosta, Georgia 31603.

March 9, 2012: Panel Speaker, "Lincoln on Professionalism," Atlanta Bar Association Continuing Legal Education Program, Atlanta, Georgia. Notes supplied.

March 7, 2012: Program Speaker, "What community stakeholders can do to reduce the stigma of mental health disease and the high incidence of mental health issues among felony defendants – a judicial perspective," Opening Doors to Recovery Project (ODR) Stakeholder Meeting, National Alliance for the Mentally Ill (NAMI) Georgia, Waycross, Georgia. Notes supplied.

February 12, 2012: Speaker, "Criminal Justice Reform Panel Discussion," American Legislative Exchange Council (ALEC), Atlanta, Georgia. The presentation was on the work of the Governor's 2011 Criminal Justice Reform Council. I have no notes, transcript or recording, but press coverage is supplied. The address for ALEC is 2900 Crystal Drive, 6th Floor, Arlington, Virginia 22202.

February 9, 2012: Public comments, Court of Appeals Campaign Fundraiser, Citizens to Elect Judge Mike Boggs, Waycross, Georgia. The speech included remarks thanking my supporters at my re-election fundraiser. I have no notes, transcript or recording, but press coverage is supplied. Citizens to Elect Judge Mike Boggs, Inc. has no physical address.

February, 2, 2012: Luncheon Speaker, "Adult Criminal Justice Reform in Georgia - HB1176," Douglas County Bar Association, Douglasville, Georgia. The presentation was on the work of the Governor's 2011 Criminal Justice Reform Council. I have no notes, transcript or recording. The Douglas County Bar Association has no physical address.

February, 2, 2012: Speaker, "Georgia Appellate Practice," Institute of Continuing Legal Education (ICLE), University of Georgia, Atlanta, Georgia. The presentation was a general review of Georgia appellate practice. I have no notes, transcript or recording. The address for ICLE is P.O. Box 1885, Athens, Georgia 30603.

January 10, 2012: Speaker, "Perfecting Rights of Appeal," State Bar of Georgia, Mid-Year Bar Meeting, Atlanta, Georgia. Notes supplied.

January 6, 2012: Public comments, my Court of Appeals swearing-in ceremony, State Capitol, Atlanta, Georgia. Notes supplied.

December 9, 2011: Panel Speaker, "Trial Trends as Observed from the Bench," Georgia Trial Lawyers Association, Atlanta, Georgia. I have no notes, transcript or recording. The address for the Georgia Trial Lawyers Association is 3550 Centennial Tower, 101 Marietta Street, Atlanta, Georgia 30303.

December 1, 2011: Speaker, "Citizenship," National Elementary Honor Society Induction Service, Waresboro Elementary School, Waycross, Georgia. Notes and press coverage supplied.

September 16, 2011: Panel Speaker, "Juvenile Justice Reform Update," Women in Leadership, Atlanta, Georgia. The presentation was an update on the status of Georgia's anticipated juvenile justice reform. I have no notes, transcript or recording, but press coverage is supplied. Women in Leadership has no physical address.

Spring 2009: Keynote Speaker, "Mentoring and Citizenship," High School graduates recognition program–The Consolidated Men's Club and 100 Black Men of Southeast Georgia, Blackshear, Georgia. The speech was to recent high school graduates about the importance of furthering their education, engaging in volunteer community service, and serving as mentors to others. I have no notes, transcript or recording. The Consolidated Men's Club has no physical address.

June 18, 2009: Speaker, "War Stories," Institute of Continuing Legal Education (ICLE), University of Georgia, Georgia State Bar Annual Meeting, Amelia Island, Florida. The panel discussion was on mistakes lawyers should avoid in jury trials. I have no notes, transcript or recording. The address for ICLE is P.O. Box 1885, Athens, Georgia 30603.

June 21, 2007: Speaker, "Georgia Trial Skills Clinic," Institute of Continuing Legal Education (ICLE), University of Georgia, Athens, Georgia. The presentation was on techniques for effective direct and cross examinations. I have no notes, transcript or recording. The address for ICLE is P.O. Box 1885, Athens, Georgia 30603.

November 12, 2005: Keynote Speaker, "Veterans Day Memorial Dedication," Retired Veterans Association, Baxley, Georgia. Notes supplied.

2005: Graduation Speaker, "The BASICS Program," State Bar of Georgia, Bar Association Support to Improve Correctional Services (BASICS) Program, Nicholls State Prison, Nicholls, Georgia. The presentation was on the mission of the program aimed at steering inmates toward the direction of self-rehabilitation. I have no notes, transcript or recording. The address for the State Bar of Georgia is 104 Marietta Street, NW, Suite 100, Atlanta, Georgia 30303.

May 7, 2004: Commencement Speaker, "Civic Duty," Waycross College, Waycross, Georgia. The speech was on the importance of community

involvement and civic duty. I have no notes, transcript or recording. The address for Waycross College is 2001 South Georgia Parkway, Waycross, Georgia 31503.

2001: Commencement Speaker, "Community Service," Okefenokee Technical College, Waycross, Georgia. The speech was on the importance of education and community service. I have no notes, transcript or recording. The address for Okefenokee Technical College is 1701 Carswell Avenue, Waycross, Georgia 31503.

While a member of the Georgia General Assembly from 2001 to 2004, I made a practice of speaking frequently about the work of the Legislature. I recall that these speeches were typically delivered to local civic organizations too numerous to recall. To the best of my recollection, all of these speeches focused solely on legislative updates addressing the status of bills in the General Assembly. I also held regular town hall meetings during the legislative session. These public speeches were always made extemporaneously and without notes.

During the seven years that I served as a superior court judge, I also made it a practice to speak frequently within the communities I served. To the best of my recollection, all of these speeches focused on updating the audience on the progress of the Waycross Circuit Drug Court, general comments about the jurisdiction of the superior courts, issues facing the courts, the division of responsibilities among the judges, or others matters concerning the judiciary. These public speeches were always made extemporaneously and without notes.

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 memory, my files, and available Internet databases including YouTube, Google, LexisNexis and Westlaw (using name variants) to assemble the list of interviews below, but there may be others that I have been unable to remember. Copies of all news clips are supplied.

Ed Finkel and Dick Mendel, "Evidence-Based Treatment Works for Georgia's Troubled Youth, but Dollars Aren't Following," *Juvenile Justice Information Exchange, (Public Integrity.org)*, July 2, 2013.

Greg Bluestein and Bill Rankin, "Prison Reform's Aim: Inmate Rehab," *The Atlanta Journal-Constitution*, April 26, 2013.

Bill Rankin and Carrie Teegardin, "Armed Robbery: Unequal Justice," *The Atlanta Journal-Constitution*, February 24, 2013. Reprinted in multiple outlets.

Carrie Teegardin and Bill Rankin, "A Question of Justice," *The Atlanta Journal-Constitution*, February 17, 2013.

Mike Klein, "Juvenile Justice Bill Would Revise Designated Felony Act," *Georgia Public Policy Foundation* - http://mikekleinonline.com, February 11, 2013.

Carrie Teegardin and Bill Rankin, "Georgia Rethinks Prison Stance," *The Atlanta Journal-Constitution*, January 3, 2013.

Carrie Teegardin and Bill Rankin, "State to Reform Juvenile System," *The Atlanta Journal-Constitution*, December 13, 2012.

Walter Jones, "Changes Proposed for Juvenile Sentences in Georgia," *The Florida Times-Union*, November 18, 2012. Reprinted in multiple outlets.

Walter Jones, "Georgia Commission Searching for New Ways to Handle Juvenile Offenders," *The Florida Times-Union*, September 19, 2012.

Kathleen Baydala Joyner, "Getting Tough on Youths Doesn't Work," *Daily Report*, September 19, 2012.

Kathleen Baydala Joyner, "Reforms Studied for Georgia's Juvenile Justice System," *Daily Report*, September 6, 2012.

Bill Rankin, "Panel Studying Prison Reforms," *The Atlanta Journal-Constitution*, July 17, 2012.

Myra Thrift, "South Georgia Summit on Economic Development," *Waycross Journal-Herald*, April 30, 2012.

Kim Sloan, "Court of Appeals Judge Michael Boggs Visits Rome, Speaks to Rome Bar Association," *Rome News-Tribune (Northwestgeorgianews.com)*, March 31, 2012.

Alyson M. Palmer, "Boggs Settles in at Appeals Court," *Daily Report*, February 16, 2012.

Mike Klein, "Less Time, More Treatment Possible for Low-Risk Drug Abuse," http://mikekleinonline.com, December 12, 2011.

Wayne Hardy, "The New War: Prescription Drug Overdose Is Now a Top Killer in Georgia," *The Blackshear Times*, November 30, 2011.

Press Release, Judge Michael P. Boggs, "Drug Court Graduates Three," *Waycross Journal-Herald*, November 8, 2011.

Jason Deal, "Giving a Second Chance," *The Blackshear Times*, December 23, 2009.

Press Release, Judge Michael P. Boggs, "Waycross Judicial Circuit Drug Court Awarded Grant," *Waycross Journal-Herald*, December 10, 2009.

Press Release, Judge Michael P. Boggs, "Local Superior Court Judges Take Voluntary Pay Cut," *Waycross Journal-Herald*, September 29, 2009.

Press Release, Judge Michael P. Boggs, "Waycross Judicial Circuit Drug Court Awarded Grant," *Waycross Journal-Herald*, June 30, 2009.

Press Release, Judge Michael P. Boggs, "Drug Court Receives Non-Profit Status," *Waycross Journal-Herald*, March 26, 2009.

Gordon Jackson, "Charlton Finally Gets its Jail," *The Florida Times-Union*, January 11, 2008.

Teresa Stepzinski, "Stephen L. Jackson: 1947 - 2007: Well-Respected Jurist Succumbs after Collapse," *The Florida Times-Union*, December 30, 2007.

Teresa Stepzinski, "Waycross Drug Court Battles Abuse," *The Florida Times-Union*, December 2, 2007.

Brandon Larrabee, "Special Session Called to Balance Budget," *The Florida Times-Union*, April 9, 2004.

Brian Basinger, "Budget Talks Go Down to the Wire," *The Florida Times-Union*, April 8, 2004.

Gordon Jackson, "Court Backlog Creates Problem," *The Florida Times-Union*, February 20, 2004.

Terri Hillhouse, "Some Democrats Have a Conscience After All," www.renewamerica.com, January 21, 2004. I discovered this article while performing an internet search to ensure that my responses to this question were complete. Although I did attend a brief private reception with President George W. Bush, I did not attend the fundraiser itself. I do not recall participating in any interviews or giving any remarks to the press, and indeed the remarks attributed to me are not accurate as I have no children.

Jeffry Scott, "President Pays Tribute to King: Bush Visits Atlanta for Ceremony, Fund-raiser," *The Atlanta Journal-Constitution*, January 16, 2004.

Dick Pettys, "Bush Gets Backing of a Dozen Democratic State Legislators," *The Associated Press*, January 15, 2004.

Kristen Wyatt, "Child Molestation Bill Stalls Over Concerns It's Too Broad," *The Associated Press*, March 3, 2003.

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

In July 2004, I was elected as a superior court judge for the six counties of the Waycross Judicial Circuit. I was re-elected without opposition in 2008, for a term expiring December 31, 2012. The superior court is Georgia's general jurisdiction trial court.

On January 6, 2012, I was appointed by Governor Nathan Deal to serve as a judge for the Court of Appeals of Georgia. I was elected state-wide (unopposed) in July 2012, for a six-year term. My present term of office expires December 31, 2018. The Court of Appeals of Georgia has state-wide appellate jurisdiction over all cases not reserved to the Supreme Court of Georgia or conferred on other courts by law.

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

As a superior court judge, I presided over approximately 50 criminal jury trials to verdict and 30 civil trials to verdict. I conducted approximately 250 bench trials to judgment. In total, I was assigned approximately 13,794 cases (8,214 criminal cases and 5,580 civil cases) for disposition while a superior court judge.

i. Of these, approximately what percent were:

jury trials:	24%
bench trials:	76%
civil proceedings:	40%
criminal proceedings:	60%

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

See attached list of cases.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

During my tenure as a superior court judge, I presided over the following significant cases:

1. *Huling v. Huling*, File No. 2006-SU-CV-017, Superior Court of Charlton County, *aff'd*, 707 S.E.2d 86 (Ga. 2011).

   I presided over this three-day divorce jury trial, which resulted in a verdict for the wife in the amount of $490,750 as an equitable division of marital assets, $500 in damages for fraud, and $23,750 in punitive damages. The wife successfully moved to join as indispensable parties the husband's father and sister, along with two of the families' incorporated businesses, alleging that the husband had transferred marital property to them in an attempt to defraud the wife of her claim to an equitable division. The case was affirmed on appeal.

Counsel for plaintiff:	Andrew C. Spivey 115 Albany Avenue Waycross, GA 31501 (912) 283-6150
	James E. Stein P.O. Box 5130 St. Mary's, GA 31558 (912) 729-3635
Counsel for defendant:	James B. Durham Audra L. Rizzi Durham & Rizzi, P.C. P.O. Box 2177 Brunswick, GA 31521 (912) 264-1800

2. *Gowen Oil Co. v. Farmland Mutual Insurance Co.*, File No. 2009-SU-CV-107, Superior Court of Charlton County.

   This action involved an insured's claim against his insurer for approximately $1.6 million in losses claimed to have arisen from the improper use of key cards at wholesale facilities owned by various customers of Gowen Oil. The plaintiff sought terminal access card coverage under the policy issued by the defendant insurer. The insurer's policy contained provisions excluding coverage for any card issued by the plaintiff to its customer and, in this case, three key cards were arguably issued to a customer of the plaintiff to fulfill contracts for fuel purchases for three stations owned by the plaintiff's customer. The matter was further complicated because the plaintiff's customer transferred his interest in the stations to a third party, thereby raising issues of whether the exclusion was applicable. The case involved complex insurance policy interpretations and was settled during the trial.

Counsel for plaintiff:	Brent Savage P.O. Box 10600 Savannah, GA 31412 (912) 231-1140
Counsel for defendant:	Joseph Y. Rahimi, II Brannen, Searcy & Smith, LP P.O. Box 8002 Savannah, GA 31412 (912) 234-8875

3. *State of Georgia v. Popham*, File No. 04R-141, Superior Court of Charlton County.

   I presided over this five-day jury trial. The defendant was indicted for malice murder in the shooting death of his alleged girlfriend's new romantic interest. The case involved numerous evidentiary issues including the issuance of a subpoena for the production of out-of-state witnesses and multiple hearsay rulings. The trial involved nearly 25 witnesses to alleged prior difficulties between the defendant and the victim. The case arose in a very small county and garnered a substantial amount of media attention requiring individualized voir dire and constant monitoring of the jurors during the course of the trial. The case involved complex evidentiary rulings on the admissibility of several alleged similar transactions and evidence of prior difficulties between the defendant and the victim. The defendant was acquitted.

Counsel for the State:	Alex J. Markowich 306 Albany Avenue Waycross, GA 31501 (912) 287-4395
Counsel for defendant:	John R. Thigpen P.O. Box 411 Blackshear, GA 31516 (912) 449-6309

4. *Burch v. Redmon*, File No. 2010-SU-CV-220, Superior Court of Charlton County.

   I presided over the jury trial of this case. Subsequent to undergoing hip replacement surgery, and while recovering at Charlton Memorial Hospital, the plaintiff allegedly fell in the shower when left alone by her nurses. The suit was pled as a medical malpractice case, including an accompanying affidavit alleging that the nurse defendants were negligent for leaving the plaintiff alone in the shower. The plaintiff's damages included the cost of bilateral knee replacement surgeries. At trial, the plaintiff's nursing expert (and affiant) testified. The defendants moved to disqualify the expert on the grounds that she did not meet the

statutory requirement of having practiced in the specific area of her testimony for three out of the last five years. I granted the defendants' motion based upon a careful review of the applicable statute. I denied the plaintiff's motion for a mistrial but allowed the plaintiff to dismiss the case without prejudice to permit time to acquire a new expert. The case ultimately settled. The case was unique in the analysis required to resolve the defendants' motion to disqualify the plaintiff's expert, and the application of our State's then-existing expert witness statute.

Counsel for plaintiff:

Willis H. Blacknall, III
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Waycross, GA 31502
(912) 285-9508

J. Roger Dodd
P.O. Box 1066
Valdosta, GA 31603
(229) 242-4470

Counsel for defendant:

N. Daniel Lovein
Hall, Booth, Smith & Slover
3528 Dunes Highway
Suite 300
Brunswick, GA 31525
(912) 554-0093

5. *State of Georgia v. Troupe*, File No. 2004F-12-255, Superior Court of Coffee County.

I presided over this jury trial where the defendant was tried on five counts of homicide by vehicle and DUI after she drove her car at approximately 70 miles per hour into a four-wheeler (ATV) carrying six children on a public roadway. The defendant had a blood alcohol content of .015. Five of the children were killed instantly. I granted a request from the media to televise portions of the trial and ruled on multiple unique evidentiary issues related to the admissibility of the defendant's blood alcohol content. The case involved competing medical and crash reconstruction experts and required rulings as to the admissibility of many arguably objectionable accident scene photographs. I was also required to remove a prospective juror during the course of the trial. The trial resulted in a defense verdict on all counts except DUI.

Counsel for the State:

Richard E. Currie
306 Albany Avenue
Waycross, GA 31501
(912) 287-4395

Counsel for defendant:

Tom Pujadas

Robert L. Walker
P.O. Box 247
Ocilla, GA 31774
(229) 468-7472

6. *State of Georgia v. Cutrer*, File No. 2005F-08-178, Superior Court of Coffee County, *aff'd*, 695 S.E.2d 597 (Ga. 2010).

   I presided over this three-day jury trial in which the defendant, the roommate of the victim, was charged with malice murder, armed robbery, and two counts of theft by taking of an automobile. This entirely circumstantial evidence case involved an extensive investigation by the Georgia Bureau of Investigation before the victim's body was located in a freezer in the victim's home. The State presented evidence showing that the victim disappeared after inheriting a large amount of money, and that the defendant was using the victim's two vehicles, selling the victim's property, and carrying a large amount of cash. The case also involved an alleged jail-house confession. The case was unique in the evidentiary rulings necessary to address the large volume of circumstantial evidence, and the admissibility of the cellmate's statements concerning the defendant's alleged confession. The jury found the defendant guilty.

   Counsel for the State:

   Richard E. Currie
   306 Albany Avenue
   Waycross, GA 31501
   (912) 287-4395

   Counsel for defendant:

   J. Clay Culp
   Circuit Public Defender
   605 Church Street, Suite D
   Waycross, GA 31501
   (912) 287-4360

7. *State of Georgia v. Jones, et al.*, File No. 2005F-04-043, Superior Court of Coffee County.

   I presided over this jury trial in May 2006. The defendants were charged with the murder of three people in a public park in Douglas, Georgia. It was alleged that the three victims had previously robbed the defendants of a substantial amount of marijuana. The two-year police investigation revealed that the murders occurred in retaliation for the robbery. The defendants were jointly indicted and tried together. Two others were charged with conspiracy to commit murder and agreed to a plea in exchange for their testimony. Numerous motions in limine were filed by the four defense attorneys representing clients with varied theories of the case and conflicting defenses. The evidence included statements by non-testifying co-defendants inculpating other defendants and thus required a careful Confrontation

Clause analysis to determine whether the statements should be excluded. The tria resulted in a defense verdict for all defendants.

Counsel for the State:

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Counsel for defendants:

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Circuit Public Defender
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John R. Thigpen, Sr.
P.O. Box 411
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(912) 449-6309

Melissa Jill Starling
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Douglas, GA 31533
(912) 384-5471

8. *State v. Wesley*, File No. 2006F-04-117, Superior Court of Coffee County.

I presided over this jury trial in 2006, in which the defendant was charged with armed robbery as a party to a crime. He was indicted along with two older acquaintances for his role as the getaway driver in the robbery of a convenience store owner at his home. The defendant, a 17-year-old, on track to graduate from high school and with no prior criminal record, cooperated with the police and testified against his co-defendants. The other defendants had substantial criminal histories. The defendant refused to accept a plea to robbery as a lesser-included offense, which would have avoided the imposition of a minimum mandatory sentence and proceeded to trial and was convicted. I imposed a minimum mandatory period of incarceration of ten years. One of his co-defendants pled to robbery and was sentenced to five years in prison. The third defendant, the other party with a weapon, subsequently was tried before me and was acquitted. I granted the defendant's motion for a new trial and the defendant pled guilty to robbery. He was given a five year prison sentence which, based on time already served, made him immediately eligible for parole. I permitted the defendant to enter the plea as a first offender. The case required multiple unique evidentiary rulings and a careful analysis of the "substantial injustice" grounds for granting a new trial.

Counsel for the State:	John Rumker 200 Ward Street W Suite D3 Douglas, GA 31533 (912) 384-6166
Counsel for defendant:	Kimberly L. Copeland 256 North Brunswick Street Jesup, GA 31546 (912) 530-7317

9. *Timmerman v. Smith*, File No. 2009-SU-CS-474, Superior Court of Pierce County.

   I presided over Mr. Timmerman's petition for legitimation of a minor child, which he filed after the mother of the child died and the maternal grandmother filed a petition for adoption. At issue was whether Mr. Timmerman had abandoned his constitutionally protected opportunity interest in establishing a meaningful relationship with his child. After a detailed and careful analysis of the constitutional rights of unwed fathers, the commensurate and substantial protection afforded them under the Due Process Clause, and Georgia case law authority holding that the mere existence of a biological link does not merit equivalent constitutional protection, I held that Mr. Timmerman had failed to take advantage of his constitutionally protected "opportunity interest" and denied his petition for legitimation.

Counsel for plaintiff:	Fred R. Kopp P.O. Box 785 Alma, GA 31510 (912) 632-6812
Counsel for defendant:	John R. Thigpen, Sr. P.O. Box 411 Blackshear, GA 31516 (912) 449-6309

10. *State v. Britt*, File No. 2006F-09-270, Superior Court of Coffee County, *aff'd*, 668 S.E.2d 461 (Ga. Ct. App. 2008).

    I ruled upon the defendant's motion to suppress in which the defendant challenged the constitutionality of a police roadblock, and sought to exclude evidence (methamphetamine) seized during the stop. After a careful review of the evidence in this case, I concluded that the State satisfactorily proved that the roadblock was ordered by a supervisor and implemented to ensure roadway safety rather than as a constitutionally impermissible pretext aimed at discovering general evidence of ordinary crime. I further concluded that the officers had authority to search based upon the defendant's consent and that the defendant's detention at the stop was

not so unreasonably long as to invalidate the search. The denial of the defendant's motion to suppress was affirmed on appeal.

Counsel for the State:

John Rumker
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Counsel for defendant:

Patrick Scott Ferris
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(912) 384-1145

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. *Capellan v. State*, 729 S.E.2d 602 (Ga. Ct. App. 2012).

Counsel for the State:

J. Bradley Smith
Erica Patrick Shepley
Jackson County District Attorney
5000 Jackson Parkway, Suite 160
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(706) 387-6288

Counsel for defendant:

Bernard Stephen Brody
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2. *Zurich Am. Ins. Co. v. Heard*, 740 S.E.2d 429 (Ga. Ct. App. 2013), *cert. denied*, 2013 Ga. LEXIS 738 (Sept. 23, 2013).

Counsel for plaintiff:

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Drew Eckl & Farnham
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Atlanta, GA 30357
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Chad Eric Jacobs
Allen, Kopet & Associates, PLLC

	P.O. Box 724077 Atlanta, GA 31139 (770) 435-7260
Counsel for defendant John W. Heard:	Gregory Howard Wheeler Ryan Bradley Wilhelm Carlock, Copeland & Stair, LLP 191 Peachtree Tower, Suite 3600 Atlanta, GA 30303 (404) 522-8220
Counsel for defendant Hairston Engineering:	David Sewell Bills 1932 North Druid Hills Road, NE Suite 200 Atlanta, GA 30319 (404) 633-6000

3. *Norred v. Teaver*, 740 S.E.2d 251 (Ga. Ct. App. 2013).

Counsel for plaintiff:	Robert U. Wright One Decatur Town Center, Suite 300 150 Ponce de Leon Avenue Decatur, GA 30030 (404) 240-0400
Counsel for defendant:	Richard Gardner Tisinger, Jr. Tisinger Vance, PC 100 Wagon Yard Plaza Carrollton, GA 30017 (770) 834-4467

4. *Ga. Cash Am. v. Greene*, 734 S.E.2d 67 (Ga. Ct. App. 2012), *cert. denied*, 2013 Ga. LEXIS 165 (February 18, 2013).

Counsel for plaintiffs:	Roy E. Barnes John Raymond Bevis James Cameron Tribble The Barnes Law Group 31 Atlanta Street Marietta, GA 30060 (770) 227-7575
Counsel for defendants:	John G. Parker Shauna T. Phillips William K. Whitner Paul Hastings, LLP

1170 Peachtree Street, NE
Suite 100
Atlanta, GA 30309
(404) 815-2400

5. *Ford Motor Company v. Conley*, No. A13A0453 (Ga. Ct. App. July 12, 2013) (transfer to Supreme Court on equal division-unpublished (S13A1603 docketed July 15, 2013)). Copy supplied.

Counsel for plaintiff:	Andrew Jones Cooper, Jones & Cooper, LLP 701 Whitlock Avenue, SW Building J, Suite 44 Marietta, GA 30064 (770) 427-5588
	Benjamin Baker Beasley, Allen, Crow, Methvin, Portis & Miles, PC P.O. Box 4160 Montgomery, AL 31603-4160 (334) 269-2343
Counsel for defendant:	Christopher Anulewicz Michael Bowers Balch & Bingham Suite 700 30 Ivan Allen Jr. Boulevard, NW Atlanta, GA 30308 (404) 261-6020
	Audrey Berland Huff, Powell & Bailey, LLC 999 Peachtree Street, Suite 950 Atlanta, GA 30339 (404) 892-4022
	Adam Charnes Kilpatrick Townsend & Stockton, LLP 1001 West Fourth Street Winston-Salem, NC 27101 (336) 607-7300
Counsel for amicus curiae Products Liability Advisory Council, Inc.:	King & Spalding, LLP 1180 Peachtree Street, NE Atlanta, GA 30309-3521

(404) 572-4600

6. *Cosmo v. State*, 739 S.E.2d 828 (Ga. Ct. App. 2013), *cert. granted*, No. S13G1070, 2013 Ga. LEXIS 693 (Ga. Sept. 9, 2013).

Counsel for the State:	Herbert E. Franklin Alan Christopher Norton 7694 Nashville Street Ringgold, GA 30736 (706) 965-9055
Counsel for defendant:	Adam Marshall Hames The Hames Law Firm, LLC 511 East Paces Ferry Road, NE Atlanta, GA 30305 (404) 842-9577

7. *Cheeks v. State*, 750 S.E.2d 753 (Ga. Ct. App. 2013).

Counsel for the State:	Paul Howard Paige Whitaker Arthur Walton Fulton County District Attorney Fulton County Courthouse, Fourth Floor 136 Pryor Street Atlanta, GA 30303 (404) 612-4965
Counsel for defendant:	Thomas S. Robinson, III P.O. Box 390728 Snellville, GA 30039 (404) 285-8367

8. *State v. Barnett*, 722 S.E.2d 865 (Ga. Ct. App. 2012).

Counsel for the State:	Jamie Inagawa Joseph Myers Office of the Fayette Solicitor Fayette County Justice Center One Center Drive Fayetteville, GA 30214 (770) 716-4260
Counsel for defendant Jamie B. Chaves:	Walker Chandler Marcus Glenn Howell Office of the Fayette Public Defender

	175 Johnson Avenue Fayetteville, GA 30214 (770) 716-4337
Counsel for defendant C. Lauriston McLeod:	Rebekah Betsill Law Firm of Stephen D. Ott, PC 380 Stonewall Avenue West Fayetteville, GA 30214 (770) 692-2600
Pro se defendant:	Jack Barnett

9. *Talifero v. State*, 734 S.E.2d 61 (Ga. Ct. App. 2012).

Counsel for the State:	Patrick H. Head Amelia Greeson Pray John Richard Edwards Benjamin M. First D. Victor Reynolds 70 Haynes Street Marietta, GA 30090 (770) 528-3080
Counsel for defendant:	Gina Anne Smalley 401 Atlanta Street SE Marietta, GA 30060 (770) 794-4460

10. *Teele v. State*, 738 S.E.2d 277 (Ga. Ct. App. 2012), *cert. denied*, 213 Ga. LEXIS 528 (June 3, 2013).

Counsel for the State:	Daniel J. Porter Charles Paul Efstration, III Gwinnett Justice & Administration Center 75 Langley Drive Lawrenceville, GA 30046 (770) 822-8400
Counsel for defendant:	G. Richard Stepp 249 South Culver Street P.O. Box 749 Lawrenceville, GA 30046 (678) 407-0064

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.

During the seven years I served as a superior court judge, I was reversed in the following cases:

Scarborough v. Scarborough, 651 S.E.2d 42 (Ga. 2007). The Supreme Court of Georgia reversed the contempt judgment against the husband due to child support arrearages. The husband's appeal alleged that he was entitled to a credit for social security retirement benefit payments made to his former wife for the benefit of the children.

Smith v. State, 653 S.E.2d 510 (Ga. Ct. App. 2007). The Court of Appeals reversed the denial of the defendant's motion to suppress. The court held that defendant's encounter with the police amounted to a detention unsupported by sufficient reasonable suspicion.

Santaniello v. Bennett, 675 S.E.2d 282 (Ga. Ct. App. 2009). The Court of Appeals reversed the grant of summary judgment to the prospective seller in a business matter concluding that genuine issues of material fact precluded summary judgment.

Gifford v. State, 686 S.E.2d 831 (Ga. Ct. App. 2009). The Court of Appeals reversed the denial of defendant's motion for discharge and acquittal on speedy trial grounds. It held that the filing of notice of conflict letters by the defendant's counsel was insufficient to constitute a waiver of the speedy trial demand and the fact that the defendant was not physically present in court when his case was called for trial did not constitute noncompliance with the speedy trial statute.

I am not aware of any case where my rulings as a superior court judge were affirmed with significant criticism of my substantive or procedural rulings.

While a Judge on the Court of Appeals of Georgia since January 2012, I have been reversed in the following cases:

State v. Sauls, 728 S.E.2d 241 (Ga. Ct. App. 2012), *rev'd*, 744 S.E.2d 735 (Ga. 2013). The Georgia Supreme Court reversed the Court of Appeals, holding that the implied consent notice was insufficient because it omitted the portion of the notice advising the defendant of the consequence of a refusal to submit to

chemical testing. The court concluded that the trial court properly granted the defendant's motion to suppress on this ground.

State v. Brown, 726 S.E.2d 654 (Ga. Ct. App. 2012), *rev'd*,750 S.E.2d 148 (Ga. 2013). The Georgia Supreme Court, in reversing the decision of the Georgia Court of Appeals, concluded that while a police sergeant had supervisory authority to implement a roadblock, there was *some* evidence to support the trial court's conclusion that the roadblock was not planned in advance to occur at a specific time.

Greenway v. Northside Hosp., 730 S.E.2d 742 (Ga. Ct. App. 2012), *rev'd sub nom. Roper v. Greenway*, No. S12G2030 (Nov. 18, 2013). The Georgia Supreme Court reversed the decision of the Court of Appeals and held that the deputy's act of providing a form, which subsequently led to the euthanasia of the plaintiff's dogs, could not be separated into discretionary and ministerial components. The court remanded the case back to the Court of Appeals for a determination of whether the deputy's manner of presenting the form was malicious.

While a judge on the Court of Appeals of Georgia, I have had no opinions affirmed with significant criticism of my substantive or procedural rulings.

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.

While a judge on the Court of Appeals of Georgia, I have authored 273 opinions of which 109 (40%) have been unpublished. In every instance where I have issued an unpublished opinion, the decision to do so was in accordance with court rules and agreed upon by the two other judges on the panel.

Unpublished opinions of the Court of Appeals of Georgia are filed and/or stored on our internal case management docket system and are searchable and accessible to court staff or judges as needed for research purposes. In the case of all unpublished opinions, the opinions are sent to the attorneys representing the parties and to the lower court judge whose decision was reviewed. Upon request, the opinions are also available to the public through our Clerk's office.

I estimate that, while a superior court judge, I wrote thousands of orders that were not published in official reporters. All written orders are available to the public in the Court Clerk's Offices of the counties within the Waycross Judicial Circuit.

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

While a judge for the Court of Appeals of Georgia, I have authored no significant opinions on federal or state constitutional issues due to the limited constitutional appellate jurisdiction of the court on which I serve. Our court has state-wide

appellate jurisdiction over all cases not reserved to the Supreme Court of Georgia or conferred on other courts by law. (Georgia Constitution, Article VI, Section V, Paragraph III). The Supreme Court of Georgia has exclusive appellate jurisdiction in all cases involving the construction of the Constitution of the State of Georgia or of the United States and in all cases in which the constitutionality of a law, ordinance, or constitutional provision is in question. (Georgia Constitution, Article VI, Section VI, Paragraph II). The opinions I have authored that involve the federal and state constitutions are generally limited to a review of whether a party was denied or waived certain constitutional rights. To this extent, I provide the following cases:

Spragins v. State, A13A0941, 2013 Ga. App. LEXIS 950 (Ga. Ct. App. Nov. 20, 2013).

Bulloch County School District v. Ga. Dept. of Education, A13A0970, 2013 Ga. App. LEXIS 915 (Ga. Ct. App. Nov. 14, 2013), *petition for cert. filed.*

Seitman v. State, 740 S.E.2d 368 (Ga. Ct. App. 2013).

Hatcher v. State, 739 S.E.2d 805, 808-810 (1) (Ga. Ct. App. 2013).

Hassard v. State, 738 S.E.2d 293, 295-296 (1) (Ga. Ct. App. 2013).

Gibson v. State, 737 S.E.2d 728, 729-731 (2) (Ga. Ct. App. 2013).

Morris v. State, 734 S.E.2d 926 (Ga. Ct. App. 2012).

State v. Curry, 732 S.E.2d 459 (Ga. Ct. App. 2012).

State v. Brown, 726 S.E.2d 654 (Ga. Ct. App. 2012), *rev'd*, 750 S.E.2d 148 (Ga. 2013).

Matthews v. Dukes, 726 S.E.2d 95, 100-101 (3) (Ga. Ct. App. 2012).

During the seven years that I served as a superior court judge, I presided over and issued decisions on federal or state constitutional issues in the following cases:

State v. Reed, Case No. 2007F07216, Superior Court of Coffee County, *aff'd*, 673 S.E.2d 246, 247-248 (3) (Ga. Ct. App. 2009).

State v. Daniel, Case No. 2005F05093, Superior Court of Coffee County, *aff'd*,679 S.E.2d 811, 813-814 (3) (Ga. Ct. App. 2009).

State v. Britt, Case No. 2006F09270, Superior Court of Coffee County, *aff'd*, 668 S.E.2d 461, 464-466 (1) (Ga. Ct. App. 2008).

State v. Hicks, Case No. 2003F04168, Superior Court of Coffee County, *aff'd*, 635 S.E.2d 830, 832-833 (1) (Ga. Ct. App. 2006).

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:

In my former capacity as a superior court judge I did not maintain, nor was I expected to maintain, a standing recusal list. During the seven years I served, I was assigned approximately 13,794 cases for disposition. There were certainly occasions where a litigant may have moved for my recusal. I do not remember any cases where the parties moved to substitute me for cause, but it may have happened. These cases cannot be searched other than by a physical review of the file. However, I did voluntarily recuse sua sponte on occasions where I may have known a party or recusal was necessary to otherwise avoid an appearance of impropriety. This probably occurred no more than five times over seven years. My judicial circuit did not employ an automatic recusal system.

I evaluated the necessity or propriety of recusal pursuant to the provisions of Canons 3 (E) and (F) of the Georgia Code of Judicial Conduct and also considered the provisions of Canon 2, which require judges to avoid impropriety and the appearance of impropriety. I also assessed recusal motions pursuant to the provisions of Rule 25 of the Uniform Rules of Superior Court, which contains affidavit and time limitation requirements for litigants seeking recusal.

While a judge on the Court of Appeals of Georgia, I have been assigned or otherwise responsible for voting on hundreds of cases. I have never been requested to disqualify myself from a case for any reason. However, I have recused sua sponte on occasion after I evaluated the necessity or propriety of recusal pursuant to the provisions of Canons 3 (E) and (F) of the Georgia Code of Judicial Conduct and also considered the provisions of Canon 2 of the Code of Judicial Conduct which require judges to avoid the appearance of impropriety. In addition, I followed the Court of Appeals Protocol on Disqualification and Recusal of Judges as contained in the Court's Internal Operations Manual (Appendix XXXIII). Our court does not employ an automatic recusal system. I have recused sua sponte in the following cases:

City of Douglas v. Hudson, A11A1914 (The case involved an appeal from my former judicial circuit, and involved a decision of my former judicial colleague and the chief judge of my former circuit).

Littlefield Constr. Co. v. Bozeman, A11A2363 (I recused because the case involved an appeal of a case from my former judicial circuit, and I personally knew a party).

Coastal Marshlands Protection Commission v. Altamaha Riverkeeper, A11A1844; *First Southern Bank et al. v. Altamaha Riverkeeper*, A11A1845 (The cases involved an attorney who served on my incorporated Court of Appeals election committee, and he had hosted a campaign fundraiser for me).

Hampton Island v. Asset Holding Co. 5, A12A1694; *Wallace v. Asset Holding Co. 5*, A12A1695; *Mason v. Asset Holding Co. 5*, A12A1696 (The matters involved an attorney who had hosted a fundraiser for me).

Smith v. Fairley Cisco, A12A0313; *Smith v. Fairley Cisco*, A12A0314 (I personally knew and was friends with the some of the attorneys who had hosted a campaign fundraiser for me. In addition, while a superior court judge, I had presided over related litigation).

Douglas Asphalt Co. v. Georgia DOT, A12A1593; *Douglas Asphalt Co. v. Linnenkohl*, A12A1933 (The matter involved an attorney who had hosted a fundraiser for me. I was also very familiar with extra-judicial matters concerning the litigation).

Wylie et al. v. Denton, A12I0276; *Suntrust Bank v. Denton*, A12I0277 (I was personal friends with the husband of one of the litigants).

Synovus Bank v. Griner, A12A1822 (The matter involved an attorney who had hosted a fundraiser for me).

Williams v. Eaves, A13D0216 (I presided over matters involving this litigant while serving as a superior court judge. The matter also involved a former Chief Assistant Public Defender from my former circuit as a party defendant).

Coffee Iron Works v. Qore Inc., A13A0613; *Spivey v. Qore Inc.*, A13A0616; *Spivey v. Qore Inc.*, A13A0617 (I personally knew and was friends with the some of the attorneys. I was also very familiar with extra-judicial matters concerning the litigation. Some of the lawyers also hosted a campaign fundraiser for me).

Wilkinson v. State, A13A1638 (While a superior court judge, I presided over this defendant's probation revocation hearing).

15. <u>Public Office, Political Activities and Affiliations</u>:

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 nominations for appointed office.

State Representative
Georgia General Assembly
District 168 (2001 – 2002)
District 145 (2002 – 2004) (District renumbered after reapportionment)

I was elected in 2000 and reelected in 2002.

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 maintained any membership in or held office in or rendered services to any political party or election committee. I have never held a position in or played a role in a political campaign other than my own.

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 a clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk

I have never served as a clerk to a judge.

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

1997–2004
Michael P. Boggs, PC
214 Screven Avenue
Waycross, Georgia 31501

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
McKenzie & McPhail
Concourse Parkway, Suite 2000
Atlanta, Georgia 30328
Associate Attorney

1991–1992
McKenzie, Martin, Taylor & McConnaughey
6201 Powers Ferry Road
Atlanta, Georgia 30339
Associate Attorney

1992–1995
Thomas & Settle
800 Plant Avenue
Waycross, Georgia 31501
Associate Attorney

1995–1997
Landers & Boggs, LLP
306 Isabella Street
Waycross, Georgia 31501
Partner

1997–2004
Michael P. Boggs, PC
214 Screven Avenue
Waycross, Georgia 31501
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 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 1990 to 1992, I was employed as an associate attorney with Atlanta firms McKenzie & McPhail and McKenzie, Martin, Taylor & McConnaughey. My practice during this time involved first and third party insurance defense litigation and subrogation in state and federal courts in and around Atlanta, Georgia. I defended property insurers in claims involving suspected arson, general property insurance coverage dispute matters, and occasional subrogation litigation.

From 1992 to 1997, I worked as an associate with Thomas & Settle, as a partner with Landers & Boggs, LLP and as a sole practitioner in

Waycross, Georgia where I handled a substantial volume of divorce, child custody, child support, contempt, adoption, and modification cases. I also focused on plaintiffs' personal injury litigation, workers' compensation defense, and creditor bankruptcy litigation. I represented small businesses in business formation and litigation cases and occasionally defended clients in appointed federal criminal cases. I also maintained a significant real estate practice during this time and provided counsel to several local community banks on general banking issues. From 1992 to 1995, I also worked as a county attorney.

From 1995 to 1997, while with Landers & Boggs, LLP, my practice included general constitutional claims defense litigation in federal court as a special assistant attorney general for the State of Georgia representing the Georgia Department of Corrections. These cases involved multiple jury trials in alleged constitutional deprivation cases initiated by inmates at Ware State Prison.

From 1997 to 2004, I maintained a general civil trial practice as a sole practitioner, focusing primarily on personal injury and domestic relations/family law matters. I also represented local banking institutions in real estate closings, foreclosure proceedings, debt collection, banking regulatory compliance, collateralization, and commercial code issues. I also represented clients in medical malpractice litigation in state and federal courts and provided various small business clients with general corporate counsel and litigation assistance in matters involving business formation, franchises, and dissolution issues. My practice also included representing a local development authority in complex economic development projects, occasional appointed federal criminal defense cases, and creditor bankruptcy litigation for various local small businesses.

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

During the first two years of my career, my clients consisted entirely of property insurers. My former clients included Georgia Farm Bureau, Hartford Insurance Company, Travelers Insurance Company, and AIG Insurance Company. I returned to my home town of Waycross in 1992, and each of my practices thereafter included typical general trial practice clients. I represented small business owners in contract disputes and general business matters including incorporation, dissolution, franchise, and collection. I also represented individuals in domestic relations matters, handled federal criminal appointed cases, and represented local banks in real estate matters.

In 1995, I formed a partnership with Daniell Landers in which we specialized in plaintiffs' personal injury matters, real estate matters, and creditor bankruptcy cases. Our clients included GMAC, Chrysler Credit

and Ford Motor Credit. I also represented the Georgia Department of Corrections as a special assistant attorney general in federal constitutional claims defense litigation.

In 1997, I started my own practice where I handled a variety of general litigation matters. My clients typically included banking and credit union institutions, individuals in domestic relations cases and personal injury matters, small business owners, and a local development authority.

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 1990 to 1992, 100% of my practice involved litigation. From 1992 through 2004, I was engaged in general trial practice which routinely involved litigation and included regular and frequent court appearances. Approximately 80% of my practice during this time involved litigation.

i. Indicate the percentage of your practice in:

1. federal courts:	10%
2. state courts of record:	90%
3. other courts:	0%
4. administrative agencies:	0%

ii. Indicate the percentage of your practice in:

1. civil proceedings:	90%
2. criminal proceedings:	10%

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

I tried approximately 25 cases to verdict, judgment or final decision in courts of record while practicing from 1990 to 2004. These included 23 cases as sole counsel and two as associate counsel.

i. What percentage of these trials were:

1. jury:	20%
2. non-jury:	80%

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 of America, et al. v. City of Alma, Georgia and Bacon County, Georgia, Defendants*, C.A. No. CV599-68 (1999). In the United States District Court for the Southern District of Georgia (Waycross Division). Hon. William T. Moore; Consent Decree entered on November 18, 1999.

I represented the plaintiff/intervenors in this civil rights litigation. The action was brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, following receipt by the Department of Justice from the Equal Employment Opportunity Commission of a charge of discrimination on behalf of the intervenors. My clients alleged that the defendants had discriminated against them and similarly-situated women on the basis of their sex by failing or refusing to hire them or to consider them for hire as firefighters, EMT's or paramedics, and by failing or refusing to take appropriate action to correct the effects of these discriminatory policies and practices. My clients had on file applications for full-time employment with the defendants, but the defendants instead hired eight male EMT/firefighters while never contacting or notifying the intervenors of the job vacancies.

I handled all aspects of the litigation including motions, discovery, and trial preparation and settlement negotiations. The matter was settled through the entry of a Consent Decree on November 18, 1999, which provided that the defendants would pay the sum of $180,000 to my clients, that all EMT/firefighter positions for a period of five years would be cleared through the Department of Justice, that future vacancies would be properly advertised, that periodic compliance reports would be provided to the Justice Department, and that the defendants would adopt, implement and maintain standardized application hiring processes and implement a program designed to recruit qualified female applicants.

Counsel for the United States:
Aaron D. Schuham
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington D.C. 20530
(202) 305-4151

Opposing Counsel:
For Defendant Bacon County, Georgia
George Hoyt (Deceased)
Sharon P. Morgan
800 International Tower
229 Peachtree Street, NE
Atlanta, Georgia 30303
(404) 582-8406

Scott Atwood
4151 Ashford Dunwoody Road, NE
Suite 512
Atlanta, Georgia 30319
(678) 894-2893

For Defendant City of Alma, Georgia
W. Grady Pedrick (deceased)
Christopher E. Parker
1170 Peachtree Street, NE
Suite 300
Atlanta, Georgia 30309
(404) 962-6456

2. *Hester v. Long*, Civil Action File No. 98RCCV664, In the Superior Court of Richmond County, Georgia (2002). Hon. William M. Fleming, Jr.; Trial August 26-28, 2002.

I, along with co-counsel Del Percilla, represented Ms. Hester in this medical malpractice litigation. Ms. Hester's claim primarily included allegations that the defendant physician violated the generally accepted standard of care in his treatment of her during and subsequent to her hysterectomy surgery. Specifically, he released my uninsured client from the hospital at night without regard for her obvious and severe infection. Her discharge resulted in permanent injuries and a subsequent surgery. I represented Ms. Hester throughout this case and her five day jury trial in 2002. The case resulted in a verdict of $225,000 for the plaintiff.

Co-Counsel:
Del Percilla, Jr.
6075 Roswell Road, NE

Atlanta, Georgia 30328
(770) 390-7548

Opposing Counsel:
Jack Slover
Two Ravinia Drive, Suite 1330
Atlanta, Georgia 30346
(404) 856-0040

3. *Luke v. Johnson and The Neurological Institute of Central Georgia, P.A.*, C.A. No. 94-CV-222-HL. In the United States Court for the Middle District of Georgia. Hon. Hugh Lawson; September 9-13, 1996.

I, along with my law partner Daniell S. Landers, represented Ms. Luke in this medical malpractice litigation. Ms. Luke alleged that the defendants violated the appropriate standard of care in scheduling, and then refusing to perform, a C-7/T-1 diskectomy and fusion on her knowing that the attendant and most likely risk of failing to operate was the almost certain risk of permanent paralysis. They likewise failed to refer Ms. Luke to a physician who would perform the surgery. Approximately three weeks after the cancellation of her surgery, Ms. Luke turned over in bed and ruptured her C-7/T-1 discs resulting in permanent paraplegia. This five-day jury trial was conducted in 1996 and resulted in a defense verdict. The case was subsequently settled to avoid an appeal. Ms. Luke received a confidential payment.

Co-Counsel:
Daniell S. Landers
301 Gibson Road
Lexington, South Carolina 29072
(803) 356-2829

Opposing Counsel:
Joseph H. Chambless
Chambless, Higdon Richardson Katz Griggs, LLP
3920 Arkwright Road, Suite 405
Macon, Georgia 31210
(478) 745-1181

4. *Godett v. Insley*, C.A. No. CV595-112, In the United States District Court for the Southern District of Georgia (Waycross Division). Hon. William T. Moore; Dismissed October 6, 1999.

I represented the Georgia Department of Corrections as a special assistant attorney general in the defense of this civil rights litigation. The plaintiff/inmate brought this action under 42 U.S.C. § 1983, contesting the conditions of his confinement at Ware Correctional Institute. Specifically, he claimed that the

defendant prison physician was deliberately indifferent to his previously diagnosed sickle-cell anemia disease. He claimed that the physician's revocation of his "medically unassigned" status and release to perform "light duty" prison labor violated the Eight Amendment's proscription against cruel and unusual punishment. I successfully advanced issues of sovereign immunity and claims preclusion pursuant to the Eleventh Amendment to the United States Constitution and prevailed on a motion to dismiss.

Opposing Counsel:
The plaintiff appeared pro se
Address unknown

5. *United States of America v. J.C.S.*, Case No. CR502-2, In the United States District Court for the Southern District of Georgia (Waycross Division). Hon. William T. Moore; Dismissed August 1, 2002. (For confidentiality purposes, initials are used to identify the defendant).

I, along with co-counsel Donnie Dixon, represented the defendant in this case where the defendant was charged with violations of federal drug laws including, manufacturing methamphetamine, possession of a listed chemical with intent to manufacture a controlled substance, attempt to manufacture methamphetamine, and aiding and abetting. This case was particularly unusual in that the defendant was well-known to me and I was personally aware of the defendant's life-long history of mental illness, including an early adolescent diagnosis of schizophrenia. Co-counsel Dixon and I worked for five months with the defendant's family, psychiatrist, the federal prosecutor, and the court in ultimately persuading the government to dismiss the case in recognition of the defendant's severely diminished mental capacity. The defendant agreed to hospitalization and mental health treatment as part of the disposition.

Co-Counsel:
Donnie Dixon
24 Drayton Street
Suite 100
Savannah, GA 31401
(912) 443-4070

Opposing Counsel:
Cameron Heaps Ippolito, Assistant United States Attorney
100 Bull Street
Savannah, GA 31401
(912) 652-4422

6. *Perry v. Stalvey*, C.A. No. CV593-057, In the United States District Court for the Southern District of Georgia (Waycross Division). Hon. James E. Graham; June 10, 1996.

I represented the State of Georgia as a special assistant attorney general in the defense of this civil rights litigation for the Georgia Department of Corrections. The nature of my representation included all aspects of discovery, responding to voluminous pro se motions, legal research, the preparation of substantive motions, and trial preparation. The pro se plaintiff/inmate brought this action pursuant to 42 U.S.C. § 1983, alleging that the defendant correctional officer assaulted him while the plaintiff was incarcerated at Ware Correctional Institute. Plaintiff alleged that the use of excessive force or the wanton infliction of pain violated the Eighth Amendment's proscription against cruel and unusual punishment. The issue involved whether the force used by the defendant correctional officer was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. The defendant contended that he did not have sufficient intent to cause harm and that the force applied was de minimis and thus not actionable. The defense involved claims of sovereign immunity and claims preclusion pursuant to the Eleventh Amendment to the U.S. Constitution. The jury trial resulted in a defense verdict.

Opposing Counsel:
The plaintiff appeared pro se
Address unknown

7. *Redding v. Gaither*, C.A. No. CV593-005, In the United States District Court for the Southern District of Georgia (Waycross Division). Hon. William T. Moore; Bench Trial June 25, 1996.

I represented the State of Georgia as a special assistant attorney general in the defense of this civil rights litigation for the Georgia Department of Corrections. The nature of my representation included all aspects of discovery, responses to voluminous pro se motions, legal research, the preparation of substantive motions, trial preparation and the trial of the case for the State. The pro se plaintiff/inmate brought this action pursuant to 42 U.S.C. § 1983 seeking an order directing the defendant, the former warden at Ware Correctional Institute, to enforce the current non-smoking policy at the prison and/or to institute an inmate classification system to classify all inmates relative to their smoking status. The case survived the defendants' motion for summary judgment due to the pending United States Supreme Court case involving the environmental tobacco smoke (ETS) claims of non-smoking inmates in *Helling v. McKinney*, 509 U.S. 25 (1993). The plaintiff sought nominal damages, punitive damages and temporary and permanent injunctive relief based upon his allegation that the prison was deliberately indifferent to his risk of harm from ETS by failing to honor his request to be assigned to a non-smoking room. He likewise claimed the prison failed to implement a smoke-free policy. The case was resolved on the defendant's motion to dismiss subsequent to the decision in *Helling*.

Opposing Counsel:
The Plaintiff appeared pro se
Address unknown

8. *United States of America v. Smith*, Case No. CR502-00009-001, In the United States District Court for the Southern District of Georgia (Waycross Division). Hon. William T. Moore; Plea October 21, 2002.

I represented the defendant as court appointed counsel in a case involving alleged violations of 21 U.S.C. § 841(a) (1), possession with intent to distribute 50 grams or more of cocaine base. The nature of my representation included all aspects of the defense of the matter ranging from arraignment, review of substantial volumes of discovery, waiver of detention, motion hearings, plea discussions, review of defendant's prior record, substantive discussions with the AUSA regarding prior convictions in light of a mandatory 20-years-to-life sentence, legal research, and meetings with probation regarding the pre-sentence investigative report. The representation concluded with the defendant entering a negotiated plea resulting in a term of incarceration of 168 months, five years supervised release, and a fine. The period of incarceration was substantially less than that which the defendant originally faced.

Opposing Counsel:
Cameron Heaps Ippolito, Assistant United States Attorney
100 Bull Street
Savannah, GA 31401
(912) 652-4422

9. *Georgia Dept. of Transportation v. 2.709 Acres of Land and J. N. West*, Civil Action No.: 03V-459, In the Superior Court of Ware County, State of Georgia. Hon. Clarence Blount; Case settled in 2003.
I represented the condemnee in this appeal involving an attempt by the Georgia Department of Transportation to exercise its powers of eminent domain to condemn a portion of the condemnee's pecan orchard. The nature of my involvement included all aspects of the litigation including substantial discovery, motions, trial preparation, and mediation. Pursuant to the declaration of taking, the condemnor paid into the registry of the court the sum of $17,800 as their estimate of the value of the taking. The case was unique in that it involved unusual damages (the value of the trees taken), including expert analysis and testimony from nationally known pecan tree valuation experts. My efforts resulted in the matter being resolved during mediation for the sum of $60,000.

Opposing Counsel:
Jerry W. Caldwell
Special Assistant Attorney General
156 South Brunswick Street

Jesup, GA 31546
(912) 427-8954

10. *Jones v. Murphy*. Case No. CV502-00049-JEG, In The United States District Court for the Southern District of Georgia (Waycross Division). Hon. William T. Moore; Dismissed July 16, 2002.

I represented the State of Georgia as a special assistant attorney general and as co-counsel with my law partner Daniell S. Landers in the defense of this civil rights litigation for the Georgia Department of Corrections. My representation included all aspects of discovery, responses to voluminous pro se motions, legal research, the preparation of substantive motions, and trial preparation. The pro se plaintiff inmate brought this action under 42 U.S.C. § 1983 contesting the conditions of his confinement at Ware Correctional Institute. Specifically, plaintiff claimed that the sixteen defendants (members of the institution's Special Emergency Response Team), used excessive force in restraining the plaintiff in a "six point" restraint following plaintiff's disruptive behavior. The case was dismissed on motion after the plaintiff failed to appear for jury trial.

Opposing Counsel:
The plaintiff appeared pro se
Address unknown

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

I represented the Okefenokee Area Development Authority, an entity representing Ware and Pierce Counties, in various industrial recruitment matters from 2001 to 2004. Of particular significance was my direct involvement and counsel to the Authority in recruiting Simmons Manufacturing Company to locate a production facility in the Ware County Industrial Park. My legal representation on this matter involved substantial complex business counsel involving property tax abatement matters, real estate collateralization issues, Freeport tax credits, bond issuances, payment and performance bond matters, construction contracts, Environmental Protection Division wetland mitigation/compliance, application and compliance with state "One Georgia" grant funding, economic impact analysis, and generally complex contract construction and review.

In 2008, I established an adult felony drug court program in my superior court judicial circuit. I served as the presiding judge for this program until 2012. During this time I was responsible for all matters pertaining to the program, including the writing of the

Participant Handbook and the Operations and Policy Manual. I recruited the local Community Service Board to fill administrative and counseling staff positions, negotiated drug screening equipment contracts, office leases, and developed all necessary court forms. I built the collaborative team framework with the public defender, district attorney, state probation, and local law enforcement agencies including the drafting of Memorandums of Understanding required by the Department of Justice. I was also involved in all community outreach including building relationships with prospective employers, instituting a private drug screening program for local governments, and coordinating GED program providers. I wrote all state and federal grant applications and was responsible for the implementation and fidelity of these grants. My duties included managing the program's budget and the completing of all necessary matters pertaining to the court's successful application for non-profit tax status. During this time I also served on the Georgia's Judicial Council Standing Committee on Drug Courts as an appointee of Chief Justice Leah Ward Sears of the Supreme Court of Georgia.

In 2011, I was elected by my peers as Secretary/Treasurer of the council of Superior Court Judges of Georgia. As a member of the council's Executive Committee and the Legislative Support Team, I was involved in monitoring and reporting on proposed legislation affecting the operations of the courts and devoted time during the legislative session to appear before legislative committees on behalf of the council. I was also active in pursuing the successful passage of legislation requested by the state's accountability court judges requiring the adoption of state-wide standards and practices for Georgia accountability courts.

I have not performed any lobbying activities for any clients or organizations.

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

During the Spring Semester of 2011, I taught a state and local government course (Political Science 2201-P.O.LS 2201-CRN: 20061) at Waycross College in Waycross, Georgia. The course included an introduction to the organization and processes of government at state and local levels, stressing the government and constitution of the State of Georgia with special emphasis on the legislative and judicial branches of Georgia government. A copy of the course syllabus is supplied.

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

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, 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 Form.

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

    See the 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.

       For at least some period of time, I would recuse from any matter in which I had familiarity from my service on the Court of Appeals of Georgia and any habeas corpus proceeding on any case over which I presided as a superior court judge. Otherwise, I am aware of no such conflicts of interest. Should an actual or potential conflict arise, I would consult all applicable statutes, rules, policies, procedures, case authority, 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 will abide by the Code of Conduct for United States Judges and all applicable statutes, rules, policies, procedures, and case authority related to avoiding or resolving actual or potential conflicts of interest, erring, as I have since I have served as a judge, on the side of recusal to avoid any appearance of impropriety.

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.

The Georgia Code of Judicial Conduct prohibits state court judges from giving legal advice or otherwise practicing law. As a result, for the last nine years, I have not been permitted to represent clients pro bono or otherwise. While in private practice, I occasionally handled divorce cases pro bono for victims of domestic violence and provided pro bono legal advice to displaced tenants.

My community service involvement also included providing occasional pro bono legal advice to the YMCA on personnel and human resources issues, advice to Waycross College on the development of a conflicts-of-interest policy, and pro bono legal advice to the Baptist Village Retirement Community on medical ethics matters.

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 22, 2013, I was contacted by a member of Senator Saxby Chambliss' judicial nomination panel to inquire if I would be interested in being considered for possible recommendation for a federal district judgeship in the Northern District of Georgia. I was contacted on July 23, 2013, by another member of Senator Chambliss' judicial nomination panel, who made additional inquiries regarding my interest in this position. Senator Chambliss contacted me on July 31, 2013, and informed me that he was submitting my name to the President for consideration. On August 2, 2013, I was contacted by an official from the White House Counsel's Office to schedule an interview. This interview was conducted in Washington, D.C., on August 7, 2013. I was contacted again by Senator Chambliss on September 5, 2013, and informed that the process was moving forward and that I would be hearing from the White House. On September 5, 2013, I was contacted by an official from the White House Counsel's Office and informed that I would be hearing from officials at the Department of Justice. Since September 10, 2013, I have

been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 13, 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 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
Boggs, Michael P.	U.S. District Court, Northern District of Georgia	01/6/2014
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	☑ Nomination Date 1/6/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☑ Amended Report	01/01/2013 to 12/15/2013
7. Chambers or Office Address		
Court of Appeals of Georgia 4th Floor State Judicial Building Atlanta, Georgia 30334-9006		

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.	Director	Okefenokee Swamp Park, Inc.
2.	Trustee	James M. Dye Foundation, Inc. (Affiliated with South Georgia State College)
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

Name of Person Reporting	Date of Report
Boggs, Michael P.	01/6/2014

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. 2012	Superior Courts of Georgia - salary	$1,731.00
2. 2012	County judicial stipend from circuit counties	$876.00
3. 2012	Court of Appeals of Georgia - salary	$152,820.00
4. 2013	Court of Appeals of Georgia - salary	$159,261.89

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	Ware County Board of Education - 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 Boggs, Michael P.	Date of Report 01/6/2014

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

Name of Person Reporting	Date of Report
Boggs, Michael P.	01/6/2014

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)	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. First Southern Bank (formerly The Patterson Bank) Accounts	A	Interest	J	T	Exempt				
2. State Farm: Variable Universal Life Policy	C	Interest	K	T	Exempt				
3. Judicial Retirement System of Georgia (Superior Court)	D	Interest	M	T	Exempt				
4. Employees Retirement System of Georgia (Court of Appeals)	A	Interest	K	T	Exempt				
5. Brokerage Account #1					Exempt				
6. - Coca-Cola Co common stock	A	Dividend	J	T	Exempt				
7. - Edward Jones Money Market funds	A	Interest	J	T	Exempt				
8. IRA #1	B	Int./Div.	K	T	Exempt				
9. -First Trust Build America Bonds (10-20) Series 14					Exempt				
10. -AMCAP Mutual Fund CL C (AMPCX)					Exempt				
11. -Capital World Growth & Income Fund CL C (CWGCX)					Exempt				
12. -Europacific Growth Fund CL C (AEPCX)					Exempt				
13. -Fundamental Investors Fund CL C (AFICX)					Exempt				
14. -Investment Co of America CL C (AICCX)					Exempt				
15. -Smallcap World Fund CL C (SCWCX)					Exempt				
16. -Washington Mutual Investors Fund CL C (WSHCX)					Exempt				
17. IRA #2	A	Dividend	K	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
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
Boggs, Michael P.	01/6/2014

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)	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)
18. -Delaware Diversified Value Fund CL A (DDVAX)					Exempt				
19. -Delaware Emerging Markets Fund CL A (DEMAX)					Exempt				
20. -Delaware SMID Cap Growth Fund CL A (DFCIX)					Exempt				
21. -Fundamental Investors Fund CL A (ANCFX)					Exempt				
22. -Growth Fund of America CL A (AGTHX)					Exempt				
23. -Income Fund of America Fund CL A (AMECX)					Exempt				
24. -Investment Co of America Fund CL A (AIVSX)					Exempt				
25. -New Perspective Fund CL A (ANWPX)					Exempt				
26. Peachstate Reserves 457 Plan - Lifecycle 2020 Fund	C	Dividend	K	T	Exempt				
27.									

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	Date of Report
	Boggs, Michael P.	01/6/2014

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

In preparing this report, I noticed that I inaddvertently misreported three income codes in Part VII of my nomination Report filed on December 23, 2013. Specifically, Column B(1) for Line 1 should have been reported as "A," Column B(1) for Line 2 should have been reported as "D," and Column B(1) for Line 8 should have been reported as "C."

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Boggs, Michael P.	01/6/2014

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/ **Michael P. Boggs**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		16	658	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		90	065	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		221	646
Real estate owned – personal residence		375	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		194	397				
Cash value-life insurance		21	317				
Other assets itemize:							
GA Judicial Retirement System		107	529				
GA Court of Appeals Retirement System		25	935				
				Total liabilities		221	646
				Net Worth		609	255
Total Assets		830	901	Total liabilities and net worth		830	901
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds AMCAP Fund	$ 2,476
American Funds Capital World Growth & Income Fund	3,822
American Funds EuroPacific Growth Fund	1,848
American Funds Fundamental Investors Fund	6,348
American Funds Growth Fund of America	2,940
American Funds Income Fund of America	3,947
American Funds Investment Company of America	7,891
American Funds New Perspective Fund	4,559
American Funds SMALLCAP World Fund	649
American Funds Washington Mutual Investors Fund	2,783
Coca-Cola Co. stock	7,165
Delaware Diversified Value Fund	5,646
Delaware Emerging Markets Fund	3,397
Delaware Smid Cap Growth Fund	1,031
First Trust Build America bonds	8,014
Peach State Reserves Lifecycle 2020 Fund	27,549
Total Listed Securities	$ 90,065

AFFIDAVIT

I, Michael P. Boggs, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 3, 2014
(DATE)

Michael P. Boggs
(NAME)

Paula F. Mixon
(NOTARY)

PAULA F. MIXON
NOTARY
MY COMM. EXPIRES JULY 2, 2017
PUBLIC
WARE COUNTY, GEORGIA

April 10, 2014

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

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I have reviewed the questionnaire I submitted to the Senate Judiciary Committee on January 14, 2014, in connection with my nomination to the United States District Court for the Northern District of Georgia, and I would like to provide some additional information with respect to my service as a State Representative in the Georgia General Assembly.

I deeply respect the Senate's constitutional responsibility to provide advice and consent on judicial nominations. In several instances in my original questionnaire, I omitted detail that I did not believe was responsive, based on the public questionnaires of other judicial nominees who also had served as state legislators, and I would like to apologize for not including this information. In addition, most of the material I have provided here was not readily available, and, as explained in greater detail below, I have located and exhausted new resources to provide the Committee with as much information as possible.

Q. 12(a)

In reviewing hard copies of the Charlton County Herald, I located the following Letter to the Editor, which I did not previously recall and which is only available in hard copy:

> Letter to the Editor, "Legislative Report," *Charlton County Herald*, June 19, 2002. Copy supplied.

Q. 12(c)

In my original questionnaire, I provided a summary description of my testimony as a State Representative before House and Senate committees in order to explain legislation I had sponsored and urge committee approval. The Assistant Clerk of the Georgia House of Representatives has confirmed that no audio or videotapes were kept or archived during my tenure, from 2001 to 2004, and that House committee meetings were not broadcast over the internet until the 2006 Legislative Session.

As a State Representative, I also had the occasion to speak on the floor of the Georgia House of Representatives, and to the best of my knowledge, the list of 13 speeches below includes all of my speeches. The daily proceedings of the Georgia House of Representatives are taped by Georgia Public Broadcasting (GPB) and searchable records extend only back to the 2009 Legislative Session. GPB does have archives of the Legislative Sessions from 2002 to 2008, but they are located in a new storage location and unavailable online. Furthermore, GPB only has DVD recordings extending back to 2005, and any recordings prior to that time are located on archived servers in a "legacy format" that must be specially decoded. Nevertheless, over the course of the last several weeks, GPB has been extraordinarily helpful in accessing available archives, locating as many of these video files as possible, and converting them to a useable format. As a result, I am able to provide a video recording for eight of my floor speeches.

April 1, 2004: I authored House Bill 1192, prohibiting the use of the Georgia Bureau of Investigation's nomenclature without permission. After the bill passed the Senate, I spoke on the floor of the House in support of my motion to adopt the Senate Amendments or Substitute to the Bill. My comments were made extemporaneously. I have no notes, transcript or recording. Because the records are not searchable electronically, GPB searched its archived files by date, and video coverage for April 1, 2004 could not be located. GPB informed me that the this file may have been lost due to a hard drive crash, may not have been converted, or may have been inadvertently deleted.

March 12, 2004: I authored House Bill 1335, requiring an opinion or memorandum of decision from the superior court sentence review panel. I spoke on the floor of the House of Representatives in introducing the measure and urging favorable consideration from my colleagues. My comments were made extemporaneously. I have no notes, transcript or recording. Because the records are not searchable electronically, GPB searched its archived files by date, and video coverage for March 12, 2004 could not be located. GPB informed me that the this file may have been lost due to a hard drive crash, may not have been converted, or may have been inadvertently deleted.

February 26, 2004: I spoke on the floor of the House of Representatives in favor of Senate Resolution 595 calling for a proposed constitutional amendment prohibiting same-sex marriages in Georgia. My comments were made extemporaneously. I have no notes but video coverage is supplied. (see: Video Attachments CD 2, file: hv022604.m4v at 2:10:26 - 2:14:04).

February 10, 2004: I authored House Bill 1192 regarding the use of the Georgia Bureau of Investigation's nomenclature without permission. I spoke on the floor of the House of Representatives in introducing the measure and urging favorable consideration from my colleagues. My comments were made extemporaneously. I have no notes but video coverage is supplied. (see: Video Attachments CD 1, file: hv021004.m4v at 1:33:07 - 1:35:59).

April 25, 2003: After the House of Representatives passed House Bills 462 (the Child Protection Act of 2003) and 463 (a bill strengthening the State Sexual Offender Registry), which I authored, I spoke on the floor of the House in support of my motion to adopt the

Senate Amendments or Substitute to the Bills. My comments were made extemporaneously. I have no notes, transcript or recording. GPB was able to provide me with three videos of the daily proceedings from April 25, 2003, but in reviewing these videos, I have been unable to find any record of my speech.

March 27, 2003: I authored House Bill 462, the Child Protection Act of 2003. I spoke on the floor of the House of Representatives in introducing the measure and urging favorable consideration from my colleagues. My comments were made extemporaneously. I have no notes but video coverage is supplied. (see: Video Attachments CD 1, file: hv032703.m4v at 2:48:53 - 2:54:48).

March 24, 2003: I authored House Bill 90, a bill providing for the submission of state bar applicants' fingerprints for a national background check. I spoke on the floor of the House of Representatives in introducing the measure and urging favorable consideration from my colleagues. My comments were made extemporaneously. I have no notes but video coverage is supplied. (see: Video Attachments CD 1, file: hv032403.m4v at 1:59:45 - 2:02:14).

March 6, 2003: I authored House Bill 463, a bill strengthening the State Sexual Offender Registry. I spoke on the floor of the House of Representatives in introducing the measure and urging favorable consideration from my colleagues. My comments were made extemporaneously. I have no notes but video coverage is supplied. (see: Video Attachments CD 1, file: hv030603 at 59:05 - 1:05:44).

April 3, 2002: As Chair of the Elections Subcommittee of the House Governmental Affairs Committee, I was asked by the Secretary of State to carry Senate Bill 414 in the House of Representatives following its passage in the Senate. This bill provided for the use of direct-recording electronic voting in Georgia. I spoke on the floor of the House in introducing the measure and urging favorable consideration from my colleagues. My comments were made extemporaneously. I have no notes but video coverage is supplied. (see: Video Attachments CD 1, file: hv040302 at 39:43 - 1:17:33).

March 26, 2002: I authored House Bill 1338, a bill clarifying property forfeiture provisions in cocaine possession cases. I spoke on the floor of the House of Representatives in introducing the measure and urging favorable consideration from my colleagues. My comments were made extemporaneously. I have no notes, transcript or recording. GPB was able to provide me with a partial video of the daily proceedings from March 26, 2002, but in reviewing this video, I have been unable to find any record of my speech.

March 26, 2002: I authored House Bill 1556, a bill providing for criminal background checks for bail bondsmen. I spoke on the floor of the House of Representatives in introducing the measure and urging favorable consideration from my colleagues. My comments were made extemporaneously. I have no notes, transcript or recording. (see: Video Attachments CD 1, file: hv032602.m4v at 2:30:29 - 2:32:07).

March 25, 2002: I authored House Bill 1369, a bill providing for a limited license for retail vendors of communications equipment. I spoke on the floor of the House of Representatives in introducing the measure and urging favorable consideration from my colleagues. My comments were made extemporaneously. I have no notes but video coverage is supplied. (see: Video Attachments CD 1, file: Hv032502.m4v at 1:22:29 - 1:25:42).

March 7, 2001: I authored House Bill 681, a bill expanding the membership of the Georgia Technology Authority Advisory Council of the Georgia Courts Automation Commission. I spoke on the floor of the House of Representatives in introducing the measure and urging favorable consideration from my colleagues. My comments were made extemporaneously. I have no notes, transcript or recording. Because the records are not searchable electronically, GPB searched its archived files by date, and video coverage for March 7, 2001 could not be located. GPB informed me that the this file may have been lost due to a hard drive crash, may not have been converted, or may have been inadvertently deleted.

As a State Representative, I sponsored 28 House Bills and 12 House Resolutions. I also co-sponsored at least 52 House Bills and 28 House Resolutions. Below is the list of all legislation that I sponsored or cosponsored, as maintained by the Georgia General Assembly, which only records the first six cosponsors of a bill or resolution. The text of this legislation can be found at the following website: http://www.legis.ga.gov/Legislation/en-US/Search.aspx.

HB 681 **Georgia Courts Automation Commission; advisory council; Georgia Technology Authority**
(1) Boggs, Mike 168th (2) Martin, Jim 47th
HC: Judy SC: DS&T
Status: May/16/2002 - House Date Signed by Governor

HB 694 **Ware County; homestead exemption**
(1) Boggs, Mike 168th
HC: SP&CA SC: SLGO
Status: Mar/14/2001 - Senate Passed/Adopted

HB 1022 **Special license plates; Boy Scouts of America**
(1) Borders, Ron 177th (2) Shaw, Jay 176th (3) Black, Ellis 178th
(4) Boggs, Mike 168th (5) Coleman, Terry 142nd
HC: MotV SC:
Status: Jan/17/2002 - House Second Readers

HB 1122 **Developmental highway system; change corridor descriptions**
(1) Smith, Tommy 169th (2) Mosley, Hinson 171st (3) Barnard, Terry 154th
(4) DeLoach, Buddy 172nd (5) Byrd, Roger 170th (6) Boggs, Mike 168th
HC: Trans SC:
Status: Jan/30/2002 - House Second Readers

HB 1284 **Developmental highway system; change description of road corridors**
(1) Smith, Tommy 169th (2) Mosley, Hinson 171st (3) Smith, Paul 12th
(4) Byrd, Roger 170th (5) Lane, Bob 146th (6) Boggs, Mike 168th
HC: Trans SC: RULES
Status: Apr/09/2002 - Senate Committed

HB 1303 **Marine manufacturers; contracts with dealers; termination provisions**
(1) Houston, Penny 166th (2) Boggs, Mike 168th (3) Hudson, Newt 156th
(4) Coleman, Terry 142nd (5) Westmoreland, Lynn 104th (6) Smith, Lynn 103rd
HC: IND SC: F&PU
Status: May/14/2002 - House Date Signed by Governor

HB 1317 **Nonambulatory livestock; humane handling and euthanization**
(1) Sims, Chuck 167th (2) Boggs, Mike 168th (3) Stokes, Jim 92nd
(4) Snow, Mike 2nd
HC: A&CA SC:
Status: Feb/12/2002 - House Second Readers

HB 1338 **Forfeiture of contraband property; change certain exemption provisions**
(1) Boggs, Mike 168th (2) Bordeaux, Tom 151st (3) Reichert, Robert 126th
(4) Walker, Larry 141st (5) Jenkins, Curtis 110th (6) Snow, Mike 2nd
HC: SJudy SC: S JUDY
Status: May/14/2002 - House Date Signed by Governor

HB 1369 **Insurance; retail vendors of communications equipment; limited license**
(1) Boggs, Mike 168th (2) Lord, Jimmy 121st (3) Harbin, Ben 113th
(4) Maddox, George 72nd (5) Shaw, Jay 176th
HC: Ins SC: I&L
Status: May/14/2002 - House Date Signed by Governor

HB 1427 **Open records; exempt name and identity of sexual assault victims**
(1) Harbin, Ben 113th (2) Campbell, Tom 42nd (3) Golick, Rich 30th
(4) Boggs, Mike 168th (5) Smith, Lynn 103rd (6) Unterman, Renee 84th
HC: Judy SC:
Status: Feb/19/2002 - House Second Readers

HB 1484 **Ware County; commissioner districts; reapportion**
(1) Boggs, Mike 168th
HC: SP&CA SC: SLGO
Status: Apr/25/2002 - House Date Signed by Governor

HB 1556 **Bondsmen; criminal background check**
(1) Boggs, Mike 168th (2) Skipper, Jimmy 137th (3) Snow, Mike 2nd
(4) Jenkins, Curtis 110th (5) Sims, Chuck 167th
HC: SJudy SC: JUDY
Status: Apr/03/2002 - Senate Read Second Time

HB 1617 **National motto; display in government buildings and public schools**
(1) Smith, Tommy 169th (2) Mosley, Hinson 171st (3) Boggs, Mike 168th
(4) Byrd, Roger 170th (5) Tillman, E 173rd (6) Sims, Chuck 167th
HC: Ed SC:
Status: Mar/18/2002 - House Committee Favorably Reported

HR 247 **Morton, Joe; commend**
(1) Boggs, Mike 168th (2) Smith, Tommy 169th (3) Sims, Chuck 167th
(4) Mosley, Hinson 171st (5) Houston, Penny 166th
HC: SC:
Status: Feb/08/2001 - House Read and Adopted

HR 439 **Wheeler, Reverend Freddie; commend**
(1) Smith, Tommy 169th (2) Boggs, Mike 168th (3) Mosley, Hinson 171st
HC: SC:
Status: Mar/01/2001 - House Read and Adopted

HR 1288 **National motto; urge support**
(1) Smith, Tommy 169th (2) Mosley, Hinson 171st (3) Byrd, Roger 170th
(4) Boggs, Mike 168th (5) Tillman, E 173rd (6) Sims, Chuck 167th
HC: Rules SC:
Status: Mar/26/2002 - House Passed/Adopted

HR 1611 **Blackshear High School FFA String Band; commend; S. V. Lee, Gene Davis, and Tony Cason; invite to House**
(1) Smith, Tommy 169th (2) Mosley, Hinson 171st (3) Boggs, Mike 168th
HC: Rules SC:
Status: Apr/09/2002 - House Passed/Adopted

HR 61EX1 **Monroe, William and Patricia; commend**
(1) Boggs, Mike 168th (2) Shaw, Jay 176th
HC: SC:
Status: Aug/17/2001 - House Read and Adopted

HB 35EX2 **Ware County; water and sewer authority; create**
(1) Boggs, Mike 168th
HC: SP&CA SC: SLGO
Status: Oct/01/2001 - House Date Signed by Governor

HB 90 **State bar applicants; submit fingerprints to FBI for check**
(1) Boggs, Mike 145th (2) Bordeaux, Tom 125th (3) Moraitakis, Nick 42nd P4
HC: Judy SC: JUDY
Status: May/29/2003 - House Date Signed by Governor

HB 140 **Criminal justice agencies; limit certain data to Georgia Crime Information Center; certain warrants**
(1) Buck, Thomas 112th (2) Boggs, Mike 145th (3) Coleman, Terry 118th
(4) Jenkins, Curtis 93rd (5) Snow, Mike 1st
HC: PubS SC: JUDY
Status: May/29/2003 - House Date Signed by Governor

HB 177 **Real estate appraisers, brokers, and salespersons; amend provisions**
(1) Powell, Alan 23rd (2) Stoner, Doug 34th P1 (3) Porter, DuBose 119th
(4) DeLoach, Buddy 127th (5) Boggs, Mike 145th
HC: GAff SC: RI&Util
Status: May/30/2003 - House Date Signed by Governor

HB 187 **Drivers' licenses; Class D permit holders; limitations**
(1) Forster, Ronald 3rd P1 (2) Day, Burke 126th (3) Hill, Victor 81st
(4) Boggs, Mike 145th (5) Lunsford, John 85th P2 (6) Dukes, Winfred 136th
HC: MotV SC:
Status: Jan/30/2003 - House Second Readers

HB 204 **Sales tax exemption; certain school clothes, supplies, computer items; limited time**
(1) Borders, Ron 142nd (2) Royal, Richard 140th (3) Black, Ellis 144th
(4) Shaw, Jay 143rd (5) Walker, Larry 115th (6) Boggs, Mike 145th
HC: W&M SC:
Status: Jan/31/2003 - House 2nd Read Engrossed Failed

HB 205 **Special license plates; Boy Scouts of America**
(1) Borders, Ron 142nd (2) Black, Ellis 144th (3) Shaw, Jay 143rd
(4) Boggs, Mike 145th
HC: MotV SC:
Status: Mar/12/2004 - House Committee Favorably Reported By Substitute

HB 254 **Human resources; Choose Life adoption support program; special license plates**
(1) White, Jack 3rd P2 (2) Smith, Tommy 129th P2 (3) Westmoreland, Lynn 86th
(4) Keen, Jerry 146th (5) Boggs, Mike 145th (6) Forster, Ronald 3rd P1
HC: C&YSC:
Status: Feb/04/2003 - House Second Readers

HB 286 **Human resources; Choose Life adoption support program; special license plates**
(1) White, Jack 3rd P2 (2) Smith, Tommy 129th P2 (3) Westmoreland, Lynn 86th
(4) Keen, Jerry 146th (5) Boggs, Mike 145th (6) Brock, Craig 5th
HC: C&Y SC:
Status: Feb/10/2003 - House Second Readers

HB 288 **Satilla Regional Water and Sewer Authority; name change from Ware County Water and Sewer Authority**
(1) Boggs, Mike 145th
HC: SP&CA SC: SLGO
Status: May/30/2003 - House Date Signed by Governor

HB 299 **Trial juries; state and defense; equal peremptory strikes**
(1) Westmoreland, Lynn 86th (2) Boggs, Mike 145th (3) Walker, Larry 115th
(4) Reece, Stacey 21st (5) Crawford, Mack 91st (6) Fleming, Barry 79th
HC: Judy SC:
Status: Feb/11/2003 - House Second Readers

HB 327 **Conditioned air equipment and plumbing; redefine; include certain natural gas piping systems**
(1) Powell, Alan 23rd (2) Ehrhart, Earl 28th (3) Boggs, Mike 145th
HC: GAff SC: RI&Util
Status: May/31/2003 - House Date Signed by Governor

HB 343 **Waycross, City of; commission districts; reapportion**
(1) Boggs, Mike 145th (2) Mosley, Hinson 129th P1
HC: SP&CA SC: SLGO
Status: Jun/03/2003 - House Date Signed by Governor

HB 352 **Licensing boards; complaints against licensee; certain notification**
(1) Harbin, Ben 80th (2) Campbell, Tom 39th (3) Powell, Alan 23rd
(4) Boggs, Mike 145th
HC: GAff SC: RI&Util
Status: May/31/2003 - House Date Signed by Governor

HB 384 **Open meetings and records; exception to disclosure; security issues**
(1) Stanley-Turner, LaNett 43rd P2 (2) Boggs, Mike 145th (3) Walker, Larry 115th
(4) Holmes, Bob 48th P1 (5) Stokes, Jim 72nd (6) Hill, Victor 81st
HC: Judy SC:
Status: Feb/14/2003 - House Second Readers

HB 415 **Sheriffs engaging in certain businesses; violation of oath of office**
(1) Snow, Mike 1st (2) Boggs, Mike 145th (3) Day, Burke 126th
(4) Jenkins, Curtis 93rd (5) Hill, Victor 81st (6) Chambers, Jill 53rd
HC: PubS SC: PS&HS
Status: Jan/12/2004 - Senate Recommitted

HB 427 **Elections; direct recording electronic voting systems; amend provisions**
(1) Powell, Alan 23rd (2) DeLoach, Buddy 127th (3) Boggs, Mike 145th
(4) Stoner, Doug 34th P1 (5) Mitchell, Billy 61st P3
HC: GAff SC: SLGO
Status: Jan/12/2004 - Senate Recommitted

HB 457 **Motor vehicles; reduce speed when passing certain stationary vehicles**
(1) Buck, Thomas 112th (2) Bridges, Ben 7th (3) Hill, Victor 81st
(4) Parham, Bobby 94th (5) Boggs, Mike 145th (6) Snow, Mike 1st
HC: MotV SC: TRANS
Status: May/31/2003 - House Date Signed by Governor

HB 462 **Sexual exploitation of children; computer pornography; obscene Internet contact with child**
(1) Boggs, Mike 145th (2) Westmoreland, Lynn 86th (3) Skipper, Jimmy 116th
(4) Bordeaux, Tom 125th (5) Smith, Tommy 129th P2 (6) Walker, Larry 115th
HC: Judy SC: JUDY
Status: Jun/02/2003 - House Date Signed by Governor

HB 463 **Sex offender registry; amend provisions**
(1) Boggs, Mike 145th (2) Westmoreland, Lynn 86th (3) Skipper, Jimmy 116th
(4) Bordeaux, Tom 125th (5) Rogers, Carl 20th (6) Mosley, Hinson 129th P1
HC: Judy SC: JUDY
Status: May/28/2003 - House Date Signed by Governor

HB 466 **Abortion; parental notification; identification requirements**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Watson, Stan 60th P2
(4) Oliver, Bert 121st P2 (5) Morris, Greg 120th (6) Boggs, Mike 145th
HC: Judy SC:
Status: Feb/26/2003 - House 2nd Read Engrossed Prevailed

HB 467 **Public meetings/records; exemptions from disclosure**
(1) Stanley-Turner, LaNett 43rd P2 (2) Boggs, Mike 145th (3) Walker, Larry 115th
(4) Holmes, Bob 48th P1 (5) Stokes, Jim 72nd
HC: Judy SC:
Status: Feb/26/2003 - House 2nd Read Engrossed Prevailed

HB 484 **Personal property in custody of law enforcement agency; disposition**
(1) Jenkins, Curtis 93rd (2) Boggs, Mike 145th (3) Mangham, Randal 62nd
HC: SJudy SC: S JUDY
Status: May/13/2004 - House Date Signed by Governor

HB 506 **Manufactured homes/mobile homes; certificate of permanent location; provide**
(1) Lunsford, John 85th P2 (2) Boggs, Mike 145th (3) Sims, Chuck 130th
(4) Keen, Jerry 146th (5) Skipper, Jimmy 116th (6) Westmoreland, Lynn 86th
HC: GAff SC: RI&Util
Status: May/31/2003 - House Date Signed by Governor

HB 558 **Athletic and Entertainment Commission; amend provisions**
(1) Powell, Alan 23rd (2) DeLoach, Buddy 127th (3) Boggs, Mike 145th
(4) Burkhalter, Mark 36th
HC: GAff SC: RI&Util
Status: Mar/12/2004 - Senate Read and Referred

HB 599 **Appeals; postconviction DNA testing; procedure**
(1) Thompson, Curt 69th P1 (2) Dix, Scott 70th P2 (3) Teilhet, Rob 34th P2
(4) Boggs, Mike 145th
HC: Judy SC: JUDY
Status: Jan/12/2004 - Senate Recommitted

HB 605 **Controlled substances; attempt or conspiracy to commit offense; sentence**
(1) Lunsford, John 85th P2 (2) Maddox, George 59th P2 (3) Moraitakis, Nick 42nd P4
(4) Day, Burke 126th (5) Keen, Jerry 146th (6) Boggs, Mike 145th
HC: SJudy SC:
Status: Feb/26/2004 - House Committee Favorably Reported By Substitute

HB 630 **Special license plates; Choose Life, Inc.**
(1) White, Jack 3rd P2 (2) Smith, Tommy 129th P2 (3) Westmoreland, Lynn 86th
(4) Keen, Jerry 146th (5) Boggs, Mike 145th (6) Forster, Ronald 3rd P1
HC: MotV SC:
Status: Mar/03/2003 - House Second Readers

HB 632 **GEMA; state government safety plans; exemptions**
(1) Snow, Mike 1st (2) Boggs, Mike 145th (3) Day, Burke 126th
(4) Forster, Ronald 3rd P1
HC: PubS SC:
Status: Apr/25/2003 - House Withdrawn, Recommitted

HB 827 **Open meetings and records; amend provisions**
(1) Stanley-Turner, LaNett 43rd P2 (2) Boggs, Mike 145th (3) Walker, Larry 115th
(4) Holmes, Bob 48th P1 (5) Stokes, Jim 72nd
HC: Judy SC:
Status: Apr/25/2003 - House Withdrawn, Recommitted

HB 833 **Public records; inspection; certain requests to be in writing**
(1) Fleming, Barry 79th(2) Boggs, Mike 145th(3) Richardson, Glenn 26th
(4) Stokes, Jim 72nd(5) Walker, Larry 115th(6) Crawford, Mack 91st
HC: Judy SC:
Status: Feb/18/2004 - House Committee Favorably Reported By Substitute

HB 864 **Certiorari and appeals; bill of costs; amend provisions**
(1) Boggs, Mike 145th
HC: Judy SC:
Status: Mar/28/2003 - House Second Readers

HB 867 **Communication service and devices; unlawful access; penalties**
(1) Golick, Rich 34th P3 (2) Boggs, Mike 145th
HC: PU&T SC:
Status: Mar/28/2003 - House Second Readers

HB 870 **License to carry pistol; law enforcement officer; no fee**
(1) Boggs, Mike 145th (2) Snow, Mike 1st (3) Smith, Tommy 129th P2
(4) Mosley, Hinson 129th P1
HC: PubS SC:
Status: Apr/07/2003 - House Second Readers

HB 1003 **Residential and General Contractors, State Licensing Board; create**
(1) Powell, Alan 23rd (2) Bruce, Roger 45th (3) Westmoreland, Lynn 86th
(4) Stoner, Doug 34th P1 (5) DeLoach, Buddy 127th (6) Boggs, Mike 145th
HC: GAff SC: RI&Util
Status: May/14/2004 - House Date Signed by Governor

HB 1105 **Sales tax exemption; wax and dies used by military**
(1) Sims, Chuck 130th (2) Smith, Tommy 129th P2 (3) Boggs, Mike 145th
(4) Roberts, Jay 131st
HC: W&M SC: FIN
Status: Mar/31/2004 - Senate Read Second Time

HB 1174 **Uniform Standards Code for Manufactured Homes Act; enact**
(1) Sims, Chuck 130th (2) Boggs, Mike 145th (3) Stokes, Jim 72nd
HC: GAff SC: RI&Util
Status: May/13/2004 - House Date Signed by Governor

HB 1183 **Controlled substances; offense related to addiction; penalty provisions**
(1) Hill, Cecily 147th (2) Boggs, Mike 145th (3) DeLoach, Buddy 127th
(4) Thompson, Curt 69th P1 (5) Mangham, Randal 62nd (6) Williams, Al 128th
HC: SJudy SC:
Status: Mar/12/2004 - House Committee Favorably Reported By Substitute

HB 1185 **Natural Resources; conservation rangers; powers; watercraft inspection**
(1) Shaw, Jay 143rd (2) Floyd, Johnny 132nd (3) Boggs, Mike 145th
(4) Rogers, Carl 20th (5) Channell, Mickey 77th (6) Roberts, Jay 131st
HC: SJudy SC: NR&E
Status: Mar/22/2004 - Senate Read Second Time

HB 1192 **Georgia Bureau of Investigation; nomenclature; definitions; usage; violations**
(1) Boggs, Mike 145th(2) Snow, Mike 1st
HC: PubS SC: PS&HS
Status: May/13/2004 - House Date Signed by Governor

HB 1219 **Assault and battery against county or municipal officers; penalties**
(1) Borders, Ron 142nd (2) Boggs, Mike 145th (3) Black, Ellis 144th
HC: SJudy SC:
Status: Jan/29/2004 - House Second Readers

HB 1228 **Voting precincts; boundaries; gated community or planned unit development**
(1) Smith, Lynn 87th (2) Powell, Alan 23rd (3) DeLoach, Buddy 127th
(4) Boggs, Mike 145th
HC: GAff SC: R&R
Status: Mar/24/2004 - Senate Read Second Time

HB 1264 **Criminal procedure; demands for trial; amend provisions**
(1) Teilhet, Rob 34th P2 (2) Fleming, Barry 79th (3) Walker, Larry 115th
(4) Thompson, Curt 69th P1 (5) Boggs, Mike 145th
HC: Judy SC:
Status: Jan/30/2004 - House Second Readers

HB 1273 **Jury duty; exemptions; certain caregivers and elderly**
(1) Boggs, Mike 145th (2) Westmoreland, Lynn 86th (3) Bordeaux, Tom 125th
HC: Judy SC:
Status: Feb/02/2004 - House Second Readers

HB 1280 **Coroners and deputy coroners; compensation**
(1) Boggs, Mike 145th (2) Porter, DuBose 119th
HC: GAff SC:
Status: Feb/26/2004 - House Committee Favorably Reported By Substitute

HB 1289 **Game and fish; licenses; hunting deer with dogs**
(1) Smith, Tommy 129th P2 (2) Williams, Al 128th (3) Mosley, Hinson 129th P1
(4) Boggs, Mike 145th (5) Sims, Chuck 130th (6) Barnard, Terry 121st P1
HC: GF&P SC:
Status: Feb/02/2004 - House Second Readers

HB 1294 **All terrain vehicles; restrictions, violations, penalties; change certain provisions**
(1) Sims, Chuck 130th (2) Boggs, Mike 145th (3) Smith, Tommy 129th P2
(4) Roberts, Jay 131st
HC: MotV SC:
Status: Mar/12/2004 - House Committee Favorably Reported By Substitute

HB 1300 **Utility contractors; licensing requirements; safety training**
(1) Powell, Alan 23rd (2) Boggs, Mike 145th (3) Burmeister, Sue 96th
(4) DeLoach, Buddy 127th
HC: GAff SC: RI&Util
Status: May/13/2004 - House Date Signed by Governor

HB 1329 **Crimes against minors; criminal negligence, cruelty, serious injury; redefine**
(1) Bordeaux, Tom 125th (2) Fleming, Barry 79th (3) Boggs, Mike 145th
(4) Oliver, Mary Margaret 56th P2
HC: Judy SC:
Status: Feb/05/2004 - House 2nd Read Engrossed Prevailed

HB 1330 **Task Force to Review State and Federal Health Insurance Mandates; create**
(1) Harbin, Ben 80th (2) Boggs, Mike 145th (3) Golick, Rich 34th P3
(4) Dodson, Ron 84th P1 (5) Keen, Jerry 146th
HC: Ins SC:
Status: Feb/05/2004 - House Second Readers

HB 1335 **Sentence reduction; review panel; memorandum of decision**
(1) Boggs, Mike 145th (2) Greene, Gerald 134th (3) Crawford, Mack 91st
(4) Walker, Larry 115th
HC: SJudy SC: JUDY
Status: Apr/07/2004 - Senate Conference Committee Appointed

HB 1358 **Public records disclosure; minors; redact identifying information**
(1) Martin, Chuck 37th (2) Boggs, Mike 145th (3) Walker, Larry 115th
(4) Campbell, Tom 39th (5) Burkhalter, Mark 36th (6) Westmoreland, Lynn 86th
HC: Judy SC: JUDY
Status: May/14/2004 - House Date Signed by Governor

HB 1360 **Electronic communications systems; subpoenas and warrants; provisions**
(1) Boggs, Mike 145th (2) Bordeaux, Tom 125th (3) Westmoreland, Lynn 86th
(4) Jenkins, Curtis 93rd (5) Smyre, Calvin 111th (6) Crawford, Mack 91st
HC: SJudy SC:
Status: Feb/06/2004 - House Second Readers

HB 1469 **Counties; certain officers; nonpartisan elections**
(1) Boggs, Mike 145th (2) Powell, Alan 23rd (3) DeLoach, Buddy 127th
(4) Walker, Larry 115th (5) Crawford, Mack 91st (6) Sims, Chuck 130th
HC: GAff SC:
Status: Feb/16/2004 - House Second Readers

HB 1498 **Charlton County; state court; create**
(1) Boggs, Mike 145th (2) Smith, Tommy 129th P2 (3) Mosley, Hinson 129th P1
HC: SP&CA SC: SLGO
Status: May/17/2004 - House Date Signed by Governor

HB 1537 **Religious heritage; recognize; prepare documents; counties display**
(1) Westmoreland, Lynn 86th (2) Richardson, Glenn 26th (3) Lunsford, John 85th P2
(4) Mills, James 67th P2 (5) Coleman, Terry 118th (6) Boggs, Mike 145th
HC: Rules SC:
Status: Mar/17/2004 - House Committee Favorably Reported

HB 1587 **Driving under the influence of marijuana; prohibition; remove exception**
(1) Boggs, Mike 145th (2) Keen, Jerry 146th
HC: SJudy SC:
Status: Feb/25/2004 - House Second Readers

HB 1597 **Abortion; minors; identification requirements**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
(4) Morris, Greg 120th (5) Watson, Stan 60th P2 (6) Burmeister, Sue 96th
HC: H&HS SC:
Status: Feb/25/2004 - House 2nd Read Engrossed Prevailed

HB 1601 **Ware County; probate judge; nonpartisan elections**
(1) Boggs, Mike 145th (2) Smith, Tommy 129th P2 (3) Mosley, Hinson 129th P1
HC: SP&CA SC: SLGO
Status: May/17/2004 - House Date Signed by Governor

HB 1602 **Ware County; state court solicitor-general and judge; compensation**
(1) Boggs, Mike 145th (2) Smith, Tommy 129th P2 (3) Mosley, Hinson 129th P1
HC: SP&CA SC: SLGO
Status: May/17/2004 - House Date Signed by Governor

HB 1657 **Juries; peremptory challenges; equal number of strikes**
(1) Boggs, Mike 145th (2) Bordeaux, Tom 125th (3) Campbell, Tom 39th
HC: Judy SC:
Status: Mar/02/2004 - House Second Readers

HB 1678 **Juries; peremptory challenges; equal number of strikes**
(1) Boggs, Mike 145th (2) Bordeaux, Tom 125th
HC: Judy SC:
Status: Mar/04/2004 - House 2nd Read Engrossed Failed

HB 1721 **Ware County; board of elections; create**
(1) Boggs, Mike 145th
HC: SP&CA SC: SLGO
Status: Apr/05/2004 - House Date Signed by Governor

HB 1723 **Local boards of education; child abuse, neglect, and abduction; develop prevention program**
(1) Hill, Cecily 147th (2) Hill, Victor 81st (3) Bridges, Ben 7th
(4) Reece, Barbara Massey 11th (5) Snow, Mike 1st (6) Boggs, Mike 145th
HC: Ed SC:
Status: Mar/12/2004 - House Second Readers

HB 1739 **Juries; peremptory challenges; equal number of strikes**
(1) Boggs, Mike 145th (2) Bordeaux, Tom 125th
HC: Judy SC:
Status: Mar/09/2004 - House 2nd Read Engrossed Failed

HB 1791 **Torts; joint trespassers; damages; recovery; amend provisions**
(1) Parrish, Butch 102nd (2) Boggs, Mike 145th (3) Dodson, Ron 84th P1
(4) Walker, Larry 115th (5) Childers, Buddy 13th P1 (6) Purcell, Ann 122nd
HC: Rules SC:
Status: Mar/15/2004 - House 2nd Read Engrossed Failed

HB 1836 **Regional development centers; state-wide water management plan; provisions**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
(4) Williams, Al 128th (5) Purcell, Ann 122nd (6) Smith, Paul 13th P2
HC: SP&CA SC:
Status: Apr/07/2004 - House First Readers

HR 27 **USA as Judeo-Christian nation; urge Congress reaffirm**
(1) Mosley, Hinson 129th P1 (2) Smith, Tommy 129th P2 (3) Porter, DuBose 119th
(4) Royal, Richard 140th (5) Boggs, Mike 145th (6) Sims, Chuck 130th
HC: Rules SC:
Status: Jan/17/2003 - House Second Readers

HR 40 **Police chiefs and department heads; observe day of recognition, 3/12/03**
(1) Day, Burke 126th (2) Snow, Mike 1st (3) Forster, Ronald 3rd P1
(4) Boggs, Mike 145th (5) Westmoreland, Lynn 86th (6) Skipper, Jimmy 116th
HC: SC:
Status: Jan/16/2003 - House Read and Adopted

HR 87 **U.S. President and nation's armed forces; express support of House**
(1) Mills, James 67th P2 (2) Keen, Jerry 146th (3) Burmeister, Sue 96th
(4) Buck, Thomas 112th (5) Boggs, Mike 145th (6) Mosley, Hinson 129th P1
HC: SC:
Status: Jan/29/2003 - House Read and Adopted

HR 116 **Firefighters' Recognition Day; recognize February 4, 2003**
(1) Snow, Mike 1st (2) Boggs, Mike 145th (3) Bridges, Ben 7th
(4) Forster, Ronald 3rd P1 (5) Hill, Victor 81st
HC: SC:
Status: Feb/04/2003 - House Read and Adopted

HR 123 **Markette, Hayden Augustus; commend**
(1) Boggs, Mike 145th (2) Shaw, Jay 143rd (3) Ehrhart, Earl 28th
(4) Smith, Tommy 129th P2 (5) Mosley, Hinson 129th P1
HC: SC:
Status: Feb/04/2003 - House Read and Adopted

HR 243 **Clinch County High School football team; invite team and its coaches to House**
(1) Boggs, Mike 145th (2) Shaw, Jay 143rd (3) Coleman, Terry 118th
HC: Rules SC:
Status: Feb/27/2003 - House Passed/Adopted

HR 291 **Raulerson, Mr. and Mrs. Duke; commend**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: SC:
Status: Feb/27/2003 - House Read and Adopted

HR 438 **Dial, Thomas Franklin; commend**
(1) Boggs, Mike 145th (2) Shaw, Jay 143rd(3) Smith, Tommy 129th P2
HC: SC:
Status: Mar/24/2003 - House Read and Adopted

HR 439 **Jones, Luther Elton, II; commend**
(1) Boggs, Mike 145th (2) Shaw, Jay 143rd (3) Smith, Tommy 129th P2
HC: SC:
Status: Mar/24/2003 - House Read and Adopted

HR 592 **Sharp, Robert R.; commend**
(1) Snow, Mike 1st (2) Boggs, Mike 145th (3) Jenkins, Curtis 93rd
(4) Coleman, Terry 118th
HC: SC:
Status: Mar/27/2003 - House Read and Adopted

HR 643 **Loyalty Day; recognize May 1, 2003**
(1) Boggs, Mike 145th (2) Walker, Larry 115th (3) Stokes, Jim 72nd
(4) Bunn, Barbara 63rd (5) Shaw, Jay 143rd (6) Hanner, Bob 133rd
HC: SC:
Status: Apr/07/2003 - House Read and Adopted

HR 684 **Richardson, Jerry D.; commend**
(1) Boggs, Mike 145th (2) Mosley, Hinson 129th P1 (3) Smith, Tommy 129th P2
HC: SC:
Status: Apr/08/2003 - House Read and Adopted

HR 753 **CSX Transportation's Rice Yard in Waycross; commend**
(1) Boggs, Mike 145th (2) Mosley, Hinson 129th P1 (3) Smith, Tommy 129th P2
(4) Fleming, Barry 79th
HC: SC:
Status: Apr/11/2003 - House Read and Adopted

HR 756 **McConnell, Gary W.; commend**
(1) Snow, Mike 1st (2) Reece, Barbara Massey 11th (3) Jenkins, Curtis 93rd
(4) Coleman, Terry 118th (5) Boggs, Mike 145th
HC: SC:
Status: Apr/11/2003 - House Read and Adopted

HR 958 **Strickland, John Andrew; commend**
(1) Boggs, Mike 145th (2) Smith, Tommy 129th P2 (3) Mosley, Hinson 129th P1
(4) Shaw, Jay 143rd
HC: SC:
Status: Jan/12/2004 - House Read and Adopted

HR 974 **Corrections, Georgia Department of; commend**
(1) Mosley, Hinson 129th P1 (2) Smith, Tommy 129th P2 (3) Boggs, Mike 145th
(4) Greene, Gerald 134th
HC: SC:
Status: Jan/14/2004 - House Read and Adopted

HR 975 **DeLoach, Terri; commend**
(1) Mosley, Hinson 129th P1 (2) Smith, Tommy 129th P2 (3) Boggs, Mike 145th
HC: SC:
Status: Jan/14/2004 - House Read and Adopted

HR 1008 **Lee Container Corporation; commend**
(1) Shaw, Jay 143rd (2) Boggs, Mike 145th
HC: SC:
Status: Jan/15/2004 - House Read and Adopted

HR 1072 **Brantley County's FFA forestry team; commend; invite Hampton Ammons to House**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: Rules SC:
Status: Feb/03/2004 - House Passed/Adopted

HR 1073 **Brantley County's FFA forestry team; commend; invite Erin Vickers to House**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: Rules SC:
Status: Feb/03/2004 - House Passed/Adopted

HR 1074 **Brantley County's FFA forestry team; commend; invite Jerrin Flowers to House**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: Rules SC:
Status: Feb/03/2004 - House Passed/Adopted

HR 1075 **Brantley County's FFA forestry team; commend; invite Buck Taylor to House**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: Rules SC:
Status: Feb/03/2004 - House Passed/Adopted

HR 1076 **Brantley County's FFA forestry team; commend; invite Richard Gill to House**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: Rules SC:
Status: Feb/03/2004 - House Passed/Adopted

HR 1113 **Charlton County; 150th year anniversary; commend**
(1) Boggs, Mike 145th (2) Smith, Tommy 129th P2 (3) Mosley, Hinson 129th P1
HC: SC:
Status: Jan/30/2004 - House Read and Adopted

HR 1245 **Nutt, Army Sergeant David Terrell; condolences**
(1) Sims, Chuck 130th (2) Boggs, Mike 145th (3) Walker, Larry 115th
(4) Coleman, Terry 118th (5) Keen, Jerry 146th (6) Skipper, Jimmy 116th
HC: SC:
Status: Feb/10/2004 - House Read and Adopted

HR 1360 **Cohen, Daniel S.; commend**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: SC:
Status: Feb/18/2004 - House Read and Adopted

HR 1361 **Gilleon, Roy L. Jr.; commend**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: SC:
Status: Feb/18/2004 - House Read and Adopted

HR 1362 **Hollis, Jerry II; commend**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: SC:
Status: Feb/18/2004 - House Read and Adopted

HR 1363 **Wade, Claude Milton; commend on 95th birthday**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: SC:
Status: Feb/18/2004 - House Read and Adopted

HR 1364 **Waters, Dr. Donald B.; commend**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: SC:
Status: Feb/18/2004 - House Read and Adopted

HR 1365 **James Virgil Johnson Bridge; honorary designation**
(1) Smith, Tommy 129th P2 (2) Mosley, Hinson 129th P1 (3) Boggs, Mike 145th
HC: SC:
Status: Feb/18/2004 - House Read and Adopted

HR 1366 **Brantley County School Nutrition Program; commend**
(1) Smith, Tommy 129th P2 (2) Boggs, Mike 145th
HC: SC:
Status: Feb/18/2004 - House Read and Adopted

HR 1422 **Okefenokee Trail; designate**
(1) Boggs, Mike 145th (2) Smith, Tommy 129th P2 (3) Mosley, Hinson 129th P1
(4) Shaw, Jay 143rd (5) Hill, Cecily 147th (6) Houston, Penny 139th
HC: Trans SC:
Status: Mar/01/2004 - House 2nd Read Engrossed Prevailed

HR 1634 **Strickland, Judge Joe C.; commend**
(1) Hill, Cecily 147th (2) Boggs, Mike 145th (3) Smith, Tommy 129th P2
(4) DeLoach, Buddy 127th
HC: SC:
Status: Mar/15/2004 - House Read and Adopted

HR 98EX **Hampton, Steve; commend**
(1) Smith, Tommy 129th P2 (2) Boggs, Mike 145th (3) Mosley, Hinson 129th P1
HC: SC:
Status: May/07/2004 - House Read and Adopted

Q. 12(d)

In my original questionnaire, I provided a summary description of my speeches and talks made from 2001 to 2004 while I was a member of the Legislature. When I served as a State Representative, I maintained my law office calendar on my laptop computer, which I discarded several years ago after it stopped working. To the extent that I may have had written calendars memorializing the dates of any speeches, I would have discarded them in 2012. When I became a judge in January 2005, the State Bar of Georgia directed me to maintain my law firm client and personal files for seven years, which I did, but I did not keep my records beyond that time. In completing my questionnaire, I made a good faith effort to search available records for media coverage of these speeches, but three of the local newspapers that covered my legislative district do not maintain electronic or searchable editions (even internally) for the time period in which I served as a State Representative. Their editions exist solely in bound volumes and on microfiche. A fourth local newspaper, the Waycross Journal-Herald/South Georgia Journal, does not maintain electronic editions searchable by the public for the time period in which I served as a State Representative. These editions are only available in bound volumes and on microfiche.

Therefore, in order to provide more information about my speeches and talks, I have performed a rigorous physical review of hard copies of newspaper coverage during that time. I obtained bound volumes of 515 editions of the Blackshear Times, the Charlton County Herald, and the Pierce County Press, and I spent five days reviewing approximately 8,050 pages. I also hired a journalist at the Waycross Journal-Herald/South Georgia Journal to review approximately 1,200 editions of that newspaper, covering approximately 20,000 pages. Through this research, I have identified the following 48 speeches and talks.

December 15, 2004: Panel Speaker, "Annual Pre-Legislative Forum," Ware Children's Initiative, Inc., Waycross, Georgia. I spoke on the progress of the new state health laboratory being built in Waycross. I have no notes, transcript or recording, but press coverage is supplied. The address for the Ware Children's Initiative, Inc. is 300 Williams Street, Waycross, Georgia 31501.

December 13, 2004: Program Speaker, YMCA Annual Christmas Banquet, Waycross, Georgia. I made remarks introducing the 2004 YMCA Community Service Award Winner. I have no notes, transcript or recording, but press coverage is supplied. The address for the YMCA of Waycross is 1634 Plant Avenue, Waycross, Georgia 31501.

July 16, 2004: Luncheon Speaker, Legislative Update, Waycross Exchange Club, Waycross, Georgia. I provided an update on bills from the most recent legislative session. I have no notes, transcript or recording, but press coverage is supplied. The address for the Waycross Exchange Club is 2401 Knight Avenue, Waycross, Georgia 31501.

July 7, 2004: Panel Speaker, "Voters Forum," Keystone Voters and Civic League, Waycross, Georgia. I participated in a question and answer forum for candidates seeking election in July 2004. I commented generally on my qualifications for Superior Court Judge. I have no notes, transcript or recording, but press coverage is supplied. The Keystone Voters and Civic League no longer exists.

June 11, 2004: Program Speaker, Legislative Update, Waycross Kiwanis Club, Waycross, Georgia. I provided an update on bills from the most recent legislative session. I have no notes, transcript or recording, but press coverage is supplied. The address for the Waycross Kiwanis Club is 1725 Memorial Drive, Waycross, Georgia 31501.

June 10, 2004: Program Speaker, Foster Parents Recognition Banquet, Ware County Department of Family and Children Services, Waycross, Georgia. I thanked local foster care families for their service to the children of the community, summarized the recently passed "Foster Parents Bill of Rights," and commented on the need for more foster families in the community. I have no notes, transcript or recording, but press coverage is supplied. The address for the Ware County Department of Family and Children Services is 1200 Plant Avenue, Waycross, Georgia 31501.

May 11, 2004: Program Speaker, Legislative Update, Blackshear Rotary Club. I provided an update on bills from the most recent legislative session. I have no notes, transcript or recording, but press coverage is supplied. The Blackshear Rotary Club has no physical address.

April 28, 2004: Remarks, Patterson Elementary School, Patterson, Georgia. I spoke to third grade students about the branches and levels of government. I have no notes, transcript or recording, but press coverage is supplied. The Patterson Elementary School address is 3414 Drawdy Road, Patterson, Georgia 31557.

March 6, 2004: Public Remarks, Town Hall Meeting, Waycross, Georgia. My remarks, discussing the recent work of the General Assembly were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

February 26, 2004: Program Speaker, Legislative Update, Blackshear Exchange Club, Blackshear, Georgia. I spoke to the club on efforts within the General Assembly to pass an amendment to the state constitution banning same-sex marriages. I have no notes, transcript or recording, but press coverage is supplied. The Blackshear Exchange Club has no physical address.

February 11, 2004: Public Remarks, Southeast Christian School, Blackshear Georgia. I made brief remarks on the presentment of a U.S. Flag to the school. I have no notes, transcript or recording, but press coverage is supplied. The address for Southeast Christian School (Now Southeast Christian Academy) is 217 W. Carter Avenue, Blackshear, Georgia 31516.

January 31, 2004: Public Remarks, Town Hall Meeting, Waycross, Georgia. My remarks, discussing the recent work of the General Assembly, were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

January 6, 2004: Program Speaker, Blackshear Rotary Club, Blackshear, Georgia. I spoke to the club on my decision to not seek re-election to the General Assembly and discussed my candidacy for Superior Court Judge. I have no notes, transcript or recording, but press coverage is supplied. The Blackshear Rotary Club has no physical address.

December 6, 2003: Public Remarks, Town Hall Meeting, Waycross, Georgia. My remarks, discussing the recent work of the General Assembly, were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

November 20, 2003: Panel Speaker, "Pre-Legislative Forum," Ware Children's Initiative, Inc., Waycross Georgia. I participated in a panel discussion generally discussing the upcoming legislative session and the state budget. I have no notes, transcript or recording but press coverage is supplied. The address for the Children's Initiative, Inc. is 300 Williams Street, Waycross, Georgia 31501.

October 11, 2003: Public Remarks, "Hunters Rally," Georgia Hunting and Fishing Federation, Blackshear, Georgia. I made brief remarks regarding pending hunting legislation. I have no notes, transcript or recording but press coverage is supplied. The Georgia Hunting and Fishing Federation has no physical address.

September 30, 2003: Public Remarks, Ribbon Cutting at St. George McKinney Community Health Center, McKinney Medical Center, St. George, Georgia. I made brief remarks thanking the McKinney Center for placing a facility in St. George. I have no notes, transcript or recording but press coverage is supplied. The address for the McKinney Medical Center is 218 Quarterman Street, Waycross, Georgia 31501.

September 12, 2003: Public Remarks, Charlton County High School, Folkston, Georgia. I made brief remarks on the presentment of a State Flag to the school. I have no notes, transcript or recording, but press coverage is supplied. The address for Charlton County High School is 994 Indian Trail, Folkston, Georgia 31537.

September 10, 2003: Program Speaker, Legislative Update, Waycross/Ware County Retired Educators Association, Waycross, Georgia. I updated the members on state budget cuts affecting retired educators. I have no notes, transcript or recording but press coverage is supplied. The Waycross/Ware County Retired Educators Association has no physical address.

August 13, 2003: Public Remarks, Charlton County Public Library, Folkston, Georgia. I made brief remarks on the presentment of a resolution from the Georgia General Assembly recognizing the 20th Century as "The Century of Women in the United States." The address for the Charlton County Public Library is 1291 Indian Trail, Folkston, Georgia 31537.

June 5, 2003: Program Speaker, Legislative Update, Waycross Exchange Club, Waycross, Georgia. I updated the Club on the work of the General Assembly and spoke on the status of the state budget, transportation funding and passage of the Child Protection Act. I have no notes, transcript or recording, but press coverage is supplied. The address for the Waycross Exchange Club is 2401 Knight Avenue, Waycross, Georgia 31501.

May 31, 2003: Public Remarks, Town Hall Meeting, Waycross, Georgia. My remarks, discussing the recent work of the General Assembly, were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

March 20, 2003: Public Remarks, Town Hall Meeting, Waycross, Georgia. My remarks, discussing the recent work of the General Assembly, were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

February 10, 2003: Public Remarks on the presentment of a State Flag to the Okefenokee Chamber of Commerce, Atlanta, Georgia. I made brief remarks to the Okefenokee Chamber of Commerce from Folkston, Georgia on their visit to the State Capitol. I have no notes, transcript or recording, but press coverage is supplied. The address for Okefenokee Chamber of Commerce is 3795 Main Street, Folkston, Georgia 31537.

February 1, 2003: Public Remarks, Town Hall Meeting, Waycross, Georgia. My remarks, discussing the recent work of the General Assembly, were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

January 20, 2003: Program Speaker, "Martin Luther King Day Program," First Born Church and the Keystone Voters League, Waycross, Georgia. I made remarks during the Martin Luther King Day Program thanking those who work for the betterment of the community. I have no notes, transcript or recording, but press coverage is supplied. The address for First Born Church is 1120 H. J. Echols Drive, Waycross, Georgia 31501. The Keystone Voters League no longer exists.

December 14, 2002: Public Remarks, Town Hall Meeting, Waycross, Georgia. My remarks, discussing the recent work of the General Assembly, were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

November 2, 2002: Public Remarks, "Homeland Founders Day Celebration," Homeland, Georgia. I made brief remarks commending Homeland on its celebration. I have no notes, transcript or recording, but press coverage is supplied. The address for the City of Homeland is 401 Pennsylvania Avenue, Homeland, Georgia 31537.

August 8, 2002: Program Speaker, Legislative Update, Waycross Exchange Club, Waycross, Georgia. I generally updated the club on the status of a local highway project. I have no notes, transcript or recording, but press coverage is supplied. The address for the Waycross Exchange Club is 2401 Knight Avenue, Waycross, Georgia 31501.

August 2, 2002: Program Speaker, Legislative Update, Waycross Kiwanis Club, Waycross, Georgia. I generally updated the club on significant legislation passed during the 2002 session of the General Assembly, provided a preview of the 2003 session, and reviewed local legislative accomplishments. I have no notes, transcript or recording, but press coverage is supplied. The address for the Waycross Kiwanis Club is 1725 Memorial Drive, Waycross, Georgia 31501.

June 5, 2002: Speaker, "Blue Star Memorial Marker Dedication," Garden Club of Georgia, Oleander District and Veterans of Foreign Wars of Folkston, Folkston, Georgia. I made remarks commending the clubs for recognizing and remembering those who fought for our country. I have no notes, transcript or recording, but press coverage is supplied. The Garden Club of Georgia, Oleander District, has no physical address. The Veterans of Foreign Wars Chapter of Folkston has no physical address.

April 30, 2002: Program Speaker, Annual Volunteer Luncheon, Concerted Services Head Start Program, Waycross, Georgia. I spoke about the importance of the Head Start program and thanked the volunteers for their support of the program. I have no notes, transcript or recording, but press coverage is supplied. The address for the Concerted Services Head Start Program of Waycross is 2100 Riverside Avenue, Waycross, Georgia 31501.

April 19, 2002: Program Speaker, Legislative Update, Waycross Kiwanis Club, Waycross, Georgia. I provided an update on bills from the most recent legislative session. I have no notes, transcript or recording, but press coverage is supplied. The address for the Waycross Kiwanis Club is 1725 Memorial Drive, Waycross, Georgia 31501.

March 16, 2002: Public Remarks, Town Hall Meeting, Folkston, Georgia. My remarks, discussing the recent work of the General Assembly, were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

December 20, 2001: Program Speaker, "One Nation Under God," Waycross College Exchange Club, Waycross, Georgia. I spoke about what it means to be an American and to be of service to one's God and country. I have no notes, transcript or recording, but press coverage is supplied. The address for the Waycross College Exchange Club (now South Georgia State College) is 2001 S. Georgia Parkway, Waycross, Georgia 31503.

November 27, 2001: Program Speaker, Legislative Update, Blackshear Rotary Club, Blackshear, Georgia. I provided an update on bills from the most recent legislative session. I have no notes, transcript or recording, but press coverage is supplied. The Blackshear Rotary Club has no physical address.

November 19, 2001: Program Speaker, Legislative Update, Ware County Exchange Club, Waycross, Georgia. I generally updated the club on the tax legislation that was approved in the 2001 Session of the Generally Assembly. I have no notes, transcript or recording, but press coverage is supplied. The Ware County Exchange Club has no physical address.

November 2, 2001: Program Speaker, Legislative Update, Waycross/Ware County Retired Educators Association, Waycross, Georgia. I updated the members on pending legislation affecting retired educators as well as tax legislation. I have no notes, transcript or recording but press coverage is supplied. The Waycross/Ware County Retired Educators Association has no physical address.

October 24, 2001: Program Speaker, Legislative Update, Ware County Lions Club, Waycross, Georgia. I gave an update on the work of the General Assembly, reapportionment and property tax legislation. I have no notes, transcript or recording, but press coverage is supplied. The Ware County Lions Club (Now the Waycross Okefenokee Lions Club) is 125 Sapp Lane, Waycross, Georgia 31501.

August 30, 2001: Program Speaker, Legislative Update, Waycross Exchange Club, Waycross, Georgia. I provided an update on bills from the most recent legislative session. I have no notes, transcript or recording, but press coverage is supplied. The address for the Waycross Exchange Club is 2401 Knight Avenue, Waycross, Georgia 31501.

June 16, 2001: Program Speaker, Green Thumb, Inc., Waycross, Georgia. I thanked the Green Thumb employees for their dedication and commitment to service for this non-profit senior employment and training program. I have no notes, transcript or recording, but press coverage is supplied. The address for Green Thumb, Inc. is 600 Plant Avenue, Waycross, Georgia 31501.

June 12, 2001: Program Speaker, Legislative Update, Waycross Rotary Club, Waycross, Georgia. I generally updated the club on the legislation passed during the 2001 Session of the General Assembly. I have no notes, transcript or recording, but press coverage is supplied. The address for the Waycross Rotary Club is P.O. Box 51, Waycross, Georgia 31502.

May 22, 2001: Public Remarks, Southeast Georgia Regional Development Center monthly meeting, Folkston, Georgia. I made brief remarks thanking the Development Center for their work on behalf of Southeast Georgia and discussed reapportionment. I have no notes, transcript or recording, but press coverage is supplied. The address for the Southeast Georgia Regional Development Center is 1725 S. Georgia Parkway, Waycross, Georgia 31503.

April 23, 2001: Program Speaker, Legislative Update, Central Baptist Church Merrymakers Group, Waycross, Georgia. I generally updated the club on the work of the General Assembly. I have no notes, transcript or recording, but press coverage is supplied. The address for the Central Baptist Church is 201 Ava Street, Waycross, Georgia 31501.

March 10, 2001: Public Remarks, Town Hall Meeting, Waycross, Georgia. My remarks, discussing the recent work of the General Assembly, were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

February 17, 2001: Public Remarks, Town Hall Meeting, Waycross, Georgia. My remarks, discussing the recent work of the General Assembly, were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

January 27, 2001: Public Remarks, Town Hall Meeting, Waycross, Georgia. My remarks, discussing the recent work of the General Assembly, were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

January 20, 2001: Public Remarks, Town Hall Meeting, Waycross, Georgia. My remarks, discussing the recent work of the General Assembly, were made to constituents during a town hall meeting. I have no notes, transcript or recording, but press coverage is supplied. There was no sponsorship organization.

Q. 12(e)

In reviewing hard copies of the Charlton County Herald, I located the following interviews, which I did not previously recall and which are only available in hard copy:

Vivian Wainwright, "Rep. Boggs Passes Child Protection Legislation," *Charlton County Herald*, March 24, 2004. Copy supplied.

Vivian Wainwright, "Boggs Sponsors Law Enforcement Legislation," *Charlton County Herald*, February 26, 2003. Copy supplied.

Vivian Wainwright, "Representative Boggs Outlines Natural Gas Services Available to Low-Income Households," *Charlton County Herald*, January 8, 2003. Copy supplied.

Vivian Wainwright, "Mike Boggs Could Represent Most of Charlton County with Changes in District Lines," *Charlton County Herald*, January 23, 2002. Copy supplied.

I would like to assure the Committee that I have always made good faith efforts in my submissions, and incorporating the additional information listed above, I certify that the information contained in these documents is, to the best of my knowledge, true and accurate. Thank you for your consideration of my nomination.

Sincerely,

Michael P. Boggs

Michael P. Boggs

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Mark Howard Cohen

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

   United States District Judge for the Northern District of Georgia

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.

   Troutman Sanders LLP
   5200 Bank of America Plaza
   600 Peachtree Street, N.E.
   Atlanta, Georgia 30308

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

   1955; Miami Beach, Florida

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

   1976 – 1979, Emory University School of Law; J.D., 1979

   1972 – 1976, Emory University; B.A. (*magna cum laude*), 1976

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

1999 – present
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, Georgia 30308
Partner (2001 – present)
Of Counsel (1999 – 2000)

1995 – 1999
Office of the Governor
State of Georgia
201 State Capitol
Atlanta, Georgia 30334
Executive Secretary (1998 – 1999)
Executive Counsel (1995 – 1998)

January – August 1995
Office of State Administrative Hearings
230 Peachtree Street, N.W., Suite 850
Atlanta, Georgia 30303
Chief State Administrative Law Judge

August – December 1994
University of Arizona
Office of the General Counsel
103 Administration Building
1401 East University Boulevard
Tucson, Arizona 85721
University Attorney

1981 – 1994
Office of the Attorney General
State of Georgia
40 Capitol Square, S.W.
Atlanta, Georgia 30334
Senior Assistant Attorney General (1989 – 1994)
Assistant Attorney General (1982 – 1989)
Staff Assistant Attorney General (1981 – 1982)

1979 – 1981
Chambers of the Honorable Joel M. Feldman
United States Magistrate Court
Northern District of Georgia
75 Spring Street, S.E.
Atlanta, Georgia 30303
Law Clerk

May 1978 – June 1979
T. Brian Glass
(Now practicing as Overbeck & Glass)
121 Linden Avenue, Suite 107
Atlanta, Georgia 30308
Research Assistant

October 1977 – May 1978
Alston, Miller & Gaines
(Now practicing as Alston & Bird LLP)
1201 West Peachtree Street
Atlanta, Georgia 30309
Research Assistant

June – August 1977
Garland, Nuckolls, Kadish & Martin
(Firm no longer in operation)
Atlanta, Georgia
Research Assistant

Other Affiliations (Uncompensated):

2003 – 2011
AMIKids of Georgia, Inc. (formerly Georgia Wilderness Institute)
1360 Peachtree Street, N.E.
Suite 1200
Atlanta, Georgia 30309
Board of Trustees (2003 – 2011)
Vice-Chair (2008 – 2010)

2003 – 2009
Emory Public Interest Committee
Emory University School of Law
Office of Career Services
1301 Clifton Road
Atlanta, Georgia 30322
Advisory Board

1999 – 2003
Georgia World Congress Center Authority
285 Andrew Young International Boulevard, N.W.
Atlanta, Georgia 30313
Board of Governors

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

   I have not served in the United States Military. I registered for the Selective Service upon turning age 18.

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

   Lawyers Foundation of Georgia Fellow (2007 – present)

   Selected as a "Super Lawyer" by *Law & Politics* and *Atlanta Magazine* for excellence in Government Law (2004 – present)

   AV-Rated, Martindale-Hubbell (Highest Ranking for Legal Ability and Ethical Standards) (1995 – present)

   Recognized by *Georgia Trend Magazine* as a member of Georgia's "Legal Elite" in Appellate Law (2012)

   Recognized in *The Best Lawyers in America* in Administrative/Regulatory Law (2007 – present) and Government Relations Law (2011)

   Resolution of Commendation, State Bar of Georgia, for advancement of justice in Georgia and support of the State Bar of Georgia (1998)

   Resolution of Commendation, Georgia House of Representatives, for legal assistance to the House during legislative and congressional redistricting (HR 1286) (1992)

   Resolution of Commendation, Georgia State Senate, for legal assistance to the Senate during legislative and congressional redistricting (SR 619) (1992)

   Honorary License to Practice Pharmacy, Georgia State Board of Pharmacy (1989)

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

   American Bar Association (2013)

   Georgia Judicial Nominating Commission
   Executive Counsel for Governor Zell Miller (1995 – 1999)

Northern District of Georgia Magistrate Judge Selection Panels
(2001 – 2008)

Senator Saxby Chambliss' Judicial and United States Attorney Selection Panel
Representative for Senator Zell Miller (2003 – 2005)

State Bar of Georgia (1979 – 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.

Georgia, 1979
Arizona, 1992 (inactive)

There have been no lapses in membership although as indicated, my membership in Arizona 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 the United States, 1983
United States Court of Appeals for the Eleventh Circuit, 1981
United States District Court for the Middle District of Georgia, 1982
United States District Court for the Northern District of Georgia, 1979
United States District Court for the Southern District of Georgia, 1989
Supreme Court of Georgia, 1979
Georgia Court of Appeals, 1979
Superior Courts of Georgia, 1979

With respect to the Eleventh Circuit Court of Appeals, my membership lapsed during my service as Executive Counsel and was re-activated in May 2001 after I joined Troutman Sanders and paid the renewal fee. There were no other lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held.

Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

AMIKids Georgia, Inc. (2003 – 2011)
Board of Trustees (2003 – 2011)
Vice-Chair (2008 – 2010)

Bleckley Inn of Court (1998 – present)

Emory Public Interest Committee (2003 – 2009)
Advisory Board

Georgia World Congress Center Authority (1999 – 2003)
Board of Governors

Gridiron Secret Society (2002 – present)
Honorary Member

Lawyers Club of Atlanta (1984 – present)

Lawyers Foundation of Georgia, Fellow (2007 – 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.

The Gridiron Secret Society is a campus fraternal society at the University of Georgia that has no female members. Otherwise, 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.

The Work-Product Doctrine in Government Litigation and Its Application to Open Records Laws, Government Attorneys Seminar, Institute of Continuing Legal Education in Georgia (Apr. 2006). Copy supplied.

Ethics and Professionalism: Considerations for Lawyer Lobbyists in Georgia, Troutman Sanders LLP (Jan. 2006). Copy supplied.

The Georgia Regional Transportation Authority: Governor Barnes' Prescription for Traffic and Pollution Control, Regional Transportation Seminar, Institute of Continuing Legal Education in Georgia (Oct. 1999). Copy supplied.

With David C. Will, *Administrative Law*, 51 Mercer L. Rev. 103 (1999). Copy supplied.

Letter to the Editor, The Atlanta Journal-Constitution (April 14, 1999). Copy supplied.

Letter to Roger Ebert, Film Critic, Chicago Sun-Times (June 28, 1998). Copy supplied.

Disciplinary Procedures Before the State Examining Boards, Institute for Continuing Legal Education (Spring 1989). Copy supplied.

With Stephanie B. Manis, *Georgia's Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine*, 40 Mercer L. Rev. 1 (1988). Copy supplied.

With Stephanie B. Manis, *Administrative Law*, 39 Mercer L. Rev. 43 (1987). Copy supplied.

With Stephanie B. Manis, *Administrative Law*, 38 Mercer L. Rev. 17 (1986). Copy supplied.

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

I do not recall preparing or contributing to any such reports, memoranda, or policy statements and I am unable to identify any copies of such materials through a diligent search of my records and Internet databases.

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.

Although I have searched my memory, my records, and Internet databases in responding to this question, there may be other communications relating, in whole or in part, to matters of public policy or legal interpretation that I have provided to public bodies or public officials (that do not fall under the attorney-client privilege) that I have been unable to recall or identify.

January 19, 2000: Speech on ethics requirements for the Georgia State Senate, delivered to a majority of its members. I have no notes, transcript, or recording from that presentation, but press coverage is supplied.

During my tenure with the Georgia Attorney General's office, I drafted a number of official and unofficial opinions on various areas of the law to public officials. Those opinions are enumerated below:

April 11, 1994 (1994 Op. Att'y. Gen. Ga. 94-16). Copy supplied.

March 7, 1994 (1994 Op. Att'y Gen. Ga. 94-9). Copy supplied.

January 21, 1994 (1994 Op. Att'y Gen. Ga. U94-2). Copy supplied.

January 19, 1994 (1994 Op. Att'y Gen. Ga. 94-3). Copy supplied.

December 15, 1993 (1993 Op. Att'y Gen. Ga. 93-27). Copy supplied.

September 30, 1993 (1993 Op. Att'y Gen. Ga. 93-24). Copy supplied.

September 20, 1993 (1993 Op. Att'y Gen. Ga. U93-8) Copy supplied.

September 2, 1993 (1993 Op. Att'y Gen. Ga. 93-21). Copy supplied.

September 1, 1993 (1993 Op. Att'y Gen. Ga. U93-7). Copy supplied.

March 11, 1993 (1993 Op. Att'y Gen. Ga. U93-2). Copy supplied.

November 4, 1992 (1992 Op. Att'y Gen. Ga.U92-18). Copy supplied.

October 7, 1992 (1992 Op. Att'y Gen. Ga. 92-27). Copy supplied.

October 2, 1992 (1992 Op. Att'y Gen. Ga. 92-26). Copy supplied.

August 19, 1992 (1992 Op. Att'y Gen. Ga. 92-21). Copy supplied.

August 13, 1992 (1992 Op. Att'y Gen. Ga. U92-13). Copy supplied.

August 5, 1992 (1992 Op. Att'y. Gen. Ga. 92-16). Copy supplied.

July 16, 1992 (1992 Op. Att'y Gen. Ga. 92-12). Copy supplied.

June 26, 1992 (1992 Op. Att'y Gen. Ga. 92-11). Copy supplied.

June 18, 1991 (1991 Op. Att'y Gen. Ga. 91-16). Copy supplied.

February 14, 1991 (1991 Op. Att'y Gen. Ga. U91-4). Copy supplied.

February 27, 1990 (1990 Op. Att'y Gen. Ga. U90-6). Copy supplied.

May 18, 1989 (1989 Op. Att'y Gen. Ga. U89-13). Copy supplied.

June 13, 1988 (1988 Op. Att'y Gen. Ga. U88-18). Copy supplied.

May 10, 1988 (1988 Op. Att'y Gen. Ga. 88-9). Copy supplied.

March 14, 1988 (1988 Op. Att'y Gen. Ga. U88-11). Copy supplied.

January 19, 1988 (1988 Op. Att'y Gen. Ga. U88-3). Copy supplied.

June 25, 1986 (1986 Op. Att'y Gen. Ga. 86-28). Copy supplied.

July 17, 1985 (1985 Op. Att'y Gen. Ga. U85-31). Copy supplied.

July 3, 1985 (1985 Op. Att'y Gen. Ga. U85-30). Copy supplied.

December 17, 1984 (1984 Op. Att'y Gen. Ga. U84-52). Copy supplied.

October 30, 1984 (1984 Op. Att'y Gen. Ga. U84-46). Copy supplied.

October 24, 1984 (1984 Op. Att'y Gen. Ga. U84-44). Copy supplied.

August 19, 1984 (1984 Op. Att'y Gen. Ga. U84-34). Copy supplied.

January 9, 1984 (1984 Op. Att'y Gen. Ga. 84-2). Copy supplied.

September 23, 1983 (1983 Op. Att'y Gen. Ga. 83-64). Copy supplied.

July 27, 1983 (1983 Op. Att'y Gen. Ga. U83-48). Copy supplied.

July 22, 1983 (1983 Op. Att'y Gen. Ga. 83-50). Copy supplied.

April 22, 1983 (1983 Op. Att'y Gen. Ga. 83-27). Copy supplied.

February 18, 1983 (1983 Op. Att'y Gen. Ga. U83-8). Copy supplied.

June 24, 1985: Speech on Ethics made to Certified Public Managers, State of Georgia. A copy of my remarks is supplied.

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

Although I have searched my memory, my records, and Internet databases in responding to this question, there may be other speeches or talks I have given that I have been unable to recall or identify.

March 1, 2013: Panelist, "Georgia Appellate Practice," Institute of Continuing Legal Education, Appellate Practice Section, State Bar of Georgia, Atlanta, Georgia. I participated in a panel discussion with judges of Georgia's appellate courts concerning keys to an effective appellate oral argument. I have no notes, transcript, or recording from that discussion, which was a portion of a day-long continuing legal education seminar on appellate practice in Georgia. The address of the Institute of Continuing Legal Education in Georgia is Post Office Box 1885, Athens, Georgia 30603.

November 14, 2012, October 13, 2011, October 14, 2010, November 12, 2009: Guest Speaker, Election Law classes taught by Professor Michael Kang at Emory University School of Law, Atlanta, Georgia. I discussed my experience in handling voting rights and election law cases. I have no notes, transcript, or recording from these discussions. The address of Emory University School of Law is Gambrell Hall, 1301 Clifton Road, Atlanta, Georgia 30322.

November 8, 2012: Panelist, "The Impetus and Impact of *Kenny A. v. Perdue*," Atlanta Bar Association, Public Interest Law Section, Atlanta, Georgia. I participated in a panel discussion concerning the litigation and settlement of the *Kenny A. v. Perdue* case. I have no notes, transcript, or recording from that discussion. The address of the Atlanta Bar Association is 229 Peachtree Street, NE, Suite 400, Atlanta, Georgia 30303.

January 28, 2011 & February 1, 2008: Instructor, Kessler-Eidson Trial Techniques Program for Emory University School of Law on the topics of direct and cross-examination. The materials for the students are prepared by the law school, and no

written materials were prepared by me or my colleagues. For a review of the program, see: http://www.law.emory.edu/academics/academic-programs/trial-techniques.html. The address for Emory University School of Law is Gambrell Hall, 1301 Clifton Road, NE, Atlanta, Georgia 30322.

January 27, 2007: Panelist, "Dollar and the Dome: Finding Justice; A Fred Friendly Discussion of the Process and Current Issues in Funding Georgia's Judicial System," Georgia Bar Media and Judiciary Conference. I participated in a panel discussion concerning the budgetary and political issues involved in funding the state's indigent defense system, which was a portion of a day-long symposium sponsored by law firms, university organizations, free speech groups, and news organizations to support the Georgia First Amendment Foundation. I have no notes, transcript, or recording from that discussion, but press coverage is supplied. The address of the Georgia First Amendment Foundation is 150 East Ponce de Leon Avenue, Suite 350, Decatur, Georgia 30030.

April 7, 2006: Speaker, "The Work-Product Doctrine in Government Litigation and Its Application to Open Records Laws," Government Attorneys Seminar, Institute of Continuing Legal Education in Georgia, Atlanta, Georgia. A copy of the written materials on which the discussion was based is supplied in response to Question 12a.

January 5, 2006: Speaker, "Ethics and Professionalism: Considerations for Lawyer Lobbyists in Georgia," Troutman Sanders LLP, Atlanta, Georgia. A copy of the written materials on which the discussion was based is supplied in response to Question 12a.

October 21, 1999: Speaker, "The Georgia Regional Transportation Authority: Governor Barnes' Prescription for Traffic and Pollution Control," Regional Transportation Seminar, Institute of Continuing Legal Education in Georgia, Atlanta, Georgia. A copy of the written materials on which the discussion was based is supplied in response to Question 12a.

October 5, 1995: Speaker, "So You Want to Be a Judge," Institute for Continuing Legal Education, Atlanta, Georgia. I discussed the procedure for applying to fill a vacancy on the trial and appellate courts of Georgia. I have no notes, transcript, or recording from that presentation. The address of the Institute for Continuing Legal Education in Georgia is Post Office Box 1885, Athens, Georgia 30603.

Spring 1989: Speaker, "Disciplinary Procedures Before the State Examining Boards," Institute for Continuing Legal Education, Atlanta, Georgia. A copy of the written materials on which the discussion was based is supplied in response to Question 12a.

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.

Although I have searched my memory, my records, and Internet databases in responding to this question, there may be other instances when I gave an interview with a newspaper, magazine, or radio or television station that I have been unable to recall or identify.

R. Robin McDonald, "Judge Denies $5.9M Bonus," *Daily Report*, July 21, 2011. Copy supplied.

Dorie Turner, "Huckaby Takes on New Challenge as Ga. Chancellor [with correction]," *The Associated Press*, May 15, 2011. Copy supplied.

Kathleen Baydala Joyner, "SAAG Costs Stay Consistent," *Daily Report*, April 27, 2011. Copy supplied.

R. Robin McDonald, "On the Rise: Joshua B. Belinfante," *Daily Report*, August 16, 2010. Copy supplied.

Meredith Hobbs, "Summer Classes Pared Down," *Daily Report*, June 7, 2010. Copy supplied.

Greg Land, "Chief Judge Has Need for Speed," *Daily Report*, May 6, 2010. Copy supplied.

Greg Land, Tony Mauro, and Marcia Coyle, "U.S. Justices Toss $4.5M Bonus," *Daily Report*, April 22, 2010. Copy supplied.

James Salzer and Cameron McWhirter, "Baker, Perdue Get Noticed," *The Atlanta Journal-Constitution*, March 28, 2010. Copy supplied.

James Salzer and Cameron McWhirter, "AG's Donors Find Work From State," *The Atlanta Journal-Constitution*, June 21, 2009. Copy supplied.

Andy Miller, "Blue Cross Must Pay $12 Million More," *The Atlanta Journal-Constitution*, December 5, 2008. Copy supplied.

Greg Land, "Manis Says 'It's Time' to Step Down," *Daily Report*, September 14, 2007. Copy supplied.

Tim Bentley, "Pie in the Sky," *Daily Report*, May 29, 2007. Copy supplied.

Andy Peters, "State Spent $36.6M for Outside Legal Help," *Daily Report*, January 10, 2007. Copy supplied.

Alyson M. Palmer, "Tough Race, Tougher Tactics," *Daily Report*, December 20, 2006. Copy supplied.

Alyson M. Palmer, "Hunstein's Campaign Looks to Pay Off Debt," *Daily Report*, November 13, 2006. Copy supplied.

Alyson M. Palmer and Andy Peters, "Big Buy for Hunstein Starts Air War," *Daily Report*, October 16, 2006. Copy supplied.

Andy Peters and Alyson M. Palmer, "Business Lobby Takes Aim at Three Justices of High Court," *Daily Report*, June 20, 2006. Copy supplied.

Andy Peters, "AG Has Money, But Opponent Has the GOP," *Daily Report*, May 22, 2006. Copy supplied.

Andy Peters, "Governor Taps New Executive Counsel." *Daily Report*, September 1, 2005. Copy supplied.

In July 2005, WSB-TV in Atlanta broadcast a report concerning allegations that former Governor Zell Miller misused funds from the Governor's "Mansion account" during his tenure. I was interviewed on camera as Governor Miller's former Executive Counsel by then WSB-TV reporter Dale Cardwell. I do not have a clip from that interview but I have supplied a copy of the print version of the televised report from the WSB-TV website.

Greg Bluestein, "AG Gets Cold Shoulder in Vetting Legislation," *Daily Report*, April 25, 2005. Copy supplied.

"Sorrow Shadows Courthouse," *Daily Report*, March 14, 2005. Copy supplied.

Jonathan Ringel, "Attorney General Emerged Victorious From *Perdue v. Baker* Power Struggle," *Daily Report*, December 29, 2003. Copy supplied.

Untitled, *Enrollment Management Report*, October 1, 2001. Copy supplied.

Sara Hebel, "U. of Georgia Settles Affirmative-Action Suit," *The Chronicle of Higher Education*, February 16, 2001. Copy supplied.

Bill Rankin, "UGA Keeps Eye on Court Appeal in Settling Claim, School Will Pay $55,000, Admit Two White Students, But More Lawsuits May Be Coming, Lee Parks Says," *The Atlanta Journal-Constitution*, February 7, 2001. Copy supplied.

Bill Rankin, "UGA Settles Lawsuit Over Admissions, Deal Won't Alter Acceptance Policies," *The Atlanta Journal-Constitution*, February 6, 2001. Copy supplied.

Marcia Coyle, "Supreme Court May Revisit *Bakke* Landmark," *Fulton County Daily Report*, January 18, 2001. Copy supplied.

James Salzer, "UGA's Black Enrollment Percentage Same as '99," *The Atlanta Journal-Constitution*, November 23, 2000. Copy supplied.

"UGA Admissions Suit Widened; Students Affected By Race, Gender Policy Can Join Action, Judge Rules," *The Florida Times-Union*, November 17, 1999. Copy supplied.

"Gingrich Says He Has No Plans to Run for Office in Next Few Years," *The Associated Press*, December 31, 1998. Copy supplied.

Peter Mantius, "Miller to Set Election for Gingrich Seat," *The Atlanta Journal-Constitution*, December 3, 1998. Copy supplied.

Bert Roughton, Jr., "2 Businessmen With Ties to Miller Face Ethics Probe Complaint Against Union County Officials Forces Governor to Call Hearing," *The Atlanta Journal-Constitution*, April 4, 1998. Copy supplied.

"Public Lists of Parolees Seldom Used Miller Proposal Shifts Responsibility From Citizens to GBI and Sheriffs to Publicize Offenders' Residences," *The Atlanta Journal-Constitution*, January 31, 1997. Copy supplied.

"Fumes Kill Man Working on Truck," *The Augusta Chronicle*, November 7, 1995. Copy supplied.

Christy Harrison, "American Indians Decry Marketing of Mayan Skulls," *The Atlanta Journal-Constitution*, September 21, 1993. Copy supplied.

Steve Harvey, "House Districts Rejected Again; Scramble on to Avoid Special Session," *The Atlanta Journal-Constitution*, March 30, 1992. Copy supplied.

Rhonda Cook, "Redistricters Face Tight Deadlines; But Feds Said They Rushed the 1st Time," *The Atlanta Journal-Constitution*, January 23, 1992. Copy supplied.

Charles Walston, "Data Sought on Metro, S. Ga. Districts," *The Atlanta Journal-Constitution*, November 27, 1991. Copy supplied.

Margaret Usdansky, "Doctor Involved in Surgery After Vote to Suspend License Not Informed of Board Action for 7 Weeks," *The Atlanta Journal-Constitution*, May 12, 1990. Copy supplied.

Richard Greer, "Hapeville Council Ends Policy on Signing For Public Records," *The Atlanta Journal-Constitution*, April 4, 1990. Copy supplied.

Rhonda Cook, "Vet Accused of Abusing Animals Cancels Warrant Against Witness," *The Atlanta Journal-Constitution*, March 29, 1990. Copy supplied.

Steve Harvey, "Hapeville's Records Policy Called Violation of Law," *The Atlanta Journal-Constitution*, March 16, 1990. Copy supplied.

I also recall that approximately three to five years ago, I was interviewed by a reporter at my local Kroger grocery store on a Sunday on the topic of Georgia's prohibition of Sunday sales of wine. I was informed by others that a portion of that interview was broadcast sometime that week on National Public Radio. I never heard the clip. I have searched the NPR website and other Internet databases and have been unable to locate the clip.

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

In January 1995, I was appointed by then-Governor Zell Miller to serve as the state's first Chief State Administrative Law Judge, who serves as the head of the Office of State Administrative Hearings in Georgia, the state agency created by the Georgia General Assembly to preside over the majority of state administrative hearings. I held that position until August 1995, at which time then-Governor Miller appointed me as his Executive Counsel. During the period of my service, my main duties were to obtain a budget appropriation from the Georgia General Assembly, secure office space, and employ a staff. Once the agency was operational, I was able to preside over fewer than ten cases before I was appointed as Executive Counsel to Governor Miller.

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

Because a majority of the decisions issued by the Office of State Administrative Hearings are initial decisions that are then subject to review by the agency, there were no decisions that went to "verdict" or "judgment" in the same manner as those in state or federal courts.

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

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

At the time of my tenure as Chief State Administrative Law Judge, the decisions of the Office of State Administrative Hearings were unreported.

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 held the position of Chief State Administrative Law Judge for seven months, and I issued approximately 15 decisions, none of which were published. Virtually all of my orders were based on forms and contained no substantive legal or factual analysis, such as a summary affirmance of an action taken by the Department of Public Safety to revoke a state-issued driver's license. I have included information on the sole written, unpublished decision I issued during my brief term that contained any significant legal or factual analysis.

Barry Reid v. Bert Hardin, Docket No. OSAH-OCA-95-1. Decision supplied.

This case involved a self-employed home repair and improvement service technician who took money from consumers, but failed to make repairs and improvements for a number of those consumers, some of whom were very elderly. After a full-day hearing, I found that many of the activities constituted violations of the Georgia Fair Business and Practices Act, and recommended that the Respondent be fined the maximum amount because the preponderance of the evidence established that the violations were intentional and egregious.

The attorneys for Complainant Reid were John S. Smith, III, 1518 Cervantes Place, The Villages, Florida 32159, (352) 575-2001, and Walter V. Landow, 3437 Lee Road, Shaker Heights, Ohio 44120, (216) 421-0578. The Respondent was pro se. The case was not reported, but a copy of my decision is supplied.

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.

At the time of my service in the Office of State Administrative Hearings, none of the decisions were published. Aside from the decision in *Reid v. Hardin*, all other orders that I signed during my short tenure as Chief State Administrative Law Judge were perfunctory and contained no substantive legal or factual analysis.

Reid v. Hardin, Docket No. OSAH-OCA-95-1. Decision supplied in 13c.

The attorneys for Complainant Reid were John S. Smith, III, 1518 Cervantes Place, The Villages, Florida 32159, (352) 575-2001, and Walter V. Landow, 3437

Lee Road, Shaker Heights, Ohio 44120, (216) 421-0578. The Respondent was pro se.

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.

At the time of my service with the Office of State Administrative Hearings, all of the decisions were unpublished and stored either in that office's files or in the files of the agency for which the hearing was conducted.

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

None.

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

None.

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

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

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

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

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

During the short period of time that I served as Chief State Administrative Law Judge for the Office of State Administrative Hearings, no motions were filed requesting my or any other Administrative Law Judge's recusal in any matter and I did not have to assess the necessity or propriety of recusal in any case for which I presided. When the agency modified its procedural rules after my departure, a rule was adopted providing for those situations when an Administrative Law Judge should be recused from hearing a case.

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 served as an appointed member of the Board of Governors for the Georgia World Congress Center Authority from 1999 to 2003. I was appointed to that position by then-Governor Zell Miller and confirmed by the Georgia State Senate.

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 served as the Treasurer for the Committee to Re-Elect Justice Carol Hunstein to the Supreme Court of Georgia from approximately 2001 until the present date. In her re-election campaign in 2006, I served as one of her campaign managers.

I have served as Treasurer for the following election committees: Committee to Keep Judge Wes Tailor on the State Court of Fulton County since January 2011, Committee to Keep Judge Cynthia Wright on the Superior Court of Fulton County from approximately 2004 to the present, Committee to Re-Elect Judge Brenda Hill Cole to the State Court of Fulton County from approximately 2001 to 2012,

and Committee to Re-Elect Judge Stephanie B. Manis on the Superior Court of Fulton County from approximately 2004 to 2007. All of those incumbent Georgia Superior and State Court judges ran unopposed, and my duties were limited to receiving contributions, depositing them in the appropriate campaign account, and filing the required campaign contribution disclosure reports.

I served on the transition team for Attorney General-elect Sam Olens from November 2010 through January 2011.

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

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

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

From 1979 to 1981, I served as law clerk to United States Magistrate Joel M. Feldman for the Northern District of Georgia.

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.

1981 – 1994
Office of the Attorney General
State of Georgia
40 Capitol Square, S.W.
Atlanta, Georgia 30334
Senior Assistant Attorney General (1989 – 1994)
Assistant Attorney General (1982 – 1989)
Staff Assistant Attorney General (1981 – 1982)

1994
University of Arizona
Office of the General Counsel
103 Administration Building
1401 East University Boulevard
Tucson, Arizona 85721
University Attorney

1995 – 1999

Office of the Governor
State of Georgia
201 State Capitol
Atlanta, Georgia 30334
Executive Secretary (1998 – 1999)
Executive Counsel (1995 – 1998)

1999 – present
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, Georgia 30308
Partner (2001 – present)
Of Counsel (1999 – 2001)

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

I have not served as a mediator or arbitrator. I have been appointed by the Supreme Court of Georgia to serve as a Special Master in a disciplinary proceeding brought by the State Bar of Georgia against a licensed attorney.

b. Describe:

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

In 1981, I began my 13-year career with the Georgia Attorney General's office. I was initially assigned to represent a number of state agencies in federal and state litigation and provide them with general legal advice. I appeared in federal and state trial courts and made arguments in appellate courts. I also began a practice of advising public officials on ethics and conflicts of interest issues as well as open meetings and open records requirements, which continued throughout my tenure with the Attorney General's office.

In 1984, I was promoted to an assistant division director position, both supervising other attorneys and representing a number of professional licensing boards and administrative agencies. I participated in hundreds of hearings before administrative law judges concerning matters involving potential disciplinary action against physicians, pharmacists, nurses, and other health care professional and nonprofessional licensees. Many of those hearings involved issues relating to alleged malpractice and criminal

activities. I also handled all of the appeals from those decisions to the applicable Georgia court.

In 1989, I was again promoted to lead the office's Government Operations Division where, among other clients, I represented the Office of the Secretary of State and the Board of Regents of the University System of Georgia. I handled many high profile litigation matters in both state and federal courts, advised and assisted the Georgia General Assembly during redistricting, and developed an expertise in election and education law. In addition, I represented all elected state judges in their official capacities and coordinated legal advice involving municipal and county officials.

In 1994, I served as counsel to the University of Arizona, representing the Schools of Medicine, Nursing, and Pharmacy. I prepared contracts, responded to discovery and open records requests, defended University employees in depositions, and advised administration and faculty on their legal responsibilities with respect to issues concerning education law.

After my services as the first Chief State Administrative Law Judge to manage the Office of State Administrative Hearings, Governor Miller appointed me as his Executive Counsel in 1995. In addition to providing legal advice to the Governor, I coordinated legal services for state government, drafted the Governor's annual legislative package, worked with members of the Georgia General Assembly, and supervised the work of the Judicial Nominating Commission. I served in that position until 1998, when I became Governor Miller's Executive Secretary, or Chief of Staff, for his final year in office.

In January 1999, I joined the Atlanta office of Troutman Sanders LLP. In my litigation practice, I have represented both governmental entities and private clients in federal and state litigation, both trial and appellate, involving constitutional, civil rights, voting rights, health care, and election matters. In my regulatory practice, I have advised clients on issues relating to contract procurement, health care, professional and industrial licensing, open records and open meetings laws, and lobbying and ethics requirements. I also assisted clients in developing legislation and strategies to assist in creating or expanding government contracting opportunities.

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

When I worked for the Georgia Attorney General's Office, my client was the State of Georgia and a large number of state agencies and public officials. I represented the State of Georgia and its agencies and officials in state and federal trial and appellate litigation. These agencies included

the Georgia Department of Human Resources, the Georgia Department of Family and Children Services, the Georgia Division of Children and Youth (now known as the Department of Juvenile Justice), the Georgia Department of Medical Assistance (now known as the Georgia Department of Community Health), Georgia's Professional Licensing Boards, the Georgia Board of Regents, and the Georgia Secretary of State. I also provided advice to county and municipal governments as well as candidates and elected officials who sought advice on election-related issues.

During my years as Executive Counsel and Executive Secretary, my client was Governor Zell Miller. In my capacity as Executive Counsel, I provided legal advice to the Governor and his staff as well as advice to state agencies and public officials.

Since joining Troutman Sanders LLP 15 years ago, I have represented a broad range of both private and public clients. The private clients have included corporate entities (both large and small), small business owners, and health care professionals and groups. The public clients have included the State of Georgia and the City of Atlanta. I provide advice on complex issues, draft agreements, and engage in both civil and administrative litigation on behalf of these 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.

During my tenure with the Georgia Attorney General's Office from 1981 to 1994 and Troutman Sanders LLP since 1999, I have appeared frequently in court. During the period when I was counsel to the University of Arizona, and later Executive Counsel and Executive Secretary to Governor Miller, I did not appear in court.

i. Indicate the percentage of your practice in:
   1. federal courts: 65%
   2. state courts of record: 20%
   3. other courts: 0%
   4. administrative agencies: 15%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather

than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried at least 75 cases to verdict, judgment, or final decision in courts of record, including cases before administrative law judges in trial-like proceedings. I tried 65 cases as sole counsel, eight as chief counsel, and two 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.

Perdue v. Kenny A., 130 S. Ct. 1662 (2010) (petition for writ of certiorari, 2009 WL 245095; merits brief, 2009 WL 1817043; reply brief; 2009 WL 3043975; argument transcript, 2009 WL 3293870).

NAACP v. Billups, 129 S. Ct. 2770 (2009) (opposition to certiorari, 2009 WL 1279196) (cert. denied)).

Crawford v. Marion County Election Board, 553 U.S. 181 (2008) (amicus brief, 2007 WL 42198483).

Georgia v. Ashcroft, 539 U.S. 461 (2003) (merits brief, 2003 WL 554486; reply brief, 2003 WL 1945491).

Cox v. Larios, 542 U.S. 947 (2004) (Jurisdictional Statement, 2004 WL 882937; Reply Brief Opposing the Motion to Affirm, 2004 WL 1211528).

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. *Kenny A., et al. v. Perdue, et al.*, No. 1:02-CV-1686-MHS, United States District Court, Northern District of Georgia, Hon. Marvin H. Shoob; June 2002 – present.

I was the lead attorney for the Governor and other state officials in defense of a class action lawsuit that alleged systemic deficiencies in the foster care system in metropolitan Atlanta. After an expedited period of discovery and a four-day hearing on a motion for a preliminary injunction, the district court found deficiencies in the operation of two emergency shelters but denied the motion based upon the state's promise to close the shelters the following year. After the state's subsequent motion for summary judgment was denied, the court ordered the parties into mediation, which resolved all substantive issues by the adoption of a Consent Decree for system-wide reforms, many of which have made a positive change in the lives of foster children. However, the parties could not agree on the amount of attorneys' fees to be awarded to plaintiffs. The district court awarded attorneys' fees in the amount of $10.5 million, which included a $4.5 million enhancement for quality of representation. *Kenny A. v. Perdue*, 454 F. Supp. 2d 1260 (N.D. Ga. 2006). On appeal, the Eleventh Circuit affirmed the award, including the enhancement, 532 F.3d 1209 (11th Cir. 2008), and denied rehearing en banc, 547 F.3d 1319 (11th Cir. 2009). I prepared a petition for writ of certiorari challenging the enhancement, which was granted by the United States Supreme Court. On behalf of the state petitioners, I argued the case before the Supreme Court, which subsequently reversed the district court's order enhancing the attorneys' fees award. *Perdue v. Kenny A.*, 130 S. Ct. 1662 (2010). I have continued to represent the State of Georgia and work closely with plaintiffs' counsel during the implementation of the Consent Decree.

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2. *United States v. State of Georgia*, No. 1:10-CV-249-CAP, and *United States v. State of Georgia*, No. 1:09-CV-119-CAP, United States District Court, Northern District of Georgia; Hon. Charles A. Pannell, January 2010 – present.

A complaint was filed by the United States Attorney General in 2009 alleging that the State of Georgia violated the Civil Rights of Institutionalized Persons Act (CRIPA) due to conditions in Georgia's state mental health institutions. A settlement agreement was immediately entered between the parties outlining a sweeping series of reforms for these facilities. One year later, the United States Attorney General filed a second complaint alleging that the State of Georgia's treatment of mental illness and mental retardation in its hospitals violated the Americans with Disabilities Act (ADA). I was retained as lead counsel for the State of Georgia in defense of the ADA complaint and to represent the state's interests during the implementation of the CRIPA settlement agreement. Following expedited discovery in the ADA case, the parties entered into a comprehensive settlement agreement before the trial of the ADA case was to begin. The landmark ADA agreement provides for additional services for persons with developmental disabilities so they may be served in the community as opposed to a hospital setting, and many additional services for persons with mental illness. I continue to represent state officials during the implementation of both CRIPA and ADA agreements and work closely with attorneys at the U.S. Department of Justice.

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Counsel for the United States:

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Timothy D. Mygatt
Judith C. Preston
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3. *Georgia v. Ashcroft*, No. 01-2111, United States District Court, District of Columbia (three-judge court), Hon. Harry T. Edwards, Hon. Emmet G. Sullivan, Honorable Louis F. Oberdorfer, October 2001 – June 2003.

This was a declaratory judgment action filed under Section 5 of the Voting Rights Act in the United States District Court for the District of Colombia to obtain preclearance of Georgia's congressional and legislative redistricting plans enacted following the 2000 decennial census. I was co-counsel for the State of Georgia. In all of the redistricting plans, the State "unpacked" the most heavily concentrated majority minority districts to create more "influence" districts. The U.S. Department of Justice made various objections to the reapportionment plans. There was an expedited period of discovery during which I participated in dozens of depositions. Following a four-day trial, the three-judge court precleared the State House and congressional redistricting plans, but denied preclearance for the State Senate Plan. *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002) (three-judge panel). I then assisted in the preparation of briefs filed on appeal to the United States Supreme Court. On appeal, the United States Supreme Court vacated the district court's opinion, concluding that the trial court failed to consider all factors relevant to preclearance when it rejected the State Senate Plan. *Georgia v. Ashcroft*, 539 U.S. 461 (2003).

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4. *Larios, et al. v. Cox, et al.*, No. 1:03-CV-693-CAP, United States District Court, Northern District of Georgia (three-judge court), Hon. Stanley Marcus, Hon. Charles A. Pannell, Hon. William C. O'Kelley, June 2003 – June 2004.

A group of plaintiffs challenged Georgia's legislative and congressional redistricting plans based on a violation of the Equal Protection Clause. I was co-counsel for the Georgia defendants. I participated in an expedited period of discovery and in a four-day bench trial conducted by the three-judge district court. The court held the legislature had systematically under-populated districts in Democratic areas of the state while it overpopulated districts in Republican areas of the state, resulting in a violation of the one-person, one-vote principle. *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) (three-judge panel). I helped draft

the brief on appeal to the United States Supreme Court, which summarily affirmed. *Cox v. Larios*, 542 U.S. 947 (2004).

Co-Counsel:

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E. Mark Braden
Baker Hostetler
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5. *Johnson, et al. v. Board of Regents, et al.*, Nos. 499CV169, 499CV181, United States District Court, Southern District of Georgia, Hon. B. Avant Edenfield, August 1999 – August 2001.

These were constitutional challenges to the University of Georgia's undergraduate admissions program in which points were awarded for gender and race in order to increase diversity. I was lead counsel for the Board of Regents and all state defendants. After an extensive discovery period, I prepared a motion for summary judgment on behalf of the state defendants. The district court ruled in favor of the plaintiffs' summary judgment motion, *Johnson v. Bd. of Regents*, 106 F. Supp. 2d 1362 (S.D. Ga. 2000). I argued the case on appeal in the Eleventh Circuit Court of Appeals, which upheld the decision of the trial court, 263 F.3d 1234 (11th Cir. 2001). The case was thereafter settled.

Co-Counsel:

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Atlanta, GA 30308
(404) 885-3313

Alfred L. Evans
Senior Assistant Attorney General
Deceased

Rodney K. Strong
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Counsel for Jennifer Johnson, *et al.*:

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Counsel for Intervenors:

Theodore M. Shaw
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666 Fifth Avenue
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6. *Cerulean Companies, Inc. v. Tiller, et al.*, Supreme Court of Georgia, 271 Ga. 65 (1999).

In May 1996, Blue Cross and Blue Shield of Georgia (BCBS) filed a petition with the Georgia Insurance Commissioner to convert from a non-profit company to a for-profit company, Cerulean Companies, Inc. As a part of the plan for conversion, BCBS policy holders were offered shares of Cerulean stock, which over half of the eligible subscribers accepted. The transaction was approved without an assessment of the plan's charitable trust obligations. After a lawsuit was filed by consumer organizations to challenge the conversion, a settlement agreement was approved providing for the transfer of funds to a charitable

foundation. In July 1998, BCBS/Cerulean announced that it was merging with WellPoint Health Networks, Inc. (WellPoint). I was co-counsel for WellPoint during the merger proceedings. A second lawsuit was then filed by certain BCBS policyholders who either made no response or rejected the offer of Cerulean stock, contending that they should receive either cash or WellPoint stock in the merger. I served as co-counsel for WellPoint as amicus curiae in the trial court and on appeal. After the policy holders received a favorable ruling in the trial court, the case was appealed to the Supreme Court of Georgia. I drafted a brief in the Supreme Court of Georgia urging that the case be reversed for failure to exhaust administrative remedies. On May 3, 1999, the Supreme Court of Georgia adopted the position taken in our amicus brief and held that the plaintiffs should have first filed an administrative action before the Commissioner of Insurance. The litigation was ultimately settled and WellPoint's acquisition of BCBS/Cerulean was completed.

Co-counsel:

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Counsel for Blue Cross and Blue Shield of Georgia, Inc.:

Charles A. Mathis, Jr.
Deceased

7. *Golden v. Georgia Bureau of Investigation*, Georgia State Personnel Board, 1986 – 1990.

I was counsel for the Georgia Bureau of Investigation (GBI) in a five-day evidentiary hearing to defend the termination of a senior GBI agent for misconduct in the line of duty. Because some GBI agents supported the personnel action and others did not, direct and cross-examination of the witnesses was extremely challenging. I conducted all of the examinations of witnesses and prepared the required briefs. The State Personnel Board upheld the termination as did the Georgia Court of Appeals. *Golden v Ga. Bureau of Investigation*, 198 Ga. App. 115, 400 S.E.2d 668 (1990).

Counsel for Don Golden:

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8. *Foster v. Georgia Board of Chiropractic Examiners*, Superior Court of Fulton County, Hon. Isaac Jenrette, 1985 – 1987.

I was counsel for the Georgia Board of Chiropractic Examiners. This case began as an administrative hearing to consider the imposition of disciplinary sanctions against a licensed chiropractor who dispensed certain nutritional substances to his patients. The administrative law judge ruled that the chiropractor was prescribing drugs and exceeded the scope of his license to practice. The case was appealed all the way to the Supreme Court of Georgia, and the chiropractor challenged the constitutionality of the Georgia chiropractic statute. At the time, the issue of the scope of chiropractic practice was being debated nationally. After representing the state licensing board at the administrative evidentiary hearing, I prepared all of the briefs filed on appeal. The Supreme Court of Georgia rejected the constitutional challenge and sustained the disciplinary sanction. *Foster v. Ga. Bd. of Chiropractic Examiners*, 257 Ga. 409, 359 S.E.2d 877 (1987).

Counsel for Foster:

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Counsel for Amicus Curiae Georgia Chiropractic Association:

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9. *Georgia Department of Medical Assistance v. Allgood*, No. 40894, Superior Court of Richmond County, Georgia, Hon. William M. Fleming, Jr., 1983 – 1984.
Georgia Department of Medical Assistance v. Parham, No. 41021, Superior Court of Baldwin County, Georgia, Hon. Hugh P. Thompson (now Justice, Supreme Court of Georgia), 1983 – 1984.
Georgia Department of Medical Assistance v. Athon, No. 41117, Superior Court of Rockdale County, 1983 – 1984.

Three separate complaints were filed by the Georgia state agency that administered Medicaid payments to challenge the receipt of such payments by members of the state legislature or their spouses who owned nursing homes in Georgia, based on an alleged violation of their constitutional duty of loyalty and conflict of interest laws. I represented the State agency in each case in bench trials that occurred in three different locations. All trial courts ruled in the legislators' favor, and those decisions were upheld by the Supreme Court of Georgia. *Ga. Dep't of Medical Assistance v. Allgood*, 253 Ga. 370, 320 S.E.2d 155 (1984).

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Counsel for Bobby Parham:

T. Dorsey Yawn
(no current business address available)

Counsel for Troy Athon:

A.R. Barksdale
Deceased

10. *Crowder v. Ginn*, Supreme Court of Georgia, 248 Ga. 824 (1982).

This Georgia superior court case originated as a lawsuit over a damage claim resulting from a motor vehicle accident involving a Georgia resident who subsequently became a resident of another state before personal service was perfected on him. The trial court quashed service of process upon the out-of-state resident. When the case came before the Supreme Court of Georgia, I filed an amicus curiae brief on behalf of the State of Georgia asking the Court to adopt the rule of long-arm jurisdiction contained in the U.S. Supreme Court's *International Shoe Co. v. Washington* decision, in which due process permits jurisdiction over a nonresident who has minimum contacts in the state where the court is trying the case. This would require the Georgia Supreme Court to overrule its decision relying on the U.S. Supreme Court's earlier *Pennoyer v. Neff* ruling. The Georgia Supreme Court adopted the position taken in my amicus brief, making this the first time the *International Shoe* doctrine was applied in Georgia.

Counsel for Crowder:

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Counsel for Ginn:

Hendley V. Napier
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.)

I was a member of the legal team at my firm retained to represent the Fulton-DeKalb Hospital Authority in 2007 when Grady Memorial Hospital, one of the largest public hospitals in the United States and the only Level One trauma center within a 100-mile radius of Atlanta, was facing a financial crisis. A task force composed of many of Atlanta's leading business leaders studied the management of Grady and concluded that the Grady Health System should be restructured into a new nonprofit corporation. We advised the existing Hospital Authority concerning the legal issues involved in the restructuring, and worked with business leaders and community groups to facilitate the restructuring process. A number of foundations pledged hundreds of millions of dollars to

save Grady's operations. While the system continues to face challenges, the work that went into the restructuring of Grady helped save a system vital to the indigent health care system in Atlanta.

When I was Executive Counsel to Governor Miller, the State faced an investigation into the conditions of its juvenile justice system by the U.S. Department of Justice, which could have resulted in massive litigation and a federal takeover of the system. Along with attorneys from the Georgia Attorney General's office and the Department of Justice, I helped negotiate a landmark settlement agreement in 1998 during Governor Miller's last year in office to provide for the monitoring of state actions designed to cure the overcrowded conditions, inmate abuse, poor medical care, and mental health treatment that then existed in state juvenile detention facilities. Federal oversight ended in 2009.

When I was a Senior Assistant Attorney General for the Georgia Attorney General's office, I was the lead attorney who worked with the Georgia General Assembly during the 1991 to 1992 reapportionment of Georgia's legislative and congressional districts. I was the main contact with the Department of Justice during this process, which led to a number of redistricting plans and eventually major litigation, concluding with the cases of *Miller v. Johnson*, 515 U.S. 900 (1995), and *Abrams v. Johnson*, 521 U.S. 74 (1997).

Between 2001 and 2002, I performed lobbying activities at the state level for the following clients of my law firm: Blue Cross and Blue Shield of Georgia, Elan Motor Sports Technologies, the Georgia Electronic Commerce Association, eMotion Mobility LLC, and the Georgia Premium Tax Legislative Group. My activities were limited to reviewing and drafting legislation for these organizations and discussing proposed legislation with members of the Georgia General Assembly.

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

    None.

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

    None. If nominated and confirmed, I would leave Troutman Sanders LLP, and I would cease to be entitled to any further income from 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 plans, commitments, or agreements to pursue outside employment if confirmed.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       I would recuse myself from any case of which I gained knowledge while a partner at Troutman Sanders LLP. In addition, in order to avoid even the appearance of impropriety, I would recuse myself for at least two years from hearing any case in which an attorney from Troutman Sanders LLP is representing a party, as recommended by the Committee on Codes of Conduct Advisory Opinion No. 24. Should any other actual or potential conflict arise, I would consult all applicable statutes, rules, policies, procedures, case authority, 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 will abide by the Code of Conduct for United States Judges and all applicable statutes, rules, policies, procedures, and case authority related to avoiding or resolving actual or potential conflicts of interest, erring on the side of recusal to avoid any appearance of impropriety.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in

serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

For a number of years while I have been in private practice, I have assisted indigent persons in defense of eviction proceedings initiated against them by landlords in Fulton County, Georgia, through the Eviction Defense Program managed by the Atlanta Volunteer Lawyers Foundation in partnership with the Atlanta Legal Aid Society.

In addition, I spent a significant portion of time in my private practice as a member of the Board of Trustees of AMIKids Georgia, Inc. (formerly known as the Georgia Wilderness Institute), a non-profit organization that, at the time of my service, oversaw the operation of three privately run Georgia residential facilities for juvenile offenders. These facilities provide education, training, and activities for juveniles who have been adjudicated as delinquent as an alternative to their commitment to a state youth correctional facility.

Finally, I served for six years in private practice as a member of the advisory board for the Emory University School of Law's Public Interest Committee, known as EPIC. EPIC is a student organization which raises funds through private contributions to fund grants to students to enable them to work at nonprofit organizations and government agencies practicing public interest law.

During my years in practice in the public sector as a member of the Georgia Attorney General's office, as the Chief State Administrative Law Judge, and as Executive Counsel and Executive Secretary to Governor Miller, there were prohibitions on my representing indigent clients. Nevertheless, particularly in my capacity as an Assistant Attorney General for the State of Georgia, I often provided assistance and direction to Georgia citizens who had issues concerning open records and open meetings laws and had difficulties in resolving complaints with state and local agencies.

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.

    During the summer of 2011, I was contacted by a member of United States Senator Saxby Chambliss' staff to inquire about my interest in being considered by the President to serve in the federal judiciary. Since October 6, 2011, I have been in contact with an official from the White House Counsel's Office, including a meeting in Washington, D.C. on October 11, 2011, to discuss my interest. Since

November 2, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 9, 2011, 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
Cohen, Mark H.	United States District Court Northern District of Georgia	01/06/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) United States District Judge	**5a. Report Type (check appropriate type)** ☑ Nomination Date 01/06/2014 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2013 to 12/26/2013
7. Chambers or Office Address Troutman Sanders LLP 5200 Bank of America Building 600 Peachtree Street, N.E. Atlanta, GA 30308		

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	Troutman Sanders LLP
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Cohen, Mark 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. 2013	Troutman Sanders LLP (Salary)	$300,000.00
2. 2012	Troutman Sanders LLP (Salary)	$368,710.75
3.		
4.		

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

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Cohen, Mark 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 8

Name of Person Reporting	Date of Report
Cohen, Mark 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	M	T					
2. Keyworth Bank (CD)	B	Interest	M	T					
3. The Private Bank (CD)	B	Interest	M	T					
4. Brokerage Account									
5. --Cambiar Opportunity Fund CAMWX	A	Int./Div.	K	T					
6. --William Blair Int'l Growth Fund BIGIX	A	Int./Div.	K	T					
7. --Delaware U.S. Growth Fund DEUIX	A	Int./Div.	K	T					
8. --Delaware Value Fund DDVIX	A	Int./Div.	K	T					
9. --Dreyfus Appreciation Fund DGAGX	A	Int./Div.	K	T					
10. --Eagle Small Cap Growth Fund HSIIX	A	Int./Div.	J	T					
11. --First Eagle Overseas Fund SGOIX	A	Int./Div.	J	T					
12. --John Hancock Classic Value Fund JCVIX	A	Int./Div.	K	T					
13. --Harbor Int'l Fund HAINX	A	Int./Div.	K	T					
14. --Hotchkis & Wiley Mid-Cap Value Fund HWMIX	A	Int./Div.	J	T					
15. --Invesco Global Real Estate Fund ARGYX	A	Int./Div.	J	T					
16. --Keeley Small Cap Value Fund KSCIX	A	Int./Div.	J	T					
17. --Lazard Emerging Equity Fund LZEMX	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
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
Cohen, Mark 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)
18. --Times Square Mid Cap Growth Fund TMDPX	A	Int./Div.	J	T					
19. --Morgan Stanley Inst'l Mid-Cap Growth Fund MPEGX	A	Int./Div.	J	T					
20. --Oppenheimer Devel. Markets Fund ODVYX	A	Int./Div.	J	T					
21. --PIMCO Commodity Real Return Strategy Fund PCRIX	A	Int./Div.	J	T					
22. --Guggenheim Mid-Cap Value Fund SEVAX	A	Int./Div.	K	T					
23. --Touchstone Large Cap Growth Fund TIQIX	A	Int./Div.	K	T					
24. --Victory Small Co. Opportunity Fund VSOIX	A	Int./Div.	J	T					
25. --Wells Fargo Adv. Emerg. Growth Fund WEMIX	A	Int./Div.	J	T					
26. --Goldman Sachs Fin. Sq. Treasury Instrum. Fund FTIXX	A	Int./Div.	J	T					
27. IRA Account #1	E	Int./Div.	M	T					
28. --AT&T stock (common)									
29. --Coca-Cola Co. stock (common)									
30. --Johnson & Johnson stock (common)									
31. --Southern Co. stock (common)									
32. --Hewlitt-Packard Sr. Unsecured Notes									
33. --Suntrust Bank Subord. Bonds									
34. IRA Account #2	E	Int./Div.	O	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
Cohen, Mark 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)
35. --Wells Fargo Stable Return Fund									
36. --PIMCO Real Return Fund PRRIX									
37. --Vanguard Mid-Cap Index Fund VMCIX									
38. --Nuveen Real Estate Securities Fund FARCX									
39. IRA Account #3	D	Int./Div.	N	T					
40. --Invesco Growth & Income Fund ACGQX									
41. --Artisan Mid-Cap Value Fund ARTQX									
42. --Morgan Stanley Inst. Mid-Cap Growth Fund MPEGX									
43. --Vanguard All-World ex-U.S. Index Fund VFWSX									
44. --Oakmark Equity Income Fund OAKBX									
45. --PIMCO Total Return Fund PTTRX									
46. --Galliard Retirement Income Fund									
47. New York Life: Whole Life Policy	A	Dividend	K	T					
48. Troutman Sanders Cash Balance Plan	D	Int./Div.	L	T					

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

Name of Person Reporting	Date of Report
Cohen, Mark H.	01/06/2014

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Cohen, Mark 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/ **Mark H. Cohen**

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 (including CDs)		322	803	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	690	756	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		71	366
Real estate owned – personal residence		395	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		125	000				
Cash value-life insurance		33	674				
Other assets itemize:							
Troutman Sanders Cash Balance Plan		77	471				
				Total liabilities		71	366
				Net Worth	2	573	338
Total Assets	2	644	704	Total liabilities and net worth	2	644	704
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SECURITIES

Listed Securities	
Artisan Mid Cap Value Fund	$ 38,685
AT&T Inc. stock	35,210
Bank of America Money Market Fund	125,863
Cambiar Opportunity Fund	15,840
Coca-Cola Co. stock	52,247
Delaware U.S. Growth Fund	19,023
Delaware Value Fund	22,696
Dreyfus Appreciation Fund	22,448
Eagle Small Cap Growth Fund	11,361
First Eagle Overseas Fund	14,054
Galliard Retirement Income Fund	239,373
Goldman Sachs Financial Square Treasury Instruments Fund	406
Guggenheim Mid-Cap Value Fund	15,564
Harbor International Fund	20,946
Hewlett-Packard Co. Senior Unsecured Notes	15,284
Hotchkis & Wiley Mid-Cap Value Fund	7,205
Invesco Global Real Estate Fund	5,270
Invesco Van Kampen Growth & Income Fund	603
John Hancock Classic Value Fund	17,379
Johnson & Johnson stock	75,728
Keeley Small Cap Value Fund	14,110
Lazard Emerging Equity Fund	12,447
Morgan Stanley Institutional Mid Cap Growth Fund	10,807
Nuveen Real Estate Securities Fund	133,298
Oakmark Equity Income Fund	23
Oppenheimer Developing Markets Fund	14,040
PIMCO Commodity Real Return Strategy Fund	8,675
PIMCO Real Return Fund	133,320
PIMCO Total Return Fund	74,816
Southern Company stock	40,630
Suntrust Bank Subordinate Bonds	16,296
TimesSquare Mid Cap Growth Fund	13,019
Touchstone Large Cap Growth Fund	17,869
Vanguard All-World ex-U.S. Index Fund	777
Vanguard Mid Cap Index Fund	142,877
Victory Small Company Opportunity Fund	9,339
Wells Fargo Advantage Emerging Growth Fund	12,291
Wells Fargo Stable Return Fund	262,660
William Blair International Growth Fund	18,277
Total Listed Securities	$ 1,690,756

AFFIDAVIT

I, Mark Howard Cohen, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/3/2014
(DATE)

Mark Howard Cohen
(NAME)

Joyce L. Swift
(NOTARY)

JOYCE L. SWIFT
NOTARY
EXPIRES
GEORGIA
FEB. 15, 2015
PUBLIC
COBB COUNTY

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Leigh Martin May (formerly Leigh Holladay Martin)

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

   United States District Court for the Northern District of Georgia

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.

   Butler, Wooten & Fryhofer, LLP
   2719 Buford Highway
   Atlanta, Georgia 30324

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

   1971; Albany, Georgia

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, The University of Georgia School of Law; J.D. (*magna cum laude*), 1998.

   1989 – 1993, The Georgia Institute of Technology; B.S. (with honors), 1993.

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

   2000 – present
   Butler, Wooten & Fryhofer, LLP
   2719 Buford Highway
   Atlanta, Georgia 30324
   Partner (2007 – present)
   Associate (2000 – 2007)

1999 – 2004
Georgia Office of Bar Admissions
244 Washington Street, Suite 440
Atlanta, Georgia 30334
Bar Examination Grader

1998 – 2000
The Honorable Dudley H. Bowen, Jr.
U.S. District Court, Southern District of Georgia
501 East Ford Street
Augusta, Georgia 30901
Federal Judicial Clerkship

Summer 1997
Alston & Bird, LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309
Summer Associate

Summer 1997, December 1997
Rogers & Hardin, LLP
229 Peachtree Street, NE
Atlanta, Georgia 30303
Summer Associate/Paid Intern

Summer 1996
J. Converse Bright
The McKey Building
101 East Central Avenue
Valdosta, Georgia 31603
Summer Associate

1995 – 1998
The University of Georgia School of Law
225 Herty Drive
Athens, Georgia 30602
Editor-in-Chief of *Georgia Law Review* (1997 – 1998)
Research Assistant for Professor Dan Coenen (1997 – 1998)
Teaching Assistant for Professor Anne Dupre (1996 – 1997)
Law Library Clerk (1995 – 1996)

1994 – 1995
EDS, The Utilities Division, Energy Management Associates

(I worked in the Atlanta office. The division where I was employed has since been sold to other entities.)
5400 Legacy Drive
Plano, Texas 75024
Consultant

Other Affiliations (Uncompensated)

2012 – present
American Inns of Court
Lamar Inn of Court
1301 Clifton Road
Atlanta, Georgia 30322
Master

2010 – present
Atlanta Bar Association, Litigation Section
229 Peachtree Street, Suite 400
Atlanta, Georgia 30303
Vice Chair/Chair-Elect (2013 – present)
Secretary (2012 – 2013)
Treasurer (2011 – 2012)
Board Member (2010 – present)

2012 – January 2014
Academy of Product Safety Attorneys
1203 North Orange Avenue, Suite 200
Orlando, Florida 32804
Board of Directors

2007 – 2013
GreenLaw
State Bar of Georgia Building
104 Marietta Street, Suite 430
Atlanta, Georgia 30303
Secretary (2008 – 2013)
Board Member (2007 – 2013)

2008 – 2013
Southern Trial Lawyers Association
P.O. Box 1201
Crawfordville, Florida 32326
Board Member

2009 – 2013
Attorneys Information Exchange Group

500 Office Park Drive, Suite 205
Mountain Brook, Alabama 35223
Board Member

2008 – 2013
Georgia Trial Lawyers Association
3350 Centennial Tower
101 Marietta Street
Atlanta, Georgia 30303
Board Member

2005 – 2008
Georgia Consumer Advocates (no longer an active organization)
Atlanta, Georgia
Chief Executive Officer

2003 – 2006
Civil Justice PAC
3350 Centennial Tower
101 Marietta Street
Atlanta, Georgia 30303
Board Member

2001 – 2006
State Bar of Georgia, Younger Lawyers' Division
State Bar of Georgia Building
104 Marietta Street
Atlanta, Georgia 30303
Board Member and District Representative

2001 – 2004
Red Clay Democrats
P.O. Box 77215
Atlanta, Georgia 30357
President and Board Member

2003 – 2004
American Association for Justice, New Lawyer's Division
777 Sixth Street, Suite 220
Washington, D.C. 20001
Board of Governors

1998 – 2000
SafeHomes – Domestic Violence Intervention Shelter
P.O. Box 3187

Augusta, Georgia 30914
Board Member

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

   I have not served in the military. I have 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.

   Martindale-Hubbell – A/V Rating (approximately 2009 – present)
   Super Lawyer (2012, 2013, 2014)
   Super Lawyer, Top 50 Women Lawyers in Georgia (2013)
   Super Lawyer, Georgia Rising Star (2005, 2006, 2007, 2009, 2010, 2011)
   State Bar of Georgia, Younger Lawyers' Division, Outstanding Service Award (2003)
   State Bar of Georgia, Younger Lawyers' Division, Award of Achievement (2004, 2005, 2006)
   University of Georgia School of Law, *Order of the Coif* (1998)
   Georgia Law Review, Editor-in-Chief (1997 – 1998)
   Georgia Law Review, Editorial Board Member (1996 – 1997)
   University of Georgia School of Law, Moot Court Board (1996 – 1998)
   Jessup International Regional Moot Court Competition Best Brief, Second Best Oralist and Team Semi-Finalist (1997)
   Book Award for Excellence in Contracts (1996)
   Georgia Water Resources Conference, Award for Best Student Paper (1997)

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

   Academy of Product Safety Attorneys
   - Board of Directors (2012 – January 2014)
   - Faculty (2012 – January 2014)

   American Association for Justice
   - New Lawyer's Division
     - Board of Governors (2003 – 2004)

   American Bar Association
   - Younger Lawyer's Division
     - Representative for Georgia and Alabama (2002 – 2003)
     - Chair of FEMA Disaster Relief Program for Georgia and Alabama (2002 – 2003)

American Inns of Court
- Lamar Inn of Court, Master (2012 – present)
- Lumpkin Inn of Court, Barrister (2005 – 2007), Pupil (1998)

Atlanta Bar Association
- Judicial Selection and Tenure Committee (2010 – 2013)
- Litigation Section
  - Vice Chair/Chair-Elect (2013 – present)
  - Secretary (2012 – 2013)
  - Treasurer (2011 – 2012)
  - Board Member (2010 – present)

Atlanta Trial Lawyers' Society

Attorneys Information Exchange Group
- Board Member (2009 – 2013)

Eleventh Circuit Historical Society

Federal Bar Association

Georgia Association of Women Lawyers

Georgia Consumer Advocates
- Chief Executive Officer (2005 – 2008)

Georgia Tech Bar Association

Georgia Trial Lawyers Association
- Co-Chair, Products Liability and Motor Vehicles Section (2009 – 2011)
- AAJ Women's Caucus Delegate (2008 – 2013)
- Board Member (2008 – 2013)

GreenLaw
- Secretary (2008 – 2013)
- Board Member (2007 – 2013)

Lawyers Club of Atlanta

Southern Trial Lawyers Association
- Board Member (2008 – 2013)

State Bar of Georgia
- Bench and Bar Committee (2011– present)
  - Chair of Subcommittee on Pattern Jury Instructions (2012 – 2013)
- Cornerstones of Freedom/Communications Committee (2008 – present)
- Fair Market Practices Committee (2011 – present)
- Younger Lawyers' Division (1999 – 2006)
  - Board Member and District Representative (2001 – 2006)
  - Director of the Community Service Committee (2001 – 2006)
  - Co-Chair of Leadership Academy (2005 – 2006)
  - Co-Chair of Great Day of Service (2002 – 2003)
  - Chair of ABA Award of Achievement (2001 – 2003)

Taxpayers Against Fraud

The Injury Board

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.

State Bar of Georgia, 1999

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 Supreme Court, 2010
Eleventh Circuit Court of Appeals, 2001
United States District Court for the Northern District of Georgia, 2001
United States District Court for the Southern District of Georgia, 1999
United States District Court for the Middle District of Georgia, 2000
Georgia Supreme Court, 2000
Georgia Court of Appeals, 2000

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.

Ansley Park Civic Association (2009 – present)

Lake Hartwell Association (2004 – present)

Descendants of the Signers of the Declaration of Independence (2007 – 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.

This list represents the published material I have identified through searches of my files and Internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

With Tedra Hobson, *Other Incidents – Impact of New Evidence Code,* PROD. LIAB. SEMINAR (Inst. Continuing Legal Educ. Ga., Athens, Ga.), Feb. 27, 2013. Copy supplied.

With Tedra Hobson, *Admissibility of Evidence of Other Similar Instances Under Georgia's Revised Evidence Code*, ANNUAL HOLIDAY WORKSHOP (Ga. Trial Lawyers Assoc., Atlanta, Ga.), Dec. 14, 2012. Copy supplied.

The Importance of Discovery – How to Use It Effectively, PARALEGAL AND LEGAL ASSISTANT WORKSHOP (Ga. Trial Lawyers Assoc., Atlanta, Ga.), Aug. 22, 2012. Copy supplied.

Edward T.M. Garland Speaks at the February 2012 Section Breakfast, THE LITIGATOR (Atlanta Bar Assoc. Litig. Section, Atlanta, Ga.), May 2012. Copy supplied.

Personal Injury and Nuisance Law, in GEORGIA NUISANCE LAW 159 (David J. Marmins, ed., 2011). Copy of relevant chapter supplied.

Auto Focus Seminar in Napa, California, LITIGATION IN BRIEF (Attorneys Info. Exchange Group, Birmingham, Al.), 2011. Copy supplied.

Jim Butler Speaks to the Litigation Section at the September 2011 Breakfast, THE LITIGATOR (Atlanta Bar Assoc. Litig. Section, Atlanta, Ga.), Dec. 2011. Copy supplied.

Pretrial Motions, AUTO TORTS SEMINAR (Ga. Trial Lawyers Assoc., Atlanta, Ga.), July 29, 2011. Copy supplied.

Mike Thurmond Speaks to the Litigation Section at the February 11, 2011 Section Breakfast, THE LITIGATOR (Atlanta Bar Assoc. Litig. Section, Atlanta, Ga.), May 2011. Copy supplied.

Victory for Plaintiffs: Supreme Court's Rejection of Preemption Defense in Williamson v. Mazda Motors of Americas, Inc., ANNUAL SEMINAR (Ga. Trial Lawyers Assoc., Atlanta, Ga.), May 6, 2011. Copy supplied.

With Mary Weeks, *Electronic Discovery*, ANNUAL SEMINAR (Southern Trial Lawyers Assoc., Crawfordville, Fl.), Feb. 3, 2011. Copy supplied.

With Mary Weeks, *Electronic Discovery*, FED. CIVIL TRIAL PRACTICE SEMINAR (Inst. Continuing Legal Educ. Ga., Athens, Ga.), Sept. 9, 2010. Copy supplied.

Getting Your Case Ready for Trial – Developing Your Theme: A Top Ten List, LIFE OF A TRIAL (Atlanta Bar Assoc., Atlanta, Ga.), Aug. 25, 2010. Copy supplied.

Pretrial Motions in Products Liability Cases, FED. PROD. LIAB. SEMINAR (Inst. Continuing Legal Educ. Ga., Athens, Ga.), Mar. 4, 2010. Copy supplied.

Using Daubert *Offensively*, ANNUAL SEMINAR (Ga. Trial Lawyers Assoc., Atlanta, Ga.), Apr. 16, 2009. Copy supplied.

What Every Plaintiffs' Lawyer Should Know About Electronic Discovery, ANNUAL HOLIDAY WORKSHOP (Ga. Trial Lawyers Assoc., Atlanta, Ga.), Dec. 12, 2008. Copy supplied.

Pretrial Motions, GA. PERS. INJURY PRAC. SEMINAR (Inst. Continuing Legal Educ. Ga., Athens, Ga.), Oct. 24, 2008. Copy supplied.

Limiting Expert Testimony With Motions in Limine, ADMISSIBILITY OF EXPERT TESTIMONY IN GEORGIA SEMINAR (Inst. Continuing Legal Educ. Ga., Athens, Ga.), Oct. 2, 2008. Copy supplied.

What Every Plaintiff Should Know About Electronic Discovery, ANNUAL SEMINAR (Ga. Trial Lawyers Assoc., Atlanta, Ga.), Apr. 18, 2008. Copy supplied.

An Offensive Strategy for Defending Against Daubert, ANNUAL SEMINAR (Southern Trial Lawyers Assoc., Crawfordville, Fl.), Feb. 1, 2008. Copy supplied.

SB3 – A Plaintiff's Perspective, PROD. LIAB. SEMINAR (Inst. Continuing Legal Educ. Ga., Athens, Ga.), Dec. 7, 2007. Copy supplied.

Pretrial Motions, ANNUAL HOLIDAY WORKSHOP (Ga. Trial Lawyers Assoc., Atlanta, Ga.), Dec. 7, 2007. Copy supplied.

An Offensive Strategy for Defending Against Daubert, JURY TRIALS (Inst. Continuing Legal Educ. Ga., Athens, Ga.), May 11, 2007. Copy supplied.

Georgia Nuisance Law Provides Relief for Wronged Landowners, ANNUAL GEN. PRACTICE AND TRIAL SECTION INST. (Inst. Continuing Legal Educ. Ga., Athens, Ga.), Mar. 16, 2007. Copy supplied.

Georgia Nuisance Law Provides Relief for Wronged Landowners, CALENDAR CALL (Ga. Bar Assoc. Gen. Practice and Trial Section, Atlanta, Ga.), 2006. Copy supplied.

Practical Strategies for Defending Against Daubert, AUTO TORTS SEMINAR (Ga. Trial Lawyers Assoc., Atlanta, Ga.), Aug. 12, 2006. Copy supplied.

About the Cover, VERDICT (Ga. Trial Lawyers Assoc., Atlanta, Ga.), 2005. Copy supplied.

An Offensive Strategy for Defending Against Daubert, VERDICT (Ga. Trial Lawyers Assoc., Atlanta, Ga.), Spring 2005. Copy supplied.

With Geoffrey E. Pope, *The Nuts and Bolts of Reimbursement and Subrogation Issues*, ANNUAL HOLIDAY WORKSHOP (Ga. Trial Lawyers Assoc., Atlanta, Ga.), Dec. 10, 2004. Copy supplied.

An Offensive Strategy for Defending Against Daubert, SEMINAR (Ga. Trial Lawyers Assoc., Atlanta, Ga.), Aug. 14, 2003. Copy supplied.

Electronic Database Discovery in Products Liability Cases: A Plaintiff's Perspective, PRODUCT LIABILITY INST. (Inst. Continuing Legal Educ. Ga., Athens, Ga.), May 16, 2003. Copy supplied.

With Matthew E. Cook, Terrance C. Sullivan, Jason Crawford, Michael A. Eddings, and Dustin T. Brown, *Trial Practice and Procedure*, 54 MERCER L. REV. 545 (Fall 2002). Copy supplied.

Discovery of Corporate Computer Databases – A Common Practice, CALENDAR CALL (Ga. Bar Assoc. Gen. Practice and Trial Section, Atlanta, Ga.), 2002. Copy supplied.

With Cale H. Conley, *Recent Developments in Automobile Law*, 36 TORT TRIAL & INS. PRAC. L.J. 225 (2001). Copy supplied.

With Terrance C. Sullivan, *Insurance Coverage Disputes from the Plaintiff's Perspective,* INS. LAW INST. (Inst. Continuing Legal Educ. Ga., Athens, Ga.), Sept. 20, 2001. Copy supplied.

With Terrance C. Sullivan, *Dilemmas in Depositions,* MED. MALPRACTICE INST. (Inst. Continuing Legal Educ. Ga., Athens, Ga.), May 18, 2001. Copy supplied.

On February 8, 2001, I co-authored a paper with Terrance C. Sullivan as part of a presentation for a medical school class at The Medical College of Georgia in Augusta, Georgia. The title of the paper was "Medical Malpractice Liability." Copy supplied.

With Terrance C. Sullivan, *Difficult Depositions – Honing Your Deposition Skills,* (Atlanta Bar Assoc., Atlanta, Ga.), Jan. 26, 2001. Copy supplied.

With Terrance C. Sullivan, *Surgical Errors – The Difference Between a Recognized Complication and Malpractice,* ANNUAL MED. MALPRACTICE SEMINAR (Inst. Continuing Legal Educ. Ga., Athens, Ga.), Nov. 9, 2000. Copy supplied.

Deregulatory Takings: Stranded Investment in a Deregulated Electric Utility Industry, 31 GA. L. REV. 1183 (1997). Copy supplied.

The Interstate Compacts for Water Allocation of the A.C.F. and A.C.T. River Basins: A Legal Perspective, GEORGIA WATER RESOURCES CONFERENCE (U.S. Geological Survey, et. al.), Mar. 22, 1997. Copy supplied.

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

As part of my work on the State Bar of Georgia's Bench and Bar Committee, on May 31, 2012, the Committee proposed a change to the state pattern jury instruction to the Council of Superior Court Judges. That proposed instruction is supplied. Additionally, the Committee proposed a change to the statute providing the oath for court bailiffs. That proposed statute is supplied.

As part of my work on the State Bar of Georgia's Cornerstone of Freedom Committee, the Committee issued reports to the State Bar of Georgia's Board of Governors. These reports concern the State Bar's media and public relations efforts to educate the public about the importance of the legal system. The reports for 2010 (issued on January 15, 2011) and 2008 (issued on June 7, 2008) are supplied.

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

I have not issued or had others prepare such statements or communications.

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

I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. Based on this search, I have determined that I provided the following remarks:

November 8, 2013: I introduced speaker B.J. Bernstein for the Atlanta Bar Association Litigation Section's Breakfast Meeting in Atlanta, Georgia. Notes supplied.

October 11, 2013: I introduced speaker Thomas Malone for the Atlanta Bar Association Litigation Section's Breakfast Meeting in Atlanta, Georgia. Notes supplied.

June 27, 2013: I provided the opening remarks for the Georgia Trial Lawyers Association's Women's Caucus Meeting in Atlanta, Georgia. My role was to thank the sponsors and introduce the speaker. I have no notes, transcript or recording. The address of the organization is 3350 Centennial Tower, 101 Marietta Street, Atlanta, Georgia 30303.

June 26, 2013: I provided the opening remarks for GreenLaw's donor appreciation event in Atlanta, Georgia. My role was to introduce the Board of Directors and Executive Director. I have no notes, transcript or recording. The address of the organization is State Bar of Georgia Building, 104 Marietta Street, Suite 430, Atlanta, Georgia 30303.

May 10, 2013: I provided the opening remarks for the Atlanta Bar Association Litigation Section's Breakfast Meeting in Atlanta, Georgia. Notes supplied.

March 26, 2013: I spoke to Professor Elizabeth Leonard's torts students at the University of Georgia School of Law about my work as a lawyer handling products liability cases. PowerPoint supplied.

February 27, 2013: I spoke as part of the Institute of Continuing Legal Education's Product Liability Seminar in Atlanta, Georgia. The title of my presentation was "Other Incidents – Impact of New Evidence Code." Notes and recording supplied. A copy of the paper on which the discussion was based is supplied in response to Question 12a.

December 14, 2012: I spoke as part of the Georgia Trial Lawyers Association's Annual Holiday Workshop in Atlanta, Georgia. The title of my presentation was "Admissibility of Evidence of Other Similar Instances Under Georgia's Revised Evidence Code." Notes supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

October 17-19, 2012: I co-chaired the Attorneys Information Exchange Group's Auto Focus Seminar in Santa Barbara, California. My role was to moderate the sessions and to introduce speakers. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

October 17, 2012: I spoke at a CLE as part of the Attorneys Information Exchange Group's Auto Focus Seminar in Santa Barbara, California. The title of my presentation was "Using Finite Element Analysis for Modeling Alternative Designs." PowerPoint supplied.

August 22, 2012: I spoke at a CLE as part of the Georgia Trial Lawyers Association's Paralegal and Legal Assistant Workshop in Atlanta, Georgia. The title of my presentation was "The Importance of Discovery – How to Use It Effectively." PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

November 2, 2011: I spoke at a CLE as part of the Attorneys Information Exchange Group's Auto Focus Seminar in Napa, California. The title of my presentation was "Utilizing Statistics Offensively." Demonstratives supplied.

November 2-4, 2011: I co-chaired the Attorneys Information Exchange Group's Auto Focus Seminar in Napa, California. My role was to moderate the sessions and to introduce speakers. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

September 9, 2011: I introduced speaker Jim Butler for the Atlanta Bar Association Litigation Section's Breakfast Meeting in Atlanta, Georgia. Notes supplied.

August 11, 2011: I participated in a panel discussion for a section at the Attorneys Information Exchange Group's Tire Seminar in Memphis, Tennessee. The section was titled "Panel Hot Documents: Different Terminology for the Same Key Document." My role was to answer questions from the moderator and attendees about the types of documents used in cases involving allegations of tire defects. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

July 29, 2011: I spoke at a CLE as part of the Georgia Trial Lawyers Association's Auto Torts Seminar in Destin, Florida. The title of my presentation was "Motions in Limine, Pretrial Motions." PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

May 13, 2011: I introduced speakers State Representatives Edward Lindsey and Stacey Abrams for the Atlanta Bar Association Litigation Section's Breakfast Meeting in Atlanta, Georgia. Notes supplied.

May 6, 2011: I spoke at a CLE as part of the Georgia Trial Lawyers Association's Annual Seminar in Atlanta, Georgia. The title of my presentation was "Victory for Plaintiffs: Supreme Court's Rejection of Preemption Defense in *Williamson v. Mazda Motors of Americas, Inc.*" PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

May 6, 2011: I took part in a mock trial as part of the Georgia Trial Lawyers Association's Annual Seminar in Atlanta, Georgia. My role was to perform a direct examination of an accident reconstruction expert. I have no notes, transcript or recording. The address of the organization is 3350 Centennial Tower, 101 Marietta Street, Atlanta, Georgia 30303.

May 5, 2011: I co-chaired a section on motor vehicles as part of the Georgia Trial Lawyers Association's Annual Seminar in Atlanta, Georgia. My role was to introduce the speakers and to moderate the program. I have no notes, transcript or recording. The address of the organization is 3350 Centennial Tower, 101 Marietta Street, Atlanta, Georgia 30303.

March 25, 2011: I was a moderator for a section at the Attorneys Information Exchange Group's Spring Seminar in Austin, Texas. The section was titled "Manufacturer Settlement Strategies." My role was to introduce the speakers and to moderate the program. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

March 23, 2011: I was the chair of the Georgia Trial Lawyers Association's Torts Seminar in Atlanta, Georgia. My role was to introduce the speakers and to

moderate the program. I have no notes, transcript or recording. The address of the organization is 3350 Centennial Tower, 101 Marietta Street, Atlanta, Georgia 30303.

February 11, 2011: I introduced speaker Michael Thurmond for the Atlanta Bar Association Litigation Section's Breakfast Meeting in Atlanta, Georgia. Notes supplied.

February 3, 2011: I spoke at a CLE as part of the Southern Trial Lawyers Association's Annual Seminar in New Orleans, Louisiana. The title of my presentation was "Electronic Discovery." PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

October 4, 2010: I introduced Laurie Fowler as the recipient of the Ogden Doremus award at GreenLaw's Environmental Heroes Event in Atlanta, Georgia. Notes supplied.

September 9, 2010: I spoke at a CLE as part of the Institute of Continuing Legal Education in Georgia's Federal Civil Trial Practice Seminar in Atlanta, Georgia. The title of my presentation was "Electronic Discovery." PowerPoint and recording supplied. A copy of the paper on which the discussion was based is supplied in response to Question 12a.

August 25, 2010: I spoke on a panel as part of the Atlanta Bar Association's Life of a Trial series in Atlanta, Georgia. The topic was "Getting Your Case Ready for Trial – Developing a Theme and Discovery." A copy of the paper on which the discussion was based is supplied in response to Question 12a.

April 22-23, 2010: I co-chaired a section on motor vehicles and product liability as part of the Georgia Trial Lawyers Association's Annual Seminar in Atlanta, Georgia. My role was to introduce the speakers and to moderate the program. I have no notes, transcript or recording. The address of the organization is 3350 Centennial Tower, 101 Marietta Street, Atlanta, Georgia 30303.

March 24, 2010: I moderated a section on seat design cases as part of the Attorneys Information Exchange Group's Spring Seminar in Orlando, Florida. My role was to introduce the speakers and to moderate the program. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

March 4, 2010: I spoke at a CLE as part of the Institute of Continuing Legal Education in Georgia's Product Liability Seminar in Atlanta, Georgia. The title of my presentation was "Pretrial Motions in Products Liability Cases." PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

October 28, 2009: I moderated a section on seat design cases as part of the Attorneys Information Exchange Group's Auto Focus Seminar in Charleston, South Carolina. My role was to introduce the speakers and to moderate the program. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

August 2009: I spoke at an informal lunch CLE for a consortium of environmental lawyers in Atlanta, Georgia. The title of my presentation was "Discovery of Expert Communications, Work Product and Privileged Materials." Notes supplied.

April 16-17, 2009: I co-chaired a section on product liability as part of the Georgia Trial Lawyers Association's Annual Seminar in Atlanta, Georgia. My role was to introduce the speakers and to moderate the program. I have no notes, transcript or recording. The address of the organization is 3350 Centennial Tower, 101 Marietta Street, Atlanta, Georgia 30303.

April 16, 2009: I spoke at the Georgia Trial Lawyers Association's Annual Seminar in Atlanta, Georgia. The title of my presentation was "Using *Daubert* Offensively." PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

March 25, 2009: I moderated a section on seat design cases as part of the Attorneys Information Exchange Group's Spring Seminar in San Francisco, California. My role was to introduce the speakers and to moderate the program. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

December 12, 2008: I spoke as part of the Georgia Trial Lawyers Association's Annual Holiday Workshop in Atlanta, Georgia. The title of my presentation was "What Every Plaintiffs' Lawyer Should Know About Electronic Discovery." A copy of the paper on which the discussion was based is supplied in response to Question 12a.

October 24, 2008: I spoke at a CLE as part of the Institute of Continuing Legal Education in Georgia's Georgia Personal Injury Practice Seminar in Lawrenceville, Georgia. The title of my presentation was "Pretrial Motions and Motions *in Limine*." PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

October 2, 2008: I spoke at a CLE as part of the Institute of Continuing Legal Education in Georgia's seminar titled: Admissibility of Expert Testimony in Georgia. The CLE was in Atlanta, Georgia. The title of my presentation was "Limiting Expert Testimony with Motions *in Limine*." PowerPoint supplied and a

copy of the paper on which the discussion was based is supplied in response to Question 12a.

April 18, 2008: I spoke at the Georgia Trial Lawyers Association's Annual Seminar in Atlanta, Georgia. The title of my presentation was "What Every Plaintiffs' Lawyer Should Know About Electronic Discovery." A copy of the paper on which the discussion was based is supplied in response to Question 12a.

April 5, 2008: I moderated a section on seat design cases as part of the Attorneys Information Exchange Group's Spring Seminar in Seattle, Washington. My role was to moderate the program. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

February 1, 2008: I spoke at the Southern Trial Lawyers Association's Annual Seminar in New Orleans, Louisiana. The title of my presentation was "An Offensive Strategy for Defending Against *Daubert*." A copy of the paper on which the discussion was based is supplied in response to Question 12a.

December 7, 2007: I spoke at a CLE as part of the Institute of Continuing Legal Education in Georgia's Products Liability Seminar in Atlanta, Georgia. The title of my presentation was "SB3 After Three Years of Practice: For the Plaintiff." PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

December 7, 2007: I spoke at a CLE as part of the Georgia Trial Lawyers Association's Annual Holiday Workshop in Atlanta, Georgia. The title of my presentation was "Pretrial Motions and Motions *in Limine*." PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

October 27, 2007: I moderated a section on seat design cases as part of the Attorneys Information Exchange Group's Auto Focus Seminar in New York, New York. My role was to moderate the program. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

July 15, 2007: I spoke at a CLE as part of the American Association for Justice's Conference in Chicago, Illinois. The title of my presentation was "Seat Back Failure: Danger to Rear-Seated Children." PowerPoint and recording supplied.

May 11, 2007: I spoke at a CLE as part of the Institute of Continuing Legal Education in Georgia's Jury Trials Seminar in Atlanta, Georgia. The title of my presentation was "An Offensive Strategy for Defending Against *Daubert*." A copy of the paper on which the discussion was based is supplied in response to Question 12a.

April 27, 2007: I spoke at a CLE as part of the Georgia Trial Lawyers Association's Annual Seminar in Atlanta, Georgia. The title of my presentation was "Damages – Winning Strategies for Success." PowerPoint supplied.

April 18, 2007: I moderated a section on seat design cases as part of the Attorneys Information Exchange Group's Spring Seminar in Chicago, Illinois. My role was to moderate the program. I have no transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

March 16, 2007: I spoke at a CLE as part of the Institute of Continuing Legal Education in Georgia's Sixth Annual General Practice and Trial Section Institute in Amelia Island, Florida. The title of my presentation was "Georgia Nuisance Law." PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

August 12, 2006: I spoke at a CLE as part of the Georgia Trial Lawyers Association's Auto Torts Seminar in Atlanta, Georgia. The title of my presentation was "Practical Strategies for Defending Against *Daubert.*" PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

March 29, 2006: I moderated a section on seat design cases as part of the Attorneys Information Exchange Group's Spring Seminar in Charleston, South Carolina. My role was to moderate the program. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

March 6, 2006: I spoke to Professor Jason Solomon's torts students at the University of Georgia about my work as a lawyer handling torts cases. I have no notes, transcript or recording. The address of the University of Georgia School of Law is 225 Herty Drive, Athens, Georgia 30602.

December 2, 2005: I spoke at a CLE as part of the Institute of Continuing Legal Education in Georgia's Trial Advocacy Seminar in Atlanta, Georgia. The title of my presentation was "Maximizing Damages – Advocacy for the Plaintiff." PowerPoint supplied.

August 25, 2005: I spoke at a CLE as part of the Attorneys Information Exchange Group's Nuts and Bolts Conference in Denver, Colorado. The title of my presentation was "Nuts and Bolts of Seat Back Failures in Rear Impacts." PowerPoint supplied.

August 20, 2005: I introduced Governor Tom Vilsack at a Red Clay Democrats function in Atlanta, Georgia. Notes supplied.

August 18, 2005: I spoke at a CLE as part of the Georgia Trial Lawyers Association's Discovery Seminar in Atlanta, Georgia. The title of my presentation was "Rule 37 Motions – When, Why and How." I have no notes, transcript, and have been unable to obtain a copy of the recording. The address of the organization is 3350 Centennial Tower, 101 Marietta Street, Atlanta, Georgia 30303.

May 6, 2005: I spoke at a CLE as part of the Institute of Continuing Legal Education in Georgia's Admissibility of Expert Testimony in Georgia Seminar in Atlanta, Georgia. The title of my presentation was "How Plaintiffs' Lawyers Can Use *Daubert* to Even the Playing Field." PowerPoint supplied.

April 25, 2005: I spoke to Professor Tom Eaton's torts students at the University of Georgia School of Law in Atlanta, Georgia. The title of my presentation was *Flax v. DaimlerChrysler*: Wrongful Death of Joshua Flax – Seat Back Failure in 1998 Dodge Caravan. PowerPoint supplied.

April 7, 2005: I moderated a section on seat design cases as part of the Attorneys Information Exchange Group's Spring Seminar in Miami, Florida. My role was to moderate the program. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

December 10, 2004: I spoke at the Georgia Trial Lawyers Association's Annual Holiday Seminar in Atlanta, Georgia. Although I submitted a paper on subrogation issues, I talked about a recent trial, *Flax v. DaimlerChrysler*. I have no notes, transcript, and have been unable to obtain a copy of the recording. The address of the organization is 3350 Centennial Tower, 101 Marietta Street, Atlanta, Georgia 30303.

August 16, 2004: I spoke at a rally for the Kerry/Edwards presidential campaign in Atlanta, Georgia. Senator John Edwards was the keynote speaker. My role was to address the audience in an introductory fashion prior to the keynote speakers. I have no notes, transcript, or recording, but press coverage is supplied.

Spring 2004: I spoke to Professor Elizabeth Weeks Leonard's health law students at the University of Georgia School of Law in Atlanta, GA. I talked to them about how tort law can impact public health. I have no notes, transcript or recording. The address of the University of Georgia School of Law is 225 Herty Drive, Athens, Georgia 30602.

April 13, 2004: I introduced Governor Ray Barnes at a Red Clay Democrats function in Atlanta, Georgia. Notes supplied.

August 14, 2003: I spoke at a CLE as part of the Georgia Trial Lawyers

Association's Seminar in Atlanta, Georgia. The title of my presentation was "An Offensive Strategy for Defending Against *Daubert*." A copy of the paper on which the discussion was based is supplied in response to Question 12a.

May 16, 2003: I spoke at a CLE as part of the Institute of Continuing Legal Education in Georgia's Product Liability Institute in Atlanta, Georgia. The title of my presentation was "Electronic Database Discovery in Product Liability Cases: A Plaintiff's Perspective." PowerPoint supplied and a copy of the paper on which the discussion was based is supplied in response to Question 12a.

May 9, 2003: I spoke at a CLE as part of the Attorneys Information Exchange Group's Airbag Summit in Dallas, Texas. The title of my presentation was "*Howard v. Ford*: Trial of an Airbag Case." I spoke about a recent automotive products liability trial involving allegations of airbag defect. I have no notes, transcript or recording. The address of the organization is 500 Office Park Drive, Suite 205, Mountain Brook, Alabama 35223.

January 24, 2002: I spoke at a Red Clay Democrats function in Atlanta, Georgia, where the keynote speaker was President Jimmy Carter. President Carter was addressing civic and political volunteering. My role was to address the audience in an introductory fashion prior to President Carter's speech. I have no notes, transcript or recording. The address of the organization is P.O. Box 77215, Atlanta, Georgia 30357.

October 18, 2001: I spoke at a Red Clay Democrats function in Atlanta, Georgia, where the keynote speakers were Georgia's elected constitutional officers. They were providing short campaign speeches. My role was to address the audience in an introductory fashion prior to the keynote speakers. I have no notes, transcript or recording. The address of the organization is P.O. Box 77215, Atlanta, Georgia 30357.

While I was affiliated with the Red Clay Democrats from 2001 to 2004, I may have addressed the audience in an introductory fashion or introduced a speaker at an event other than those identified above. I have searched my records and cannot locate any more of these events with any specificity. The address of the organization is P.O. Box 77215, Atlanta, Georgia 30357.

March 22, 1997: I spoke at the Georgia Water Resources Conference in Athens, Georgia. The title of my presentation was "The Interstate Compacts for Water Allocation of the A.C.F. and A.C.T. River Basins: A Legal Perspective." A copy of the paper on which the discussion was based is supplied in response to Question 12a.

While I was employed at EDS from 1990 to 1995, I taught power planning seminars on a regular basis as part of my job duties. The seminar attendees were power planning engineers for various electric utilities. My seminar topics were

related to long range planning for electric utilities using various computer models. There were no policy topics for any of these seminars. They were technical seminars dealing with the specific computer modeling software EDS developed. I have no notes, transcripts or recordings.

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

I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. As relating to my specific cases, I periodically gave interviews to various media outlets. I do not recall all the interviews I have given or the dates I have given interviews. I have located the following:

TV Interview with Craig Lucie on FCA case *Bibby v. Wells Fargo, et al.*, WSB-TV, July 8, 2013. Video and website summary supplied.

Blog, Butler, Wooten and Fryhofer, *Chrysler's Attempt to Fix Defective Fuel System Simply Not Enough,* June 20, 2013. Copy supplied.

Blog, Butler, Wooten and Fryhofer, *Chrysler Acknowledges that Jeep Grand Cherokee Fuel Systems Need Safety Upgrades*, June 19, 2013. Copy supplied.

Thomas Krisher, *Chrysler Expected to Formally Refuse Jeep Recall*, ASSOCIATED PRESS, June 18, 2013. Copy supplied.

TV Interview with Jim Strickland on *Walden v. Chrysler* and Jeep Recall, WSB-TV, June 5, 2013. Video and website summary supplied.

TV Interview with Jade Bulecza on *Walden v. Chrysler* and Jeep Recall, WTXL-TV, June 5, 2013. Website summary supplied.

Press Release, Butler, Wooten and Fryhofer, *NHTSA Orders Recall of the Jeep Grand Cherokee in the Fire Which Killed a 4-Year-Old Boy*, June 4, 2013. Copy supplied.

On May 20, 2013, I gave a phone interview to Benjamin Klayman with Thomson Reuters. He is writing an article about a recent Honda airbag recall that referenced one of my cases, *Williams v. Honda*. It is my understanding that this article has not yet been published.

TV Interview with Jade Bulecza on Jeep fire case *Walden v. Chrysler*, WTXL-TV, July 10, 2012. Website summary supplied.

Radio interview with Matt Cook on Jeep fire case *Walden v. Chrysler*, GEORGIA NEWS NETWORK, July 10, 2012. I have not been able to obtain a copy of the resulting story.

Press Release, Butler, Wooten and Fryhofer, *Parents of Child Killed in Post-Collision Jeep Grand Cherokee Fire Hold Chrysler Responsible for 4-year-old Boy's Death*, July 9, 2012. Copy supplied.

Press Release, Butler, Wooten and Fryhofer, *Michelin Settles Case for Man Paralyzed as a Result of Defective Tire After a Federal Judge Sanctions Michelin for Discovery Abuse*, April 2, 2012. Copy supplied.

Cary O'Neil, *Firestone Settles Faulty Tire Lawsuit in Couple's Death*, CHATTANOOGA TIMES FREE PRESS, March 23, 2012. Copy supplied.

Press Release, Butler, Wooten and Fryhofer, *Bridgestone/Firestone Settles Case for Couple Decapitated as a Result of Defective Tire*, March 22, 2012. Copy supplied.

Rick Rothacker, *Whistleblowers Reap Millions in U.S. Mortgage Suits*, THOMSON REUTERS, March 14, 2012. Copy supplied.

Rick Rothacker, *JPMorgan Paying $45 Million to Settle Mortgage Suit*, THOMSON REUTERS, March 13, 2012. Copy supplied.

TV Interview with Dale Russell on FCA case *Bibby v. Wells Fargo, et al.*, FOX-5 TV, March 12, 2012. Video supplied.

Robin McDonald, *Whistleblowers Net $45M Deal*, FULTON COUNTY DAILY REPORT, March 12, 2012. Copy supplied.

TV Interview with Jim Strickland on airbag recall and *Williams v. Honda*, WSB-TV, February 15, 2012. Video supplied.

Yuri Kageyama, *Air Bag Victim Lawyer Questions Honda Recall Scope*, ASSOCIATED PRESS, December 20, 2011. Copy supplied.

TV Interview with Doug Evans on airbag recall and *Williams v. Honda*, FOX- 5 TV, December 9, 2011. Video supplied.

Press Release, Butler, Wooten and Fryhofer, *Atlanta Attorney Who Successfully Sued Honda Over Airbag Addresses Concerns Over Latest 'Shrapnel' Defect Recall*, December 9, 2011. Copy supplied.

TV Interview with Martin Savage on FCA case *Bibby v. Wells Fargo, et al.*, CNN, October 5, 2011. Video supplied.

Graduates on Giving, 2010 – 2011 University of Georgia School of Law Annual Report, July 2011. Copy supplied.

Video Interview about tire defects for our law firm website, July 1, 2011. Video supplied.

Mike Spector, *Car Bailouts Left Behind Crash Victims*, WALL STREET JOURNAL, May 27, 2011. Copy supplied.

TV Interview with Doug Evans on airbag recall and *Williams v. Honda,* Fox-5 TV, April 10, 2010. Video supplied.

Chrysler Death – Flax v. DaimlerChrysler, INSIDER ADVANTAGE, September 21, 2009. Video supplied.

Jan Shuxteau, *Surgery Centers Sue Georgia Blue Plan Over Out-Of-Network Rates*, HEALTHLEADERS-INTERSTUDY, July 2009. Copy supplied.

Kent Steinride, *Georgia Blues Hit with Lawsuit for Slashing Out-of-network Rates*, OUTPATIENT SURGERY MAGAZINE, June 5, 2009. Copy supplied.

Urvaksh Karkaria, *Blue Cross Ga. Hit with Class Action Suit*, ATLANTA BUSINESS CHRONICLE, June 3, 2009. Copy supplied.

Alyson M. Palmer and Zach Lowe, *$13m Win*, FULTON COUNTY DAILY REPORT, July 31, 2008. Copy supplied.

Mike Casey, *Some Minivan Airbags Recalibrated to "Turn Off" by Chrysler*, KANSAS CITY STAR, July 17, 2008. Copy supplied.

Mike Casey, *Did Chrysler "Fix" in Dodge Caravans Lead to Deaths?*, KANSAS CITY STAR, July 17, 2008. Copy supplied.

Katherine Whan, *Democratic Party Animals*, ATLANTA MAGAZINE, July 2003. Copy supplied.

What Is Your Most Memorable YLD Experience?, GEORGIA BAR JOURNAL, June 2003. Copy supplied.

While I attended college at the Georgia Institute of Technology, I volunteered with the student-run radio station. From 1990 to 1993, I frequently appeared on the radio as a disc jockey. I do not have transcripts or recordings of these appearances.

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

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

I have not been a judge.

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

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

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

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

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

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

I have not held or sought public office. I have also not previously sought a 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 reviewed all of my personal records for information relating to the roles I may have played in various political campaigns, and the information below is the best I could gather regarding these activities.

On November 2, 2010, I volunteered as part of the voter protection effort for the Georgia Democratic Party.

From 2004 to 2007, I served as campaign manager for Mike Jacobs' campaign for the Georgia House of Representatives. I also hosted multiple fundraisers for him during this time period.

In 2004 and 2005, I served on the State Committee for the Democratic Party of Georgia.

From December 2003 to 2006, I volunteered on an intermittent basis for Cathy Cox's campaign for Governor of Georgia. I helped her campaign send out holiday cards, put together yard signs, and helped with general administrative activities in her campaign office. I was also a host for several fundraisers.

From 2002 to 2011, I hosted or co-hosted fundraisers for each of the following candidates or organizations: Georgia House of Representative's Democratic Caucus (May 3, 2011); Justice Harris Hines for the Georgia Supreme Court (May 30, 2007); Lauren Benedict for the Georgia House of Representatives (October 19, 2006); Shyam Reddy for Georgia Secretary of State (June 20, 2006 and June 28, 2005); Senator David Adelman for the Georgia Senate (house party on June 27, 2004 and fundraiser on June 25, 2003); U.S. Representative John Barrow (April 21, 2004); Eric Ponder for the Georgia House of Representatives (March 3, 2004); Representative Rob Teilhet for the Georgia House of Representatives (June 24, 2003); and U.S. Senator Max Cleland (October 16, 2002 and March 23, 2002).

In 1994, I volunteered for the re-election campaign of U.S. Representative John Lewis. I visited local business asking them if they would display campaign signs and drove attendees to an event.

Finally, although perhaps not directly responsive to this question, I have served as a board member of two different organizations that raise funds and support candidates. From 2003 to 2006, I served as a board member of the Civil Justice PAC, a bipartisan organization that raises funds to support candidates who support the civil justice system. From 2001 to 2004, I served as President and a board member of the Red Clay Democrats, an organization of young professionals who raise money and volunteer in support of various Democratic candidates in Georgia.

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 2000, I served as a law clerk to Judge Dudley H. Bowen, Jr., District Court Judge of the United States District Court for the Southern District of Georgia.

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

I have 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 – present
Butler, Wooten & Fryhofer, LLP
2719 Buford Highway
Atlanta, Georgia 30324
Partner (2007 – present)
Associate (2000 – 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.

Over the course of my career, I have had a multi-state practice and have handled cases in Georgia, Florida, Maryland, Nevada, Texas, Tennessee, Arkansas, and South Carolina. After my federal clerkship with Judge Bowen, I concentrated on the preparation and trial of complex civil litigation on behalf of catastrophically injured clients. The majority of my practice was in the area of automotive products liability. In recent years, my practice has changed somewhat. Although I still handle complex personal injury cases, a large portion of my professional time is spent on a *qui tam* case involving several large banks. The case involves allegations that these banks defrauded veterans and the federal government in charging unallowable and excessive costs to veterans in home refinance loans. I am serving as relators' counsel in this *qui tam* case.

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

My clients have typically been catastrophically injured children and adults and their families. Many of these cases have involved automotive products liability claims—an area in which I have specialized. I have recently expanded my practice to include *qui tam* cases.

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

100% of my practice has been in litigation. I frequently appear in court.

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

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: __%

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

I have tried five cases to verdict, judgment or final decision, three as associate counsel and two as sole counsel. In addition, although many of my cases do not go to trial or all the way to verdict, they often do not settle until after extensive briefing and hearings, many of which involve court appearances. I have frequently argued and drafted discovery motions, *Daubert* motions, motions for summary judgment, and motions *in limine*. I also have extensive experience in deposing expert witnesses. When my cases have proceeded to trial, I have taken an active role in the trial.

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

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

I drafted a portion of the brief in opposition to a petition for a writ of certiorari in *Flax v. DaimlerChrysler Corporation*. The petition was denied without oral argument. A copy of the brief is available at 2009 WL 953586.

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 of America ex rel., Bibby and Donnelly v. Wells Fargo Bank,* United States District Court for the Northern District of Georgia Atlanta Division, Civil Action File No. 1:06-CV-0547-AT; Hon Judge Amy Totenberg.

    In *Bibby*, I am part of a team representing the relators in a *qui tam* case against multiple banks. The case involves claims that these banks defrauded veterans and the government by violating the rules of a veteran home loan refinance program and charging veterans unallowable and excessive loan closing fees. It is alleged that the government guarantees the banks obtained from the government on these loans are void and that the banks should return the funds they collected from the government on these void guarantees.

    The case was originally filed on March 8, 2006. The seal was lifted on October 3, 2011. Shortly thereafter, each defendant either filed a motion to dismiss or a motion for summary judgment. I was actively involved in drafting the responses to these motions. Six of the eight defendants have settled, and the case remains pending and in discovery as to the two remaining defendants, Wells Fargo Bank and Mortgage Investors Corporation. I am actively engaged in the discovery portion of the case.

    Dates of Representation: March 2011 to present.

    Co-Counsel:

    Marlan B. Wilbanks
    Tyrone M. Bridges
    Wilbanks & Bridges, LLP

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404-842-1075

Mary Louise Cohen
Timothy P. McCormack
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Washington, DC 20036
202-833-4567

Opposing Counsel:

Bank of America Corporation:
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New York, NY 10036
212-728-5670

Robert M. Brennan
Parker, Hudson, Rainer & Dobbs, LLP
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404-523-5300

CitiMortgage, Inc.:
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Ballard Spahr LLP
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678-420-9436

Countrywide and Bank of America, N.A:
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Nelson Mullins Riley & Scarborough LLP
201 17th Street, Suite 1700
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404-322-6154

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Mortgage Investors:
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Michael Y. Kieval
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404-572-4778

SunTrust:
Michael L. Brown
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, GA 30309
404-881-7000

Wells Fargo:
Amy P. Williams
K & L Gates, LLP
Hearst Tower
214 North Tryon Street, 47th Floor
Charlotte, NC 28202
704-331-7400

Charles T. Huddleston
1256 Pasadena Avenue
Atlanta, GA 30326
678-468-8351

2. *Bates and Bates v. Michelin North America, Inc. and Michelin Corporation,* United States District Court for the Northern District of Georgia, Atlanta Division, Case No. 1-09-CV-03280-AT; Hon Judge Amy Totenberg.

In *Bates*, I was co-counsel for the plaintiffs, Mr. and Mrs. Bates. Mr. Bates suffered a catastrophic brain injury and was rendered a quadriplegic when the tire on his vehicle suffered a tread separation, which resulted in Mr. Bates losing control of his vehicle. This case involved allegations of product liability and negligence against the tire manufacturer. I handled almost all of the expert and fact witness depositions. I also drafted and argued a large portion of the discovery motions, drafted the majority of the *Daubert* motions and responses, and handled the majority of the expert work. This case settled shortly before trial.

Dates of Representation: March 2009 to April 2012.

Co-Counsel:

Gary M. Shapiro
Law Offices of Gary M. Shapiro
400 Galleria Parkway, Suite 1500-20
Atlanta, GA 30339
770-817-1444

Opposing Counsel:

Robert P. Monyak
Peters & Monyak, LLP
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950 East Paces Ferry Road N.E.
Atlanta, GA 30326
404-607-0100

Richard K. Hines, V
Nelson Mullins Riley & Scarborough LLP
Atlantic Station
201 17th Street N.W., Suite 1700
Atlanta, GA 30363
404-322-6000

3. *Williams v. Honda Motor Co., Ltd., et al.*, State Court of Clayton County, Civil Action File No. 2010CV04232; Hon. Harold G. Benefield.

In *Williams*, I was sole counsel for the plaintiff, Ms. Williams. Ms. Williams was injured when the airbag in her vehicle deployed while she was stopped at a traffic light—the vehicle was not involved in an impact. When her airbag deployed, the

airbag inflator canister ruptured, propelled metal shrapnel through her airbag, and severed her carotid artery. The case involved allegation of product liability and negligence against the vehicle and airbag component manufacturers. This case settled. I handled most aspects of this case, including the settlement negotiations.

Dates of Representation: April 2010 to February 2011.

Opposing Counsel:

Takata Corporation and TK Holdings, Inc.:
Halli D. Cohn
King & Spalding LLP
1180 Peachtree Street N.E.
Atlanta, GA 30309
404-572-4600

Honda Motor Co., Ltd.; Honda Research Institute Japan Co., Ltd.; American Honda Motor Co., Inc.; and Honda North America, Inc.:
Charles K. Reed
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Atlanta, GA 30309
404-991-2175

Willett Imports/South, Inc.:
Michael J. Rust
Gray, Rust, St. Amand, Moffett & Brieske, LLP
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Atlanta, GA 30326
404-870-7375

4. *Katz, et al. v. DaimlerChrysler Corporation and Norwood*, Superior Court of Fulton County, Civil Action File No. 2007CV130355; Hon. Jackson Bedford.

In *Katz*, I served as co-counsel for the plaintiffs, the husband and young daughter of Mrs. Katz. Mrs. Katz was killed when a motorist fleeing a prior wreck struck her minivan. Mrs. Katz's frontal airbag did not deploy, and she and her unborn son were killed when her head struck the steering wheel. This case involved allegations of product liability and negligence against the vehicle manufacturer and of negligence against the driver of the vehicle who caused the collision. Judge Bedford had already ruled on the majority of the pretrial matters and the case was awaiting trial when Chrysler filed for bankruptcy. I handled the majority of the expert and fact witness depositions. I also drafted and argued a large portion of the *Daubert* motions, the response to the motion for summary

judgment, and the motions *in limine*. I also handled the majority of the expert work.

Dates of Representation: April 2005 to April 2009.

Opposing Counsel:

M. Diane Owens
Swift, Currie, McGhee & Hiers, LLP
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Atlanta, GA 30309
404-874-8800

Cheryl A. Bush
Bush Seyferth & Paige PLLC
3001 West Big Beaver Road, Suite 600
Troy, MI 48084
248-822-7800

5. *Beck and Beck v. General Motors Corporation; Bill Heard Chevrolet Co.; and Tucker*, Superior Court of Muscogee County, Case No. SU06CV-1303-05; Hon. Bobby G. Peters.

In *Beck*, I served as co-counsel for the plaintiffs Mr. and Mrs. Beck. Mr. Beck was rendered a quadriplegic when his airbag failed to deploy in his Chevrolet pickup truck. This case involved allegations of product liability and negligence against the vehicle manufacturer and a negligence claim against the driver of the other vehicle involved in the incident. This case was settled. I handled all depositions and the majority of the settlement negotiations. I also handled the majority of the expert work.

Dates of Representation: April 2006 to March 2010.

Opposing Counsel:

General Motors Corporation and Bill Heard Chevrolet Co.:
Harold E. Franklin, Jr.
King & Spalding LLP
1180 Peachtree Street
Atlanta, Georgia 30309
404-572-4600

Tucker:
Hall, Booth, Smith & Slover, P.C.
1214 First Avenue

Columbus, GA 31901
706-494-3818

6. *Adams, et al. v. Chrysler LLC, et al.*, Circuit Court of Washington County, Case No. CV 07-2554-5; Hon. Gary L. Carson.

In *Adams*, I served as co-counsel for the plaintiffs, the parents of two children, who received brain injuries and skull fractures when their parents' 1994 Chrysler minivan was rear-ended and the front seats collapsed rearward. This case was tried in state court in Fayetteville, Arkansas, and involved allegations of product liability and negligence against the vehicle manufacturer and of negligence against the driver who caused the collision. The jury found against the driver of the vehicle who caused the collision when she rear-ended the minivan. Plaintiffs appealed the judgment, and Chrysler declared bankruptcy while the case was under appeal. I handled the majority of the expert and fact witness depositions. I also drafted and argued a large portion of the pretrial motions. I was second chair at this trial and handled the direct and cross-examination of multiple fact and expert witnesses. I also handled the majority of the expert work.

Dates of Representation: April 2006 to April 2009.

Co-Counsel:

Raymond L. Niblock
324 North College Avenue
Fayetteville, AR 72701
479-521-5510

Opposing Counsel:

DaimlerChrysler Corporation:
C.G. Norwood, Jr.
Gary Hebert
McGlinchey Stafford, PLLC
12th Floor, 501 Poydras Street
New Orleans, LA 70130
504-586-1200

Defendant Knapp:
Joe Benson
Benson & Wood, PLC
2774 East Millennium Place
Fayetteville, AR 72703
479-444-8000

7. *Neal, et al. v. DaimlerChrysler Corporation, et al.*, Ninth Judicial Circuit Court of Orange County, Florida, Case No. 2003-CA-8085; Hon. John Adams, Sr.

In *Neal*, I served as co-counsel for the plaintiffs, parents of a two-year-old child, who received brain injuries and skull fractures when her parents' rented minivan was rear-ended and the front seats collapsed rearward. This case involved allegations of product liability and negligence against the vehicle manufacturer and of negligence against the trucking company and truck driver causing the collision. Because the Neal family was visiting the United States from England, many of the depositions occurred in England. This case settled just prior to trial and after Judge Adams had ruled on the majority of the pretrial matters. I handled the majority of the expert and fact witness depositions, including multiple depositions in England. I also briefed and argued a large portion of the dispositive and pretrial motions and handled the majority of the expert work.

Dates of Representation: February 2002 to June 2007.

Co-Counsel:

Edmund Normand
Wooten, Kimbrough, and Normand, P.A.
236 S. Lucerne Circle East
Orlando, FL 32801
800-235-7060

Opposing Counsel:

DaimlerChrysler Corporation, DTG Operations, Inc., f/k/a Dollar Rent A Car Systems, Inc.; Dollar Thrifty Automotive Group, Inc., f/k/a Dollar Rent A Car Systems, Inc.; Dollar Rent A Car Systems, Inc.:
David Tyrell (retired)
Robert M. Fulton
Hill, Ward & Henderson, P.A.
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Tampa, FL 33602
813-221-3900

DTG Operations, Inc., f/k/a Dollar Rent A Car Systems, Inc.; Dollar Thrifty Automotive Group, Inc., f/k/a Dollar Rent A Car Systems, Inc.; Dollar Rent A Car Systems, Inc.:
E. Peyton Hodges
Cameron, Hodges, Coleman, LaPointe & Wright, P.A.
111 North Magnolia Avenue, Suite 1350
Orlando, FL 3280
407-841-5030

T.D.T. Inc. and Holloway:
Allen C. Sang
Carman, Beauchamp & Sang, P.A.
1850 Lee Road, Suite 334
Winter Park, FL 32789
407-622-7888

William E. Crabill
Quintairos, Prieto, Wood & Boyer, P.A.
9300 South Dadeland Boulevard
Miami, FL 33156
305-670-1101

8. *Fowler, et al. v. Trinity Outdoor, LLC, et al.*, State Court of Gwinnett County, Civil Action No. 04-C03310-3; Hon. Carla E. Brown.

In *Fowler*, I served as co-counsel for the plaintiffs, parents and children of two brothers who were killed when a billboard on which they were working collapsed. As well as traditional negligence and products liability claims, this case also involved complicated issues regarding piercing the corporate veil. The case was settled just prior to trial. I handled the expert and fact witness depositions. I also drafted and argued the majority of the motions and handled the majority of the expert work.

Dates of Representation: December 2003 to July 2006.

Co-Counsel:

Gerald Davidson, Jr.
Mahaffey Pickens & Tucker, LLP
1550 North Brown Road, Suite 125
Lawrenceville, GA 30043
770-232-0000

Trinity Outdoor, LLC:
J. Kenneth Moorman
John M. Hawkins
Weinberg, Wheeler, Hudgins, Gunn & Dial LLC
950 East Paces Ferry Road, Suite 3000
Atlanta, GA 30326
404-876-2700

Linda Klein
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
Suite 1600, Monarch Plaza
3414 Peachtree Road, N.E.

Atlanta, GA 30326
404-577-6000

Phoenix Structures and Services, Inc.
William T. Mitchell
Cruser & Mitchell, LLP
275 Scientific Drive, Suite 2000
Norcross, GA 30092
404-881-2622

Sun Capital Partners, Inc.:
Michael J. Bowers
T. Joshua R. Archer
Matthew B. Ames
Balch & Bingham LLP
30 Ivan Allen Boulevard, Suite 700
Atlanta, GA 30308
404-261-6020

Sun Outdoor Holdings, Inc., Sun Outdoor Advertising Partners, LLP, and Sun Outdoor Advertising Advisors, Inc.:
Melanie C. Eyre
Drew Eckl & Farnham, LLP
880 West Peachtree Street
Atlanta, GA 30357
404-885-6323

Thompson and Thompson Engineering Group, LLC:
Tracy C. Wooden
Wooden Law Firm
730 Cherry Street, Suite B
Chattanooga, TN 37402
423-756-9972

9. *Flax, et al. v. DaimlerChrysler Corporation and Stockell,* Circuit Court for Davidson County, Tennessee, Case No. 02C-1288; Hon. Hamilton V. Gayden, Jr.

Flax v. DaimlerChrysler Corp., 272 S.W.3d 521 (Tenn. 2008).

In *Flax*, I served as co-counsel for the plaintiffs, parents of an eight-month-old child, who was killed when his grandparents' minivan was rear-ended and the front seats collapsed rearward. This case involved allegations of product liability and negligence against the vehicle manufacturer and negligence against the driver who caused the collision. This case was tried in state court in Nashville, Tennessee. The jury found for the plaintiffs. Defendant DaimlerChrysler Corporation appealed to the Tennessee Court of Appeals, Supreme Court of

Tennessee, and United States Supreme Court. I handled the majority of the expert and fact witness depositions. I also drafted and argued a large portion of the pretrial motions. I was third chair at this trial and handled the direct and cross-examination of several fact and expert witnesses. I was also extensively involved in the appeal and handled the majority of the issues relating to the Chrysler bankruptcy and collecting the excess insurance proceeds.

Dates of Representation: October 2001 to March 2010.

Co-Counsel:

Gail Vaughn Ashworth
Wiseman Ashworth Law Group, PLC
511 Union Street, Suite 800
Nashville, TN 37219
615-254-1877

Opposing Counsel:

Joy Burns Day
Law Offices of John Day, P.C.
5141 Virginia Way, Suite 270
Brentwood, TN 37027
615-742-4880

Lawrence A. Sutter
Sutter, O'Connell
3600 Erieview Tower
1301 East Ninth Street
Cleveland, OH 44114
216-928-2200

Theodore J. Boutrous, Jr.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Suite 4600
Los Angeles, CA 90071
213-229-7000

Thomas H. Dupree, Jr.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue NW, Suite 900
Washington, DC 20036
202-955-8500

10. *Mr. Howard, as legal guardian of Mrs. Howard, an incapacitated adult, and Mr. Howard, individually v. Ford Motor Company*, United States District Court, Middle District of Georgia, Macon Division, Civil Action No. 5:00-CV-0448-3; Hon. C. Ashley Royal.

In *Howard*, I served as co-counsel for the plaintiffs Mr. and Mrs. Howard. Mrs. Howard suffered a catastrophic brain injury from the deployment of her airbag. This case involved allegations of product liability and negligence against the vehicle manufacturer. This case was tried in federal court in Macon, Georgia. The first trial resulted in a mistrial because of a divided jury. The case settled in the midst of its second trial. I handled multiple expert and fact witness depositions. I also briefed and argued a large portion of the pretrial motions. I was second chair at this trial and handled the direct and cross-examination of several fact and expert witnesses.

Dates of Representation: August 2000 to July 2003.

Co-Counsel:

Frank H. Childs, Jr.
Childs & Noland
165 First Street
P.O. Box 898
Macon, GA 31202
478-745-4712

Opposing Counsel:

C.G. Norwood, Jr.
McGlinchey Stafford, PLLC
12th Floor, 501 Poydras Street
New Orleans, LA 70130
504-586-1200

Charles K. Reed
Lewis, Brisbois, Bisgaard & Smith LLP
1180 Peachtree Street N.E., Suite 2900
Atlanta, GA 30309
404-991-2175

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Throughout my legal career, I have frequently volunteered as a speaker at numerous CLE programs on a variety of trial-related topics. It has been extremely rewarding to have an opportunity to share with others lessons I have learned during my practice. I have also served in leadership positions in multiple bar associations. I have enjoyed the opportunities these positions have provided me in terms of mentoring and working to improve the legal profession. I have also appreciated the chance to learn from others involved in these programs and organizations.

For example, in 2006, I co-chaired and developed the first Leadership Academy class for the State Bar of Georgia, Younger Lawyers' Division. The Leadership Academy has proven to be a successful tool in developing younger lawyers and providing them with additional mentoring experiences. It continues to this date.

From 2001 to 2006, I served as Director of the Community Service Committee for the State Bar of Georgia, Younger Lawyers' Division. During this time, I was involved in planning and participating in numerous activities organized to get younger lawyers more involved in working in their community. I am especially proud of the partnership we built with the Fulton County Department of Family and Children Services that allowed younger lawyers to spend time with foster children in the Fulton County program.

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.

    No.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       It is possible that conflicts could arise in cases involving my former clients and my current law firm. In such cases, I will follow the Code of Conduct for United States Judges.

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

       If I am confirmed, I will follow the federal recusal statutes and the Code of Conduct for United States Judges. If any issue of a potential conflict were to arise, I would seek advice from the Code of Conduct Committee of the Judicial Conference. In cases of uncertainty, I would err on the side of recusal.

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

    I have volunteered my services both through my involvement in the boards of various community organizations and through the provision of pro bono legal services. From 1998 to 2000, for example, I volunteered as a board member for Safe Homes, which provides emergency housing for victims of domestic violence in Atlanta, Georgia. From 2001 to 2006, I served as the Director of the Community Service Committee of the Younger Lawyers' Division of the State Bar of Georgia. During this time period, I

volunteered with numerous community service projects and was involved in their planning and implementation. From 2002 to 2003, I chaired the American Bar Association's disaster relief program for Alabama and Georgia. During this time, I worked with FEMA to coordinate pro bono legal services for victims of natural disasters. Since 2004, I have volunteered with GreenLaw, which provides pro bono environmental legal services in Georgia to non-profit organizations and to community groups. I have also been active in various bar association activities that involve one-time public service projects, fundraising for pro bono projects, mentoring, and working to improve the professionalism of the bar.

26. **Selection Process**:

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

In February 2009, a Judicial Advisory Panel was appointed by the Georgia Democratic Congressional Delegation to review applicants for the vacancies in the Georgia federal district courts. On February 28, 2009, I submitted a letter of interest and resume to the Panel. The Panel then requested certain applicants to complete a full questionnaire, which I did prior to a March 18, 2009, deadline. On April 14, 2009, I interviewed with the Panel in Atlanta, Georgia. Since December 19, 2011, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On November 21, 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 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
May, Leigh M.	United States District Court, Northern District of Georgia	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 1/03/2014
7. Chambers or Office Address		
2719 Buford Highway Atlanta, GA 30324		

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	Butler, Wooten & Fryhofer, LLP
2.	Secretary and Director	GreenLaw
3.	Director	Southern Trial Lawyers Association
4.	Director	Attorneys Information Exchange Group
5.	Director	Georgia Trial Lawyers Association
6.	Vice Chair, Secretary and Director	Atlanta Bar Association, Litigation Section

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 May, Leigh M.	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	Butler, Wooten & Fryhofer, LLP	$935,660.00
2. 2012	Butler, Wooten & Fryhofer, LLP	$1,214,842.00
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 architect
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 May, Leigh M.	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
May, Leigh M.	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 Cash Accounts	A	Interest	N	T					
2. Brokerage Account # 1									
3. - GREIF INC. Bond	A	Interest	J	T					
4. - AMERICAN CENTURY GLOBAL GOLD FUND CL A Mutual Fund	A	Dividend	J	T					
5. - EATON VANCE EMRG MKTS LOCAL INC A Mutual Fund	A	Dividend	J	T					
6. - EATON VANCE FLOATING RATE FD CL A Mutual Fund	A	Dividend	J	T					
7. - INTEL CORP Stock	A	Dividend	J	T					
8. - LORD ABBETT SHORT DUR INCOME FD CL A Mutual Fund	A	Dividend	J	T					
9. - MARATHON VALUE PORTFOLIO Mutual Fund	A	Dividend	J	T					
10. - U S BANCORP DEL NEW Stock	A	Dividend	K	T					
11. - APPLE INC Stock	A	Dividend	K	T					
12. - NOBLE GROUP LTD Stock	A	Dividend	J	T					
13. - Schwab Money Market Fund	A	Interest	K	T					
14. - US TREAS Note	A	Interest							
15. - LOOMIS SAYLES INVESTMENT GRADE BD CL A Mutual Fund	A	Dividend							
16. IRA # 1	A	Int./Div.	M	T					
17. - PIMCO Total Return Mutual Fund									

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
May, Leigh M.	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)
18. - PIMCO Real Return Mutual Fund									
19. - Oppenheimer Intl Bond Mutual Fund									
20. - Mutual Global Discovery Mutual Fund									
21. - PIMCO All Asset Mutual Fund									
22. - BlackRock Global Allocation Mutual Fund									
23. - Ivy Asset Strategy Mutual Fund									
24. - Fidelity ContraFund Mutual Fund									
25. - Capital World Growth & Income									
26.									
27.									
28.									
29.									
30.									

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		

Name of Person Reporting	Date of Report
May, Leigh M.	01/06/2014

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting May, Leigh M.	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/ Leigh M. May

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		416	197	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		278	837	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		531	367
Real estate owned – see schedule		725	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		55	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		531	367
				Net Worth		943	667
Total Assets	1	475	034	Total liabilities and net worth	1	475	034
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 Global Gold Fund	$ 678
Apple, Inc. stock	33,188
BlackRock Global Allocation Fund	28,607
Capital World Growth & Income Fund	10,487
Eaton Vance Emerging Markets Local Income Fund	1,404
Eaton Vance Floating Rate Fund	2,106
Fidelity Contrafund	12,757
Greif, Inc. bond	5,525
Intel Corporation stock	7,737
Ivy Asset Strategy Fund	32,172
Lord Abbett Short Duration Income Fund	2,032
Marathon Value Portfolio	11,340
Mutual Global Discovery Fund	21,471
Noble Group Limited Fund	8,340
Oppenheimer International Bond Fund	15,983
PIMCO All Asset Fund	18,529
PIMCO Real Return Fund	16,611
PIMCO Total Return Fund	33,914
US Bancorp stock	15,956
Total Listed Securities	$ 278,837

Real Estate Owned	
Personal residence #1	$ 400,000
Personal residence #2	110,000
Vacation home	215,000
Total Real Estate Owned	$ 725,000

Real Estate Mortgages Payable	
Personal residence #1	$ 383,294
Vacation home	148,073
Total Real Estate Mortgages Payable	$ 531,367

AFFIDAVIT

I, Leigh Martin May, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/3/14
(DATE)

Leigh Martin May
(NAME)

Cathy M Huff
(NOTARY)

CATHY M HUFF
MY COMMISSION EXPIRES
NOTARY
PUBLIC
DECEMBER 17, 2016
COBB COUNTY, GEORGIA

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Eleanor Louise Ross (Eleanor Louise Barnwell)

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

   United States District Court Judge for the Northern District of Georgia

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: DeKalb County Courthouse
   556 North McDonough Street
   Suite #3230
   Decatur, Georgia 30030

   Residence: Lithonia, Georgia

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

   1967; Washington, D.C.

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

   1991 – 1994, University of Houston; J.D., 1994
   1985 – 1989, American University; B.A. in Public Communication, 1989

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

   2011 – present
   DeKalb County State Court
   556 North McDonough Street, Suite #3230

Decatur, Georgia 30030
Judge

2007 – 2011, 1998 – 2002
Fulton County District Attorney's Office
136 Pryor Street, Suite #640
Atlanta, Georgia 30303
Executive Assistant District Attorney (2007 – 2011)
Senior Assistant District Attorney (1998 – 2002)

2002 – 2005
United States Attorney's Office, Northern District of Georgia
75 Spring Street, SW, Suite #600
Atlanta, Georgia 30303
Assistant United States Attorney

1997 – 1998, May – June 1993
DeKalb County Solicitor's Office
556 North McDonough Street, Suite #500
Decatur, Georgia 30030
Assistant Solicitor-General

1993 – 1996
Tarrant County District Attorney's Office
401 West Belknap
Fort Worth, Texas 76106
Assistant District Attorney (1994 – 1996)
Legal Intern (August – October 1994)
Summer Intern (May – June 1993)

Fall 1993, Spring 1992 (part-time)
Moriarty and Associates (now known as Moriarty Leyendecker)
4203 Montrose Boulevard, Suite #150
Houston, Texas 77006

Summer 1993
Miles and Stockbridge
100 Light Street
Baltimore, Maryland 21202
Intern (June – August 1993)

Other affiliations (uncompensated):

2007 – 2011
His Word 'N Motion
His Word 'N Motion School of Dance, Inc.

3579 Portsmouth Circle
Lithonia, Georgia 30038
Board of Directors

2006 – 2011
Herzing University
3393 Peachtree Road NE
Suite #1003
Atlanta, Georgia 30326
Board of Directors

2006 – 2008
Eagle Ridge Homeowners Association
(no physical address)
Secretary for the 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 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.

   Georgia's Most Powerful and Influential Attorney Award by *Women Looking Ahead Magazine* (2011)
   Fulton County Assistant District Attorney of the Year (2010)
   Fulton County District Attorney Homicide Attorney of the Year (2000)
   Fulton County Voice for Victims Award (2000)

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.

   DeKalb Bar Association (1997 – present)
   DeKalb Lawyers Association (2011 – present)
   State Bar of Georgia (1997 – present)
   State Bar of Texas (1995 – 1997)

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.

State Bar of Georgia, 1997
State Bar of Texas, 1995

I allowed my membership to lapse in the State Bar of Texas once I determined that I would not be returning to Texas to reside or work.

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, 2003
United States District Court, Northern District of Georgia, 2002
Supreme Court of the State of Georgia, 1997
Court of Appeals of the State of Georgia, 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.

Aerobics & Fitness Association of America (2005 – present)
Certified Fitness Instructor
Delta Sigma Theta Sorority (1986 – present)
Eagle Ridge Homeowners Association (2003 – present)
Secretary for the Board of Directors (2006 – 2008)
Herzing University (2006 – 2011)
Board of Directors
His Word 'N Motion School of Dance, Inc. (2007 – 2011)
Board of Directors
Parent-Teacher Organization, Bouie Elementary School (2007 – present)
Parent-Teacher Organization, Greenforest-McCalep Christian Academic Center (August 2013 – 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.

Eleanor Barnwell, *D.C. General Hospital's Children's Center*, Washington View, June 1991. Copy supplied.

Eleanor Barnwell, *Sweet Honey In the Rock: Music With A Message*, Washington View, April 1991. Copy supplied.

Eleanor Barnwell, *All That Jazz*, Washington View, October 1990. I have been unable to locate a copy.

Eleanor Barnwell, *On New Year's, Corks Will Pop On All Channels*, USA Today, December 30, 1988. Copy supplied.

Eleanor Barnwell, *A Roundup of Annual Top-10 Lists*, USA Today, December 29, 1988. Copy supplied.

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

Although I did not participate in the drafting or editing of the June 30, 2011 Special Report on the allegations of test tampering and related matters in the Atlanta Public School System, I was part of the special investigation team that assisted in conducting the interviews during the investigation. Out of an abundance of caution, I have supplied the report.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Questionnaire for DeKalb County State Court Vacancy, March 1, 2011. Copy supplied.

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

December 2, 2013: I welcomed participants and parents and announced the winners of the Third Annual Division V Art Challenge at a reception held in my courtroom, in the DeKalb County Courthouse. I have no notes, transcript, or recording. The address of the DeKalb County Courthouse is 556 North McDonough Street, Courtroom 3C, Decatur, Georgia 30030.

December 17, 2012: I welcomed participants and parents and announced the winners of the Second Annual Division V Art Challenge at a reception held in my courtroom, in the DeKalb County Courthouse. I have no notes, transcript, or recording. The address of the DeKalb County Courthouse is 556 North McDonough Street, Courtroom 3C, Decatur, Georgia 30030.

October 24, 2012: Guest Speaker, DeKalb Lawyers Association (DLA) meeting held at the Gregory A. Adams Juvenile Justice Center. The subject matter included ethical responsibilities in the practice of law and appropriate courtroom decorum from a judge's perspective. I have no notes, transcript, or recording. The address of the DeKalb Lawyers Association is P.O. Box 2403, Decatur, Georgia 30031.

June 23, 2012: Guest Speaker, Women's Day Service at Kelley Chapel United Methodist Church. I spoke on the topic of renewing one's mind to accept certain life changes. I have no notes, transcript, or recording. The address of Kelley Chapel United Methodist Church is 3411 Kelley Chapel Road, Decatur, Georgia 30034.

May 11, 2012: Presenter, "Georgia DUI Update: Ethical Considerations in DUI Cases and Sentencing" for the Institute of Continuing Legal Education (ICLE) in Georgia at the State Bar of Georgia Headquarters. I have no notes, transcript, or recording. The address of the State Bar of Georgia is 104 Marietta Street, NW, Atlanta, Georgia 30303.

May 8, 2012: Panelist with Steve C. Jones, United States District Court Judge for the Northern District of Georgia, sponsored by the Georgia Association of Black Women Attorneys (GABWA) as part of their Judicial and Public Office Academy. The subject matter was navigating through a judicial appointment process. I have no notes, transcript, or recording. The address of the Georgia Association of Black Women Attorneys (GABWA) is P.O. Box 4381, Atlanta, Georgia 30302.

February 11, 2012: Guest Speaker, a local chapter of the Boy Scouts of America at Greater Traveler's Rest Baptist Church. The topic was the legal profession and my judicial career. I have no notes, transcript, or recording. The address of Greater Traveler's Rest Baptist Church is 4650 Flat Shoals Parkway, Decatur, Georgia 30034.

December 6, 2011: I welcomed participants and parents and announced the winners of the First Annual Division V Art Challenge at a reception held in my courtroom, in the DeKalb County Courthouse. I have no notes, transcript, or recording. The address of the DeKalb County Courthouse is 556 North McDonough Street, Courtroom 3C, Decatur, Georgia 30030.

April 29, 2011: Acceptance speech, Georgia State Capital, swearing-in ceremony as a DeKalb County State Court judge by Governor Nathan Deal on the subject of my gratitude for the opportunity to serve in my current position as well as my pledge to perform to the best of my ability. I have no notes, transcript, or recording. The address of the Georgia State Capitol Building is 206 Washington Street, SW, Atlanta, Georgia 30334.

August 2007 – April 2011: As a prosecutor for the Fulton County District Attorney's Office, I frequently made presentations to various civic groups about recognizing the signs of gang activity within communities. I have no notes, transcript, or recording. The address of the Fulton County District Attorney's Office is 136 Pryor Street, Atlanta, Georgia 30303.

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.

Burke Brenan & Angela Walton, *Press Release Announcing the Third Annual Division V Art Challenge*, DeKalb County Webmail, September 13, 2013. Copy supplied.

Burke Brenan & Angela Walton, *Press Release Announcing the Second Division V Art Challenge*, DeKalb County Webmail, November 29, 2012. Copy supplied.

Stormy Kage, *Middle and High School Students Win Top Prizes in Judge's Art Contest*, Cross Roads News, December 10, 2011. Copy supplied.

Carla Parker, *Talented Students Nab First Place in State Court Judge's Art Contest*, CrossRoads News, December 8, 2011. Copy supplied.

Burke Brenan & Angela Walton, *Press Release announcing the 1st Division V Art Challenge*, DeKalb County Webmail, October 7, 2011. Copy supplied.

Jennifer French-Parker, *Veteran Prosecutors Joining DeKalb State Court Bench*, Cross Roads News, April 16, 2011. Copy supplied.

February 2010: Interview and legal commentary on truTV's "In Session" court program following the station's full coverage of the Fulton County murder trial of Devonni Burton, which I prosecuted (*State of Georgia v. Devonni Benton*, 09SC84683). I have been unable to obtain a copy. I also recall providing legal commentary for Court TV at various other times as an attorney for the Fulton County District Attorney's Office from 1998 to 2002 and from 2007 to 2011, but I do not recall the specific dates or cases discussed.

Keith Morrison, *Justice for Sparkle; Man Hires Hit Man to Kill his Daughter-in-Law*. NBC News Transcripts, August 30, 2009. Copy supplied.

Marcus K. Garner, *Jury Deadlocks in Road Rage Trial*, The Atlanta Journal Constitution, August 20, 2008. Copy supplied.

Drew Jubera, *Hearing No Problem for Deaf Juror*, The Atlanta Journal Constitution, March 15, 2008. Copy supplied.

Jay Croft, *Fulton Woman, Mother Guilty in Revenge Killing*, The Atlanta Journal Constitution, November 21, 1998. Copy supplied.

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

April 2011 – present: Judge, State Court of DeKalb County in Decatur, Georgia. I was appointed to this position by Georgia Governor Nathan Deal on April 29, 2011 for the period beginning on May 2, 2011. I was elected to the same position in November 2012 for a four-year term. This court presides over civil matters not exclusively with the Superior Court's jurisdiction, including cases involving personal injury and contract disputes, as well as criminal misdemeanors. The State Court also has appellate jurisdiction over Magistrate Court and Recorder's Court.

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

I have presided over approximately 235 cases that have gone to verdict or judgment.

jury trials:	10%
bench trials:	90%
civil proceedings:	60%
criminal proceedings:	40%

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

As a state court trial judge, I have not written any published opinions for any reported cases. All of my opinions are issued in the form of written orders which are filed with the DeKalb County State Court Clerk. They are of public record and are available in the Clerk's office, but are not published.

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

I have included five civil cases and five criminal cases over which I have presided. All of the listed cases are from the State Court of DeKalb County, Georgia.

1. *Davis v. Perimeter OB/GYN Care, LLC*, et. al. (10A33677). Decision Supplied.

This medical malpractice case involves allegations that the patient, one day after abdominal surgery, was misdiagnosed by the hospital's ICU Pulmonologist upon her admission from the Emergency Room to the ICU. Rather than getting a surgical consult, the ICU doctor diagnosed aspiration pneumonia and the patient died the next day, allegedly from infection caused by a perforated bowel from the prior surgery. I denied the defendants' Motion for Summary Judgment, which required a ruling on the construction of Official Code of Georgia Annotated (O.C.G.A.) § 51-1-29.5, Georgia's emergency room statute. The statute raises the plaintiff's burden of proof to "clear and convincing evidence," while lowering the medical provider's standard of care to gross negligence in medical malpractice cases arising from emergency room care. I determined the patient's claims against the intensive care physician who examined the patient, admitted her to the intensive care unit, and wrote new orders for her care would be not be governed by the special standard of the emergency room statute, despite the patient's location in the emergency room at the time the admissions work-up was performed. My decision was based on the statute's inclusion of both surgical and

obstetrical procedures on emergency room patients that were performed outside the emergency room by specialists in those areas, but did not include intensive care physicians and procedures. I certified this question for immediate review by the Georgia Court of Appeals, which has accepted the issue for review. An interim decision is pending.

Attorneys:

Plaintiff: Marcus Howard and Gregory Pope
Pope & Howard, P.C.
945 East Paces Ferry Road, Suite #2525
Atlanta, Georgia 30326
404.885.9999

Erik Olson
The Olson Law Firm, LLC
6100 Lake Forrest Drive, Suite #104
Atlanta, Georgia 30328
404.897.1014

Defendant: Melissa Reading and Rolfe Martin (Nisbet, Pulmonary Group PC)
Owen, Gleaton, Egan, Jones & Sweeney, LLP
1180 Peachtree Street, NE, Suite #3000
Atlanta, Georgia 30309
404.688.2600

Defendant: Daniel Huff & Michael Frankson (Pancer, Perimeter OBGYN Care LLC)
Huff, Powell & Bailey, LLC
999 Peachtree Street, Suite #950
Atlanta, Georgia 30309
404.892.4022

2. *Metro Atlanta Task Force for the Homeless, Inc. v. Emory University and Emory Healthcare, Inc.* (11A39185). Decisions Supplied.

This case involves allegations based on O.C.G.A. § 9-11-11.1, commonly known as the Georgia anti-Strategic Lawsuit Against Public Participation, or "anti-SLAPP" provision. The claims involve allegations that a charitable business suffered loss of funding and loss of real property due to defamatory statements about them made by the defendants and co-conspirators to government and private sources of funding. I ruled on defendants' Motion to Dismiss or Strike Complaint for the plaintiff's failure to file affidavits verifying its Complaint as required by the statute and defendants' Motion to Strike Plaintiff's Notice of Voluntary Dismissal. While I found the plaintiff was on notice of the defendants' allegations that the affidavits had not been filed, the Complaint's allegations of

defamation, tortious interference with business and contractual relations and violations of Georgia's Racketeer Influenced and Corrupt Organizations Act (RICO) were not made in the context of an official proceeding authorized by law or in connection with an issue under consideration by an official proceeding.

The defendants filed a Motion for Certificate for Immediate Review. However, before the order was certified, the plaintiff voluntarily dismissed its case without prejudice. The defendants then filed a Motion to Strike Plaintiff's Notice of Voluntary Dismissal Without Prejudice. I upheld the plaintiff's right to voluntarily dismiss the case under O.C.G.A. 9-11-41(a). Both sides appealed the Anti-SLAPP order, and the defendant appealed the order allowing the plaintiff's voluntary dismissal of the action. The Georgia Court of Appeals affirmed the orders. The Georgia Supreme Court denied the defendants' petition for certiorari. I have entered an Order in the renewal action which requires a more definite statement of the content and context of the defamatory statements alleged and a listing of the contracts with which interference is claimed.

Attorneys:

Plaintiff: Mark E. Murray
The Murray Law Firm LLC
The Astoria 306
2233 Peachtree Road
Atlanta, Georgia 30309
404.842.1600

Defendants: Henry R. Chalmers
Arnall Golden & Gregory, LLP
171 17th Street NW, Suite #2100
Atlanta, Georgia 30363
404.873.8646

3. *West et al. v. Children Healthcare of Atlanta, Inc.* (10A29581). Decisions Supplied.

This medical malpractice case was filed by the parents of a chronically ill child who died due to hyperammonemia during hospitalization. The defendant hospital wanted to conduct ex parte interviews of the patient's doctors, who sought protection pursuant to a Qualified Protection Order. I granted the Qualified Protective Order and Order Granting in Part the Defendants' Motion for Reconsideration of Qualified Protection Order. The case eventually settled and was dismissed with prejudice on December 18, 2013.

Attorneys:

Plaintiffs: Harvey Spiegel

Henry Spiegel Milling, LLP
950 East Paces Ferry Road, NE, Suite #2450
Atlanta, Georgia 30326
404.832.8000

Defendant: Julye Johns
Huff Powell & Bailey
999 Peachtree Street, Suite #950
Atlanta, Georgia 30309
404.892.4022

4. *Crews v. The Kroger Company* (12A41592). Decision Supplied.

This was a slip-and-fall case involving a serious fall on a slippery supermarket floor, which was being waxed at the time of the fall. I denied Defendant's Motion for Summary Judgment. Although the plaintiff could provide only circumstantial evidence there was a slippery wax condition on the floor where he fell and lost consciousness, the defendant still is required to show some evidence either of the condition of the floor at the time of the fall or adherence to a policy to prevent such hazards. The parties settled this case in the midst of trial.

Attorneys:

Plaintiff: James Creasy
Gillis & Creasey, LLC
Two Ravinia Drive, Suite #650
Atlanta, Georgia 30346
770.394.3127

Defendant: Douglas A. Wilde
Law Office of Douglas A. Wilde, LLC
215 Market Road, Suite #2C
Tyrone, Georgia 30290
678.364.0055

5. *Wells, et al. v. Long, New Birth Missionary Baptist Church, et. al.* (11A39373). Decision Supplied.

This is a case of fraud, breach of fiduciary duty and securities fraud in which the plaintiffs, congregants of a church, allege their pastor brought to the pulpit and endorsed an investment broker, employed by an Ohio bank, who defrauded them out of the funds they invested with him. I denied defendants' Motion to Dismiss for Lack of Jurisdiction and Improper Venue. The relevant contracts contain a forum selection clause and choice of law provision that would require these issues to be determined in Ohio under Ohio law. All the plaintiffs and two of the four defendants who had been served were Georgia residents. I ruled that the forum selection and choice of law provisions were invalid both because the forum

selection clause was not part of a freely negotiated contract and because Ohio securities law would not have protected these Georgia residents' claims. The case is currently scheduled for a pretrial conference at which I expect to set a trial date.

Attorneys:

Plaintiffs: Quinton S. Seay
Stewart, Seay & Felton, LLC
260 Peachtree Street, Suite #1001
Atlanta, Georgia 30303
404.637.0248

Jason R. Doss and Joy L. Doss
The Doss Firm, LLC
P.O. Box 965669
Marietta, Georgia 30066
770.578.1314

Defendant: Chad Jacobs, Melanie C. Eyre and Barbara A. Marschalk (Long & New Birth Missionary Baptist Church)
Drew, Eckl & Farnham, LLP
P.O. Box 7600
Atlanta, Georgia 30357
404.885.1400

Defendant: William V. Hearnburg, Jr. and W. Parker Sanders (Batt & Equity Trust Company)
Smith, Gambrell & Russell, LLP
Promenade II, Suite #3100
1230 Peachtree Street, NE
Atlanta, Georgia 30309
404.815.3679

Defendant: Kenneth Bravo, Issac Eddington and Francis Goins (Pro hac vice, Co-Counsel with Hearnburg)
Ulmer & Berne, LLP
1960 West Second Street, Suite #1100
Cleveland, Ohio 44113
216.583.7001

6. *State of Georgia v. Hutchins* (12C45475). Decision Supplied.

The defendant in this case was arrested during a sting operation and charged with pimping. He had two prior pimping convictions. I granted the state's motion to use the defendant's two prior pimping convictions as similar transactions but granted the defendant's motion in limine regarding the age of one of the

prostitutes from the prior cases. The state's main witness, the woman alleged to have been pimped by the defendant, failed to appear for trial despite having been properly served with a subpoena. I signed a material witness warrant for marshals to seize her, which was executed. Once the witness was located, the defendant was tried by a six-person jury and found guilty. I sentenced him to the maximum possible sentence, which was 12 months in jail.

Attorneys:

State: Sonja Brown & Keisha Storey
DeKalb County Solicitor's Office
556 North McDonough Street, Fifth Floor
Decatur, Georgia 30030
404.371.2201

Defendant: Heather McLeod and Bryan Henderson
DeKalb County Public Defender's Office
The Callaway Building
120 West Trinity Place, Suite #408
Decatur, Georgia 30030
404.371.2222

7. *State of Georgia v. Ditman* (12C51706). Decision Supplied.

In this case, the defendant was arrested for Driving While Under the Influence of Alcohol (DUI) after being involved in a one car accident. The responding officer observed an empty beer can in the defendant's cup holder, an odor of alcohol emanating from the defendant's breath, and that the defendant was unsteady on his feet. The defendant was not able to perform field sobriety evaluations to the officer's satisfaction. The defendant challenged the officer's reading of implied consent warnings as untimely because the officer testified he did the warnings before arresting the defendant. In relying on *Oliver v State*, 268 Ga. App. 290 (2004), I held that because the warnings were done in close proximity to the arrest, they were timely. Thus, I denied the defendant's Motion to Suppress his blood alcohol concentration, which exceeded the legal limit. Following my denial, the defendant entered a guilty plea.

Attorneys:

State: Lisa Bobb
DeKalb County Solicitor's Office
556 North McDonough Street, Fifth Floor
Decatur, Georgia 30030
404.371.2201

Defendant: Justin Spizman
The Hawkins Law Firm
1535 Mt. Vernon Road, Suite #200
Atlanta, Georgia 30338
770.685.6400

8. *State of Georgia v. Ellison* (12C52852). Decision Supplied.

The defendant was charged with Family Violence Battery, Simple Battery, Cruelty to Children in the third degree, and Disorderly Conduct for striking the mother of his child after arguing about his suspicions that she was seeing another man. The State sought to introduce evidence of two prior incidents in which the defendant assaulted different women under similar circumstances and filed a motion to introduce the two prior acts as similar transactions. Under Georgia's new evidence rules that took effect on January 1, 2013 (and which now track the Federal Rules of Evidence), a prosecutor can no longer use other acts to demonstrate a defendant's "course of conduct" or "bent of mind." Because I determined the State's only purpose for introducing the prior acts was to establish a particular pattern of conduct on the part of the defendant, I denied the State's Motion to Introduce Similar Transaction Evidence. The case was later dismissed without prosecution because the listed victim failed to appear for trial.

Attorneys:

State: Lisa Bobb
DeKalb County Solicitor's Office
556 North McDonough Street, Fifth Floor
Decatur, Georgia 30030
404.371.2201

Defendant: Heather McLeod
DeKalb County Public Defender's Office
The Callaway Building
120 West Trinity Place, Suite #408
Decatur, Georgia 30030
404.371.2222

9. *State of Georgia v. Dawkins* (12C52884). Decision Supplied.

This was a DUI trial in which a deputy marshal observed a defendant driving erratically in the early morning hours. The officer noted a moderate smell of alcohol on the defendant and that the defendant had slurred speech and was unsteady on his feet. The defendant also admitted to consuming "a beer." After being placed under arrest, the defendant was advised of his implied consent rights. He refused to submit to the state-administered chemical test for his alcohol concentration. The state sought to introduce evidence of similar acts, which were

two prior DUI convictions. In this case, I did admit the prior DUI convictions based on O.C.G.A. § 24-4-417, which specifically deals with scenarios such as this one, where the defendant refuses to submit to the chemical testing. The defendant was found guilty by a jury and sentenced to twelve months in jail with the understanding that I would reconsider his sentence after six months if he presented what I found to be an appropriate treatment plan for his alcoholism. Within the first four months of his sentence, the defense attorney petitioned the court twice for a sentence modification. Both times the request was denied because: (1) it had not been six months since he was sentenced; and (2) there was no supporting documentation for a treatment plan. However, I have scheduled a sentence modification hearing for February 6, 2014, at which time the defendant will have been incarcerated for six months.

Attorneys:

State: Lisa Bobb
DeKalb County Solicitor's Office
556 North McDonough Street, Fifth Floor
Decatur, Georgia 30030
404.371.2201

Defendant: Careton Matthews
Law Offices of Careton Matthews
9820 Redan Road, Suite B
Stone Mountain, Georgia 30088
404.298.9098

10. *State of Georgia v. Giovino* (10C24954). Decision Supplied.

This was a DUI case in which a police officer stopped the defendant after observing him make an improper right turn. The officer noticed a strong odor of alcohol coming from the defendant's breath and that he had bloodshot and watery eyes. The defendant admitted to consuming beer earlier in the day. After being placed under arrest and having implied consent warnings read to him, the defendant agreed to submit to a breath test, which revealed he was over the legal limit. What makes this case significant is that the defendant filed a motion to obtain the computer source code for the Intoxilyzer machine on which the breath test is performed. I issued a certificate of materiality which supports that the source code is central to the proper functioning of the Intoxilyzer. However, the source code is in Kentucky, where the machine is manufactured, and Kentucky courts have not honored certificates of materiality issued by Georgia courts. Currently this issue is on appeal in Kentucky. This case is scheduled for a status hearing.

Attorneys:

State: Solicitor Sherry Boston and Assistant Solicitor Wystan Getz
DeKalb County Solicitor's Office
556 North McDonough Street, Fifth Floor
Decatur, Georgia 30030
404.371.2201

Defendant: Greg Willis
Head, Thomas, Webb & Willis
750 Hammond Drive; Building #5
Atlanta, Georgia 30328
404.250.1113

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. *Davis v. Perimeter OB/GYN Care, LLC*, et. al. (10A33677). Decision previously supplied in 13c.

Attorneys:

Plaintiff: Marcus Howard and Gregory Pope
Pope & Howard, P.C.
945 East Paces Ferry Road, Suite #2525
Atlanta, Georgia 30326
404.885.9999

Erik Olson
The Olson Law Firm, LLC
6100 Lake Forrest Drive, Suite #104
Atlanta, Georgia 30328
404.897.1014

Defendant: Melissa Reading and Rolfe Martin (Nisbet & Pulmonary Group PC)
Owen, Gleaton, Egan, Jones & Sweeney, LLP
1180 Peachtree Street, NE, Suite #3000

Atlanta, Georgia 30309
404.688.2600

Defendant: Daniel Huff & Michael Frankson (Pancer, Perimeter OBGYN Care, LLC
Huff, Powell & Bailey, LLC
999 Peachtree Street, Suite #950
Atlanta, Georgia 30309
404.892.4022

2. *Metro Atlanta Task Force for the Homeless, Inc. v. Emory University and Emory Healthcare, Inc.* (11A39185). Decision previously supplied in 13c.

Attorneys:

Plaintiff: Mark E. Murray
The Murray Law Firm LLC
The Astoria 306
2233 Peachtree Road
Atlanta, Georgia 30309
404.842.1600

Defendant: Henry R. Chalmers
Arnall Golden & Gregory, LLP
171 17th Street NW, Suite #2100
Atlanta, Georgia 30363
404.873.8646

3. *Babineau v. Baughand FFE Transportation Services, Inc.* (11A34640). Decision supplied.

Attorneys:

Plaintiff: Trent Shuping
Micahel Warshauer
Warshauer Law Group, P.C.
3350 Riverwood Parkway, Suite 2000
Atlanta, Georgia 30339
404.892.4900

Defendant: Sean Hynes (Baugh)
Downey & Cleveland
288 Washington Avenue
Marietta, GA 30036
770.422.3233

Defendant: E. Andrew Treese (FFE Transportation Services, Inc.)
Stevan A. Miller
Drew Eckl & Farnham, LLC
P.O. Box 7600
Atlanta, GA 30357
404-885-1400

4. *Crews v. The Kroger Company* (12A41592). Decision previously supplied in 13c.

Attorneys:

Plaintiff: James Creasy
Gillis & Creasey, LLC
Two Ravinia Drive, Suite #650
Atlanta, Georgia 30346
770.394.3127

Defendant: Douglas A. Wilde
Law Office of Douglas A. Wilde, LLC
215 Market Road, Suite #2C
Tyrone, Georgia 30290
678.364.0055

5. *Wells, et al. v. Long, New Birth Missionary Baptist Church, et al.* (11A39373). Decision previously supplied in 13c.

Attorneys:

Plaintiffs: Quinton S. Seay
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404.637.0248

Jason R. Doss and Joy L. Doss
The Doss Firm, LLC
P.O. Box 965669
Marietta, Georgia 30066
770.578.1314

Defendant: Chad Jacobs, Melanie C. Eyre and Barbara A. Marschalk (Long & New Birth Missionary Baptist Church)
Drew, Eckl & Farnham, LLP
P.O. Box 7600
Atlanta, Georgia 30357
404.885.1400

Defendant: William V. Hearnburg, Jr. and W. Parker Sanders (Batt & Equity Trust Company)
Smith, Gambrell & Russell, LLP
Promenade II, Suite #3100
1230 Peachtree Street, NE
Atlanta, Georgia 30309
404.815.3679

Defendant: Kenneth Bravo, Issac Eddington and Francis Goins (Pro hac vice, Co-Counsel w/Hearnburg)
Ulmer & Berne, LLP
1960 West Second Street, Suite #1100
Cleveland, Ohio 44113
216.583.7001

6. *Cason v. Bakeroll, Inc. and Maloof* (10A31867). Decision supplied.

Attorneys:

Plaintiff: Douglas R. Powell
Hinton & Powell
2901 Piedmont Road, Suite A
Atlanta, GA 30305
404-365-7077

Defendant: Jerry A. Landers, Jr.
166 Anderson Street, Suite 200
Mariette, GA 30036
770-795-1299

7. *State of Georgia v. Ditman* (12C51706). Decision previously supplied in 13c.

Attorneys:

State: Lisa Bobb
DeKalb County Solicitor's Office
556 North McDonough Street, Fifth Floor
Decatur, Georgia 30030
404.371.2201

Defendant: Justin Spizman
The Hawkins Law Firm
1535 Mt. Vernon Road, Suite #200
Atlanta, Georgia 30338
770.685.6400

8. *State of Georgia v. Ellison* (12C52852). Decision previously supplied in 13c.

Attorneys:

State: Lisa Bobb
DeKalb County Solicitor's Office
556 North McDonough Street, Fifth Floor
Decatur, Georgia 30030
404.371.2201

Defendant: Heather McLeod
DeKalb County Public Defender's Office
The Callaway Building
120 West Trinity Place, Suite #408
Decatur, Georgia 30030
404.371.2222.

9. *State of Georgia v. Dawkins* (12C52884). Decision previously supplied in 13c.

Attorneys:

State: Lisa Bobb
DeKalb County Solicitor's Office
556 North McDonough Street, Fifth Floor
Decatur, Georgia 30030
404.371.2201

Defense: Careton Matthews
Law Offices of Careton Matthews
9820 Redan Road, Suite B
Stone Mountain, Georgia 30088
404.298.9098

10. *State of Georgia v. Giovino* (10C24954). Decision previously supplied in 13c.

Attorneys:

State: Solicitor Sherry Boston and Assistant Solicitor Wystan Getz
DeKalb County Solicitor's Office
556 North McDonough Street, Fifth Floor
Decatur, Georgia 30030
404.371.2201

Defendant: Greg Willis
Head, Thomas, Webb & Willis

750 Hammond Drive; Building #5
Atlanta, Georgia 30328
404.250.1113

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

I have not had any cases on 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.

Vol Repairs II, Inc. v. Knighten, 745 S.E.2d 673 (2013) was a contract case for car repair. This was a jury verdict and judgment on which my denial of the defendants' motion for a directed verdict was reversed on the issue of attorney fees only. Otherwise, the judgment was affirmed.

Michael C. Frasard v. The State, 745 S.E.2d 716 (2013) was a misdemeanor traffic offense jury trial for speeding offenses. Because the sentence sheet failed to reflect the merger of the convictions for the two speeding charges, the judgment was vacated and the case was remanded for resentencing. The defendant appeared in court on August 22, 2013 for resentencing, at which time he received the same sentence originally given along with a revised sentencing sheet that reflected a merger of the two counts.

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 issue unpublished opinions, many of which are dispositive, on most of the motions that I hear. On average, that would be ten opinions on criminal cases (mostly on suppression motions) and about eight opinions on civil cases (often on motions for summary judgment) per month. All of my orders are filed with the Clerk of DeKalb County State Court in hard copy.

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

Although none of my opinions on constitutional issues have resulted in a significant opinion, I do routinely rule on constitutional issues dealing with a criminal suspect's Fourth Amendment rights related to search and seizure of dwellings and vehicles, as well as compulsion of bodily substances for alcohol

and drug testing. I also routinely rule on issues surrounding a criminal suspect's Fifth Amendment right against self-incrimination as related to statements made during criminal investigations.

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 on any such cases.

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.

Since taking the bench almost two and a half years ago, I have recused myself on the following five cases, all of which were in the State Court of DeKalb County, Georgia:

Custom Carriage Garage Doors, LLC v. Tisha Simmons-Lawson (10A30127), which involved a contract dispute between the plaintiff-contractor and one of my neighbors. By order, I recused myself sua sponte due to the conflict that existed from my personal relationship with the defendant.

Kimberly McRae v. Waterford Services, LLC, et. al. (09A08077), which involved allegations of premises liability. After disclosing to attorneys for both parties that my staff attorney's daughter is employed as a paralegal by the plaintiff's attorney, I was asked by defense counsel to recuse myself. I did so voluntarily due to the conflict presented by the close relationship between my staff attorney, who would have been assisting me on the case, and her daughter, who would have been assisting the plaintiff's attorney.

State v. Helen Richter (12C46659), in which the defendant was charged with Obstruction and Disorderly Conduct. During the State's presentation of evidence at trial, I realized that the defendant was the nurse midwife who had rendered care during the pregnancy and birth of my oldest daughter ten years earlier. After excusing the jury from the courtroom, I disclosed this fact to both parties and granted the prosecutor's request for leave of court to confer with his supervisor. I subsequently granted the State's oral motion for my voluntary recusal due to my past personal relationship with the defendant.

The Wynn Group v. Maria L. Walker, M.D., PC d/b/a Snapfinger Woods Family Practice Group and Piedmont Minor Emergency Clinic, P.C. (12A42425), which involved allegations of billing improprieties by a medical practice. At calendar call, I asked attorneys for both parties to come back to chambers for a private discussion during which I disclosed that the defendant-doctor had been my primary care physician for several years. I also disclosed in chambers that I had elected to leave that practice following my dissatisfaction with the defendant-doctor. I granted defense counsel's request for leave of court to discuss the situation with his client. I subsequently granted defense counsel's request that I voluntarily recuse myself.

Najah Drakes v. Kareem Hodges and Shekina Ward (13A47284) which involved a dispossessory action. The plaintiff, Ms. Drakes, has been a close, personal friend of mine for several years. After noticing her name on the pleadings, I recused myself sua sponte based on the nature of my relationship with the plaintiff.

Although in each of these cases I assured the parties that I could be impartial, my concern for even the appearance of impropriety led to my decisions to voluntarily recuse myself upon request of one of the attorneys. There have been no other cases in which a litigant has requested that I recuse myself.

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

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

I have never held any public office other than my current position, nor have I ever sought any other public office by appointment or election.

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.

Other than my own 2012 election campaign, the only political campaign in which I have participated was that of my husband, Brian B. Ross, for Solicitor-General of DeKalb County in 2006. Although I was listed as the Chairperson of his campaign, my sole responsibility was appearing at events with him. His candidacy was not successful.

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 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 – 1996
        Tarrant County District Attorney's Office
        401 West Belknap
        Fort Worth, Texas 76106
        Assistant District Attorney

        1997 – 1998
        DeKalb County Solicitor's Office
        556 North McDonough Street, Suite #500
        Decatur, Georgia 30030
        Assistant Solicitor General

        1998 – 2002
        Fulton County District Attorney's Office
        136 Pryor Street, Suite #640
        Atlanta, Georgia 30303
        Senior Assistant District Attorney

2002 – 2005
United States Attorney's Office, Northern District of Georgia
75 Spring Street, SW, Suite #600
Atlanta, Georgia 30303
Assistant United States Attorney

2007 – 2011, 1998 – 2002
Fulton County District Attorney's Office
136 Pryor Street, Suite #640
Atlanta, Georgia 30303
Executive Assistant District Attorney (2007 – 2011)
Senior Assistant District Attorney (1998 – 2002)

2011 – present
DeKalb County State Court
556 North McDonough Street, Suite #3230
Decatur, Georgia 30030
Judge

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.

Before becoming a judge, I always served as a prosecutor. Initially, as a state prosecutor at the Tarrant County District Attorney's Office in Fort Worth, Texas from 1994 to 1996, I prosecuted various state misdemeanor offenses, including driving under the influence, crimes of domestic violence, assault and battery, and theft. Later at the DeKalb Solicitor-General's Office in Decatur, Georgia from 1997 to 1998, I again prosecuted various state misdemeanor offenses, including driving under the influence, crimes of domestic violence, assault and battery, and theft. Later, at the Fulton County District Attorney's Office in Atlanta, Georgia from 1998 to 2002 and 2007 to 2011, I prosecuted various state felony offenses, including homicide, rape, child molestation, armed robbery, aggravated assault and possession and sale of drugs. As an Assistant United States Attorney for the Northern District of Georgia from 2002 to 2005, I prosecuted various felony offenses including firearm offenses, mail fraud, illegal reentry, and gang related crimes. At several of the offices where I prosecuted, I also wrote appellate briefs for the cases I had

tried. I also argued before the United States Court of Appeals while working at the United States Attorney's Office.

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

As a state prosecutor I represented Tarrant County, Texas, DeKalb County, Georgia, and Fulton County, Georgia. As a federal prosecutor, I represented the United States, within the Northern District of Georgia.

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

In private practice, I served as a state and federal prosecutor for over 15 years and appeared in court frequently. The following percentages reflect the amount of time I spent in court as a prosecutor over my career.

i. Indicate the percentage of your practice in:
   1. federal courts: 15%
   2. state courts of record: 85%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 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 have tried approximately 150 cases over my career. I served as sole counsel for approximately 65% of these cases. I served as lead counsel with a junior co-counsel on approximately 25% of these cases. I served as associate counsel on approximately 10% of these cases.

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

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

I have never practiced before the Supreme Court of the United States.

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

a. the date of representation

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

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

1. *United States v. Heard*, 367 F.3d 1275 (11th Cir. 2004) – The United States Court of Appeals, Eleventh Circuit; Judges Birch, Marcus and Brunetti (sitting by designation).

In 2004, I argued a case of first impression in the Eleventh Circuit, which dealt with the question: when does an anonymous tip give rise to reasonable suspicion sufficient to justify a *Terry* (*Terry v. Ohio*, 392 U.S. 1 (1968)) stop. In the case, a police officer stopped a defendant and conducted a weapons pat-down based on a woman's tip that the defendant had a gun. The trial court acknowledged that the woman was akin to an anonymous tipster because she did not stay to speak with the officer or even provide her name. The Court of Appeals affirmed the trial court, holding that a face-to-face tip, even if given by an anonymous person, may provide an officer with a reasonable suspicion to conduct a pat-down if there are sufficient indicia of reliability.

Defense: W. Carl Lietz, III and Stephanie Kearns
Federal Defender Program, Inc.
1500 The Centennial Tower
101 Marietta Street
Atlanta, Georgia 30303
404.688.7530

2. *State of Georgia v. Peterson & Peterson* (Y03703) (2000) – Fulton County Superior Court; Judge Bensonetta Lane.

In 2000, I was assigned as lead counsel to this case, which involved the death of a five-year-old, who died as a result of starvation and abuse by his grandmother and aunt. The district attorney filed a Notice of Intent to Seek the Death Penalty.

Along with co-counsel, I handled all pretrial motions and prepared the case for trial. The grandmother entered a guilty plea on February 22, 2002, and was sentenced to a life sentence without the possibility of parole. I did not handle the trial of the aunt because I had accepted employment at a different office by the time her case was called for trial.

Co-Counsel: Anna Cross
DeKalb County District Attorney's Office
556 McDonough Street
Decatur, Georgia 30030
404.371.2561

Defense: Bruce Harvey (T. Peterson)
146 Nassau Street
Atlanta, Georgia 30303
404.659.4628

Defense: August Seimon (P. Peterson)
Seimon Law Firm
P.O. Box 599
Atlanta, Georgia 30301
770.884.7067

3. *State of Georgia v. Benton* (09SC84683) (2010) - Fulton County Superior Court; Judge T. Jackson Bedford.

In 2010, I was lead counsel in prosecuting defendant Benton for the murder of a Spelman College freshman on the campus of Clark-Atlanta University. The murder occurred on September 3, 2009, after Benton and some friends visited the campus and became involved in a verbal dispute with other men. During the dispute, Benton produced a firearm and shot into a crowd of students, killing the victim, who was an innocent bystander. The jury trial was covered in its entirety on truTV's "In Session" court program. The defendant was convicted and received a life sentence on February 20, 2010 following a week-long trial.

Co-Counsel: Pat Ducher
Assistant District Attorney
Fulton County District Attorney's Office
136 Pryor Street, SW, Suite #C640
Atlanta, Georgia 30303
404.612.4518

Defense: Jackie Patterson
The Patterson Law Firm
2970 Peachtree Road, Suite #650

Atlanta, Georgia 30305
404.841.4081

4. *State of Georgia v. Auletta, et. al.* (08SC73922) (2010) – Fulton County Superior Court; Judge T. Jackson Bedford.

In 2010, I successfully prosecuted ten members of the Nine Tre' Bloods street gang for three murders and two non-fatal stabbings committed over a seven-day period in 2008 in Atlanta. The defendants murdered two fellow gang members who had violated gang rules by cooperating with police during an investigation. Additionally, they murdered two potential witnesses who had knowledge of the first two murders. Following a two-week jury trial, each defendant tried was sentenced to a life sentence plus a term of years.

Co-Counsel: J. Gabriel Banks
Assistant District Attorney
Fulton County District Attorney's Office
136 Pryor Street, SW, Suite #C640
Atlanta, Georgia 30303
404.613.4388

Defense: Raymond Giudice
The Pinnacle
3455 Peachtree Road, Suite #780
Atlanta, Georgia 30326
404.554.8800

5. *State of Georgia v. Drennon, et. al.* (08SC69501) (2009) – Fulton County Superior Court; Judge Henry Newkirk.

In 2009, I successfully prosecuted six members of the International Robbing Crew for numerous robberies and murders they committed throughout Atlanta over a three year period. Although ten murders were alleged in the indictment, the group was suspected of committing about 30. The incidents involved victims who were known drug dealers as well as some random victims. Following a two-week jury trial, each defendant tried was sentenced to a life sentence and some received an additional term of years.

Co-Counsel: J. Gabriel Banks
Deputy District Attorney
Fulton County District Attorney's Office
136 Pryor Street, Suite #C640
Atlanta, Georgia 30303
404.613.4388

Defense: Elizabeth Markowitz
Fulton County Public Defender's Office

55 Park Place, NE, Suite 1600
Atlanta, Georgia 30303
404.612.5200

6. *State of Georgia v. Rai* (06SC48640) (2008) – Fulton County Superior Court; Judge T. Jackson Bedford.

In 2008, I along with one other prosecutor, successfully prosecuted defendant Rai, a college professor, for arranging a murder hit on his daughter-in-law. Although our office sought the death penalty, the jury returned a non-death sentence and Rai was sentenced to life without the possibility of parole plus 25 years following a three-week jury trial. The case was covered on Court TV and featured on "Nightline."

Co-Counsel: Sheila A. Ross (no relation)
Deputy District Attorney
Fulton County District Attorney's Office
136 Pryor Street, Suite #C640
Atlanta, Georgia 30303
404.612.4874

Defense: Donald Samuel
Garland, Samuel & Loeb, PC
3151 Maple Drive, NE
Atlanta, Georgia 30305-2500
404.262.2225.

Jack M. Martin
The Benefits Law Group, P.K. Keesler, P.C.
945 East Paces Ferry Road, Suite #2515
Atlanta, Georgia 30326
404.995.9505

7. *State of Georgia v. Mann* (07SC55680) (2008) – Fulton County Superior Court; Judge Jerry Baxter.

In 2008, I successfully prosecuted Mann, who fatally shot his estranged girlfriend in the CNN Center, where she was employed as part of a cleaning crew. Immediately following the shooting, Mann turned the gun on himself for an apparent suicide attempt. Although he sustained a permanently disfiguring injury to the face, Mann survived and was brought to trial, where he claimed the gun accidentally fired. The case served as a catalyst for the Teen Summit on Domestic Violence, a program hosted by the Fulton County District Attorney's Office. Following a two-day jury trial, the defendant was sentenced to a life sentence plus five years.

Defense: Lawanda O'Bannon
Fulton County Public Defender's Office
55 Park Place, NE, Suite #1600
Atlanta, Georgia 30303
404.612.3510

8. *State of Georgia v. Moore* (07SC62497) (2008) – Fulton County Superior Court; Judge Stephanie Manis.

In 2008, I successfully prosecuted defendant Moore for a drug related murder at a mixed use (residential and business) complex in Atlanta called Atlantic Station. It was the first homicide at the complex, which had only recently opened. Moore attempted to rob the victim during a drug deal. At trial, I introduced evidence that Moore had previously been convicted of a drug related robbery. Following a four-day jury trial, Moore was sentenced to a life sentence plus five years.

Defense: Derek Wright
Derek M. Wright, LLC
260 Peachtree Street, Suite #2200
Atlanta, Georgia 30303
678.710.8395

9. *State of Georgia v. Lewis* (09SC85722) (2010) – Fulton County Superior Court; Judge Michael Johnson.

In 2010, I successfully prosecuted defendant Lewis for a robbery and murder. Lewis, only 17-years-old, shot a 19-year-old victim who had recently moved to the same apartment complex where Lewis lived. At the time he was shot, the victim was coming out of a convenience store in the complex. When Lewis demanded his money, the victim ran to his apartment where he screamed for his mother to let him inside. By the time the victim's mother opened the door, Lewis had shot him on his doorstep. Following a three-day jury trial, Lewis was convicted and sentenced to a life sentence plus five years.

Defense: John Russell Mayer
Fulton County Public Defender's Office
55 Park Place, NE, Suite #1600
Atlanta, Georgia 30303
404.612.3510

10. *State of Georgia v. Head, et. al.* (07SC55188) (2008) – Fulton County Superior Court; Judge Henry Newkirk.

In 2008, I successfully prosecuted defendant Head along with three co-defendants for the murder of a tattoo artist during a robbery attempt. Head masterminded a robbery of the victim, but enlisted the aid of three teenage accomplices since the victim would have recognized him as a previous client. During the robbery, the

victim lunged at one of the two gunmen who then fired a shot killing the victim. Although Head stayed home while the other three defendants carried out the murder, he was convicted as a party to the crime of murder for his role in planning the robbery. Following a week-long jury trial, Head and one of his co-defendants were convicted. A second co-defendant pleaded guilty prior to trial and testified against Head. The third co-defendant, Head's girlfriend, was acquitted. Head was sentenced to a life sentence plus five years.

Defense: Tony Axam
Axam Law Firm
P.O. Box 115238
Atlanta, Georgia 30310
404.524.2233

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

As a prosecutor, I pursued many legal matters that did not proceed to trial, mostly because those cases ended in pleas. As a Fulton County Executive Assistant District Attorney, I handled death penalty pretrial motions including ones involving *Brady* issues (pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963)) and DNA testing. I also worked on investigations involving local police officers and made presentations and recommendations to the District Attorney regarding whether the officers' actions constituted use of excessive force.

As an Assistant United States Attorney for the Northern District of Georgia, I handled many cases that resulted in pleas, especially cases involving the purchase, sale and possession of illegal firearms. For these cases, I worked closely with agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives.

As both a state and federal prosecutor, I assisted investigators in preparing search warrants for presentation to magistrate judges.

I have never been involved in any lobbying activities.

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

I have not taught any courses.

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

    None.

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

    If confirmed, I have no plans, commitments, or agreements of this sort.

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 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 foresee any such conflicts of interest. However, if one were to arise, I would consult the Code of Conduct for United States Judges to determine the appropriate steps to be taken.

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

   To resolve a potential conflict of interest, I would first consult the Code of Conduct for United States Judges to determine whether there actually was such a conflict. If I felt there was, I would follow the requirements for recusal. If I felt uncertain as to whether a

true conflict existed, I would still disclose the potential conflict to the parties and litigants and hear their positions with respect to my recusal. As is the case in my current position, my general inclination would be to recuse myself upon objection by one of the parties unless I felt strongly that the objection was frivolous and being made to thwart the legal process.

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

    Since June 20, 2012, I have run a diversionary program called, "Alternative Path" for young first time offenders who are facing minor misdemeanor charges. The program is held twice a month in my courtroom. At the sessions, guest speakers share their experiences of overcoming different life obstacles with participants. By agreement with the Solicitor-General's office, if participants attend two to three sessions and are in compliance with their other bond conditions, including remaining out of legal trouble for a specified time, they will avoid having charges formally filed and in some cases are eligible to have the arrest expunged.

    For the past six years, my husband, who also is an attorney, and I have coordinated a school-wide legal presentation for Career Day at our daughters' school in Lithonia, Georgia. The presentation consists of a mock trial that we write and then conduct with the students. We also include question and answer sessions to which we invite other presenters from the legal profession. The mock trial script always incorporates lessons regarding the importance of following school rules.

    In addition to the annual Career Day presentation, I have taught a four session anti-bullying class to fourth and fifth graders called, "No Put Downs." The program teaches children how to respond to verbal and physical bullying, and reinforces the use of positive language when communicating with others.

    I also sponsor an annual art contest for all DeKalb County middle and high school students, many of whom have experienced having arts funding cut from their schools. I donate gift cards for art supplies that are awarded to three middle school winners and three high school winners. Additionally each participant receives some small token such as a movie gift card. The contest has been covered by "11 Alive" reporter, Donna Lowery on her "Class Act" segment and featured in local newspapers. I have attached a copy of a brief article from *CrossRoadsNews* featuring the 2012 contest.

26. **Selection Process**:

    a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your

jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In the summer of 2013, I met with a member of the judicial nominating committee created by United States Senators Chambliss and Isakson to discuss my interest in being considered for a position on the United States District Court for the Northern District of Georgia. Since September 6, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 15, 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 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
Ross, Eleanor L.	U.S. District Court (Northern District of Georgia)	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 12/30/2013
7. Chambers or Office Address		
556 N. McDonough Street Suite 3230 Decatur, GA 30030-3356		

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

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

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Ross, Eleanor 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. 2013	State Court of DeKalb County - salary	$152,967.00
2. 2012	State Court of DeKalb County - salary	$152,967.00
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	Clayton County District Attorney's Office - salary
2. 2013	Self-employed attorney
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

Name of Person Reporting	Date of Report
Ross, Eleanor 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.	Bank of America	Credit Card	J
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Ross, Eleanor 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)	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 cash accounts	A	Interest	J	T	Exempt				
2. American Century Mid Cap Value Fund	A	Int./Div.	J	T	Exempt				
3. American Funds EuroPacific Growth Fund Fund	A	Int./Div.	J	T	Exempt				
4. American Funds Growth Fund of America	A	Int./Div.	J	T	Exempt				
5. American Funds Income Fund of America	A	Dividend	K	T	Exempt				
6. American Funds Investment Company of America	A	Dividend	J	T	Exempt				
7. American Funds New Perspective Fund		None	J	T	Exempt				
8. Baxter International, Inc. stock		None	J	T	Exempt				
9. Edward Jones cash account		None	J	T	Exempt				
10. Express Scripts Holding Co. stock		None	J	T	Exempt				
11. Invesco Small Cap Value Fund	A	Int./Div.	J	T	Exempt				
12. JPMorgan Government Bond Fund	A	Int./Div.	J	T	Exempt				
13. MassMutual Diversified Bond SAGIC Fund	A	Int./Div.	J	T	Exempt				
14. MassMutual Premier Disciplined Value Fund	A	Int./Div.	J	T	Exempt				
15. MassMutual S & P 500 Index Fund	A	Int./Div.	K	T	Exempt				
16. National Oilwell Varco Inc., stock	A	Dividend	J	T	Exempt				
17. Nuveen Mid Cap Growth Opportunities Fund	A	Int./Div.	J	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Ross, Eleanor 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)	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)
18. Nuveen Small Cap Select Fund	A	Int./Div.	J	T	Exempt				
19. Oppenheimer Global Opportunities Fund	A	Int./Div.	J	T	Exempt				
20. Oppenheimer Global Strategic Income Fund	A	Int./Div.	J	T	Exempt				
21. Path2College 529 Plan - Aggressive Managed, Age 11-12	A	Int./Div.	J	T	Exempt				
22. Path2College 529 Plan - Aggressive Managed, Age 9-10	A	Int./Div.	J	T	Exempt				
23. PIMCO Total Return Fund	A	Int./Div.	J	T	Exempt				
24. Qualcomm Inc. stock	A	Dividend	J	T	Exempt				
25. Southwest Airlines Co. stock	A	Dividend	J	T	Exempt				
26. Windstream Corp. stock	A	Dividend	J	T	Exempt				

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

Name of Person Reporting	Date of Report
Ross, Eleanor L.	01/06/2014

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Ross, Eleanor 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/ **Eleanor L. Ross**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		7	281	Notes payable to banks-secured (auto)		26	167
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		169	129	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		20	234
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		307	339
Real estate owned – personal residence		305	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		32	224				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		353	740
				Net Worth		159	894
Total Assets		513	634	Total liabilities and net worth		513	634
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							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Century Mid Cap Value Fund	$ 2,635
American Funds EuroPacific Growth Fund	2,784
American Funds Growth Fund of America	5,813
American Funds Income Fund of America	16,318
American Funds Investment Company of America	9,212
American Funds New Perspective Fund	8,315
Baxter International, Inc. stock	7,203
Edward Jones cash account	179
Express Scripts Holding Co. stock	6,674
Invesco Small Cap Value Fund	2,794
JPMorgan Government Bond Fund	6,771
MassMutual Diversified Bond SAGIC Fund	3,144
MassMutual Premier Disciplined Value Fund	9,874
MassMutual S&P 500 Index Fund	16,142
National Oilwell Varco Inc. stock	6,159
Nuveen Mid Cap Growth Opportunities Fund	2,794
Nuveen Small Cap Select Fund	2,695
Oppenheimer Global Opportunities Fund	4,491
Oppenheimer Global Strategic Income Fund	8,300
Path2College 529 Plan – Aggressive Managed, Age 11-12	7,228
Path2College 529 Plan – Aggressive Managed, Age 9-10	8,233
PIMCO Total Return Fund	7,706
Qualcomm Inc. stock	9,940
Southwest Airlines Co. stock	9,105
Windstream Corp. stock	4,620
Total Listed Securities	$ 169,129

AFFIDAVIT

I, Eleanor Louise Ross, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 7, 2014
(DATE)

Eleanor Louise Ross
(NAME)

Michelle L. Beck
(NOTARY)
Michelle L. Beck
Notary Public, Rockdale County, Georgia
My Commission Expires June 9, 2017

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee
On Judicial Nominations
May 13, 2014

The Judiciary Committee welcomes seven judicial nominees, two for the U.S. Court of Appeals for the Eleventh Circuit and five for the U.S. District Court for the Northern and Middle Districts of Georgia. I thank Senator Blumenthal for chairing this important hearing. I am always happy to share with other members the opportunity to chair hearings on the many important issues we handle on the Senate Judiciary Committee.

Today, we will hear first from Julie Carnes and Jill Pryor, who have been nominated to fill vacancies on the Eleventh Circuit. We will then hear from the five district court nominees: Leslie Abrams to the Middle District of Georgia and Michael Boggs, Mark Cohen, Leigh May, and Eleanor Ross to the Northern District of Georgia. Some of these positions have remained vacant for far too long. For instance, the two Eleventh Circuit seats are judicial emergency vacancies, as are two of the Northern District of Georgia seats.

Some press accounts have described six of these nominees as being a "package deal" that was negotiated between the Georgia Senators and the President. I have noted before that there is no "deal" negotiated with me as chairman of the Senate Judiciary Committee or with any of the other Senators. The constitutional responsibility of advice and consent resides with each individual Senator, and there is no such thing as a binding deal that negates each Senator's responsibility to determine the fitness of a judicial nominee for a lifetime appointment.

Nor should any Senator be making up their minds about nominees without allowing the process to run its course. The purpose of these public hearings is to allow Senators to ask questions and raise issues about the nominees' background and their fitness for a lifetime appointment on the Federal bench. I have always maintained that home state Senators be consulted by the President regarding nominations made to their states, and following that consultation and review of their backgrounds, those nominees receive a hearing.

Moreover, the purpose of these hearings is to produce a record by which Senators can make an informed decision about these nominees. The Committee welcomes written testimony from anyone who has first-hand knowledge of a nominee's fitness to serve as a judge. I look forward to reviewing the nominees' answers to Senators' questions asked here today and in writing. I expect to submit written questions to the nominees to further explore issues that will be discussed at this hearing.

I note that today's slate of nominees includes five women – I cannot recall the last time when so many women were seated at the witness table. The President has many critics but I believe he has done an outstanding job increasing the diversity of our Federal bench during his tenure and I commend him for continuing to do so. From district court nominees to circuit court nominees and even to his two Supreme Court Justice nominees, this President has made it a priority to have our federal bench reflect the people it serves. I welcome the nominees and thank their families for being with us today.

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Senator Chuck Grassley
Questions for the Record

Julie Elizabeth Carnes
Nominee, United States Circuit Judge for the Eleventh 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 Eleventh 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 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. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

    a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

        i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

        ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

        iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

        iv. Are you committed to upholding this precedent?

    b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

        i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

        ii. Will you commit to give this portion of the Court's opinion full force and effect?

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

16. 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?

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[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

17. 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?

18. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

19. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

20. 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?

21. Do you believe that the death penalty is an acceptable form of punishment?

22. 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?

23. 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?

24. 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?

25. In *Brown v. Entertainment Merchants Association*., Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

    a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

    b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

26. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

27. What would be your definition of an "activist judge"?

28. Please describe with particularity the process by which these questions were answered.

29. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Jill Pryor
Nominee, United States Circuit Judge for the Eleventh Circuit

1. You indicated in your questionnaire that have unable to find notes, transcripts, or recordings for several of your speeches. Could you provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the following talks?

   a. May 28, 2009, panel discussion entitled "Confessions of a Female Trial Team."

   b. February 5, 2008, panel discussion on jury trial in *Kellett v. PricewaterhouseCoopers.*

2. You indicated that you supervised an associate in your firm who was co-counsel in a challenge to the constitutionality of a local ordinance under which protestors were denied the opportunity to protest during the Masters Tournament. What was the general nature of this case?

3. You indicated that you have limited experience in criminal law. If confirmed, what you anticipate being the most difficult part of the transition and how will you prepare yourself?

4. You have, at times, worked with the ACLU on legal matters. Please list the matters on which you worked with the ACLU.

5. Please describe any and all work that you have done with the Civil Justice PAC.

6. 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.

7. What is the most important attribute of a judge, and do you possess it?

8. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

9. In general, Supreme Court precedents are binding on all lower federal courts, and 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?

10. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

13. Please describe your understanding of the workload of the Eleventh Circuit. If confirmed, how do you intend to manage your caseload?

14. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

15. 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?

16. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

17. 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?

18. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

19. 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?

20. At a speech in 2005, Justice Scalia said, "I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says."

    a. Do you agree with Justice Scalia?

b. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?

21. Do you think judges should consider the "current preferences of the society" when ruling on a constitutional challenge? What about when seeking to overrule longstanding Supreme Court or circuit precedent?

22. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

23. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

24. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?

25. Do you believe that the death penalty is an acceptable form of punishment?

26. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

27. Do you believe there is a right to privacy in the U.S. Constitution?

    a. Where is it located?

    b. From what does it derive?

    c. What is your understanding, in general terms, of the contours of that right?

28. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

    a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

    b. Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?

29. In *Brown v. Entertainment Merchants Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

    a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

    b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

30. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

31. 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 Supreme Court precedents faithfully and giving them full force and effect, even if you personally disagree with such precedents?

32. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

    a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

        i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

        ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

        iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

        iv. Are you committed to upholding this precedent?

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

    i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

    ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

    i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
    ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

    i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

    ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).

was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

33. What would be your definition of an "activist judge"?

34. 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.

35. Please describe with particularity the process by which these questions were answered.

36. Do these answers reflect your true and personal views?

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[5] *Id.* (internal citations omitted).

Senator Grassley
Questions for the Record

Leslie Joyce Abrams,
Nominee, U.S. District Judge for the Middle District of Georgia

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. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that

come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

13. Please list your representation of any Guantanamo Bay detainees, including the clients' names and the dates on which your representation began and terminated. Please include Westlaw citations to all court submissions you made on their behalf and/or submit copies thereof.

14. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

    a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

        i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

        ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

        iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

        iv. Are you committed to upholding this precedent?

    b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

        i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

        ii. Will you commit to give this portion of the Court's opinion full force and effect?

    c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.
[3] *Id.* 2691.

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

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

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

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 Grassley
Questions for the Record

Michael Boggs,
Nominee: U.S. District Judge for the Northern District of Georgia

1. During your hearing, I asked a few questions that you had already touched on in your earlier answers. I'd like to give you the opportunity to answer a few of them now, in writing.

   a. There may be some concern that your personal views on abortion may influence your ability to follow precedent as a judge. First, what is your commitment to following precedent, if confirmed?

   b. Please describe what you see to be the differences in responsibility of a policy maker and a judge regarding the topic of abortion.

   c. Do you hold any views regarding abortion, religious or otherwise, that would make you unable to discharge your duties faithfully as a United States District Judge?

2. Could you foresee a scenario in which a case dealing with abortion came before you where you ruled to uphold an abortion law?

3. In February 2013, you gave an interview to the Atlanta Constitution Journal where you talked about imposing a 10-year mandatory sentence on a 17 year old that you thought was unjust, but you did it because the law required you to. Please describe how you came to your decision in weighing what you believed was fair with what the law required you to do.

4. Without going into specific views you might personally hold, as a state court judge, have you ever made a ruling that follows the law or precedent that you have personally disagreed with? If so, will you briefly describe how you were able to put aside your own views and rule according to the law?

5. During your hearing, Senator Blumenthal asked a question where he said that you had indicated that the right of privacy was not in the Constitution. You answered that you did not recall ever having said that. For the record, what is your understanding of the Constitutional right to privacy?

6. During your hearing, several Senators asked you about a vote on an amendment that you took regarding abortion doctors' privacy. You said that you were not aware of violence against doctors at the time of the vote. To clarify, did you mean that you were not aware of violence against abortion doctors at all when you took the vote, or that issue did not occur to you at the time when you were voting because you were considering other factors, such as a woman's right to know information about her doctor?

7. Please describe the work you've done with the adult felony drug court program.

8. In your questionnaire you gave some examples of legislation that you sponsored. Will you please elaborate on your efforts in these areas:

   a. Strengthening laws combating sexual exploitation of children and internet child pornography?

   b. Expanding and improving the law on criminal offenses against minor victims?

   c. Updating the State Sexual Offender Registry requirements?

9. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?

10. What is the most important attribute of a judge, and do you possess it?

11. 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?

12. 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?

13. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

   a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

      i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

      ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

      iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

      iv. Are you committed to upholding this precedent?

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

    i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

    ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

    i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

    ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

    i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

    ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

    i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

ii. Will you commit to give this portion of the Court's opinion full force and effect?

14. 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?

15. 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?

16. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

17. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

18. 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?

19. 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?

20. If confirmed, how do you intend to manage your caseload?

21. 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?

22. 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.

23. 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.

24. Please describe with particularity the process by which these questions were answered.

25. Do these answers reflect your true and personal views?

Senator Grassley
Questions for the Record

Mark Cohen,
Nominee: U.S. District Judge for the Northern District of Georgia

1. You were on the Northern District of Georgia Magistrate Judge Selection Panels for several years. What qualities did you look for when you considered potential judges and do you possess those qualities?

2. According to your questionnaire, the entirety of your legal practice has been in civil matters.

   a. What steps have you taken and do you plan to take to get up to speed in criminal matters?

   b. What do you believe is the purpose of sentencing?

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. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

   a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

      i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

      ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

iv. Are you committed to upholding this precedent?

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

13. If confirmed, how do you intend to manage your caseload?

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

15. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what

individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

17. Please describe with particularity the process by which these questions were answered.

18. Do these answers reflect your true and personal views?

Senator Grassley
Questions for the Record

Leigh Martin May,
Nominee, U.S. District Judge for the Northern District of Georgia

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?

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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. 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?

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    a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

        i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

        ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

        iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

        iv. Are you committed to upholding this precedent?

    b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

        i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

        ii. Will you commit to give this portion of the Court's opinion full force and effect?

    c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

        i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

        ii. Will you commit to give this portion of the Court's opinion full force and effect?

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.
[3] *Id.* 2691.

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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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?

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

Senator Grassley
Questions for the Record

Eleanor Louise Ross,
Nominee, U.S. District Judge for the Northern District of Georgia

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. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

    a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

        i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

        ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

        iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

        iv. Are you committed to upholding this precedent?

    b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

        i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

        ii. Will you commit to give this portion of the Court's opinion full force and effect?

    c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

        i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.
[3] *Id.* 2691.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

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.

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

16. Do these answers reflect your true and personal views?

Questions for the Record
Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Chairman Patrick Leahy
Questions for the Record
Nomination of Michael Boggs
To Be U.S. District Judge for the Northern District of Georgia
May 20, 2014

1. As a United States Senator, I believe that there is no greater responsibility than the one I make when I take the oath of office and affirm that I will "support and defend the Constitution of the United States." At your hearing, in an exchange with Senator Franken, you testified that one of the differences between your role as a judge and your previous role as a legislator was that, "When I was a legislator, I did not have an obligation to be faithful to the rule of law." **Why do you believe legislators are not obligated to be faithful to the rule of law?**

2. You testified at your hearing that your legislative votes related to the Confederate symbol on the Georgia state flag represented the will of your constituents. **Given that your house district had a sizable African American constituency, did you consider their views when you voted against changing the Georgia flag? If so, what steps did you take to become aware of their views?**

3. During your hearing, in response to Senator Hirono's question asking whether you had ever voted your conscience against the will of your constituents while you were a state legislator, you testified that you had voted for reapportionment maps supported by Democrats but not supported by the majority of your constituents.

    a. **Why do you believe this was a "vote of conscience" for you, as opposed to one of alignment with your political party's interest?**

    b. **Please describe any other examples of votes you believed were based on your conscience against the will of the majority of your constituents.**

4. In 2004, while a member of the Georgia legislature, you spoke on the floor in support of a resolution calling for a state constitutional amendment banning same-sex marriages. During your speech, you stated that lawmakers should be able to come together because such a ban was "commonsensical [and] premised on good conservative Christian values." You also suggested that the significant step of amending the state constitution was warranted to protect against "the dangers we face with respect to activist judges."

    a. **Who do you consider to be an "activist judge"?**

    b. **Was the Supreme Court "activist" when it decided *Roe v. Wade (1973)*?**

    c. **Was Justice Kennedy an "activist" when he wrote the majority opinions in *Lawrence v. Texas*, 539 U.S. 558 (2003) or *United States v. Windsor*, 570 US 12 (2013)?**

5. **Please describe your understanding of the scope of the constitutional right to privacy. What do you believe to be the key elements of that right?**

6. At your nomination hearing, you testified about a case when you were a trial court judge, wherein the lawyer on the case told you that he had presented the case to your circuit's chief judge who refused to hear it. The case involved a woman who identified herself as a lesbian in chambers on the question of approving her adoption of a child from foster care. You testified that you heard the case and approved the adoption. Understanding that an adoption case may be sealed, I do not expect you to provide any identifying details on this case. **However, can you provide me with the name and contact information of any person who can personally verify the facts of the matter as you testified to the Committee?**

7. In the past several years, the Supreme Court struck down a number of federal statutes most notably several designed to protect the civil rights of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, *Flores v. City of Boerne*, 521 U.S. 507 (1997), *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000), *Board of Trustees v. Garrett*, 531 U.S. 356 (1999), and *Coleman v. Court of Appeals of Maryland*, 132 S. Ct. 1327 (2012). The Supreme Court also struck down statutes as falling outside the authority granted to Congress by the Commerce Clause in the case of *U.S. v. Lopez*, 514 U.S. 549 (1995), and *U.S. v. Morrison*, 529 U.S. 598 (2000). Similarly, a majority of the justices of the Court determined that core provisions of the Affordable Care Act were beyond the scope of the Commerce and Spending Clauses in *Nat'l Federation of Independent Business v. Sebelius*, 567 U.S. 1 (2012), and upheld the individual mandate under the taxing power. The Court struck down other federal statutes as violations of the 10th Amendment or the 11th Amendment, and part of a landmark Voting Rights Act, without articulating any clear basis for its unconstitutionality in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). These cases rely upon an expansive view of state's rights, and have been described as shifting powers to state governments as Congressional authority is diminished.

   (a) What is your view of these decisions? In your opinion, do they constitute "judicial activism"?

   (b) What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, the Commerce Clause, under Section 5 of the Fourteenth Amendment, and Section 2 of the Fifteenth Amendment?

8. Canon 7 in the Georgia Code of Judicial Conduct states that Judges shall refrain from political activity inappropriate to their judicial office, specifically that a judge or a candidate for public election to judicial office shall not publicly endorse a candidate for public office or make a contribution to a political organization. At your nomination hearing you confirmed in your testimony that you made a contribution to Georgia Conservatives in Action in September of 2012. **Did you also make an earlier contribution in April 2012 to the same group for $1,000?**

9. You testified that at the time you made your contribution to Georgia Conservatives in Action in 2012 you had no knowledge that this organization sponsored or endorsed candidates for public

office. A quick Google search reveals that in December of 2011, Georgia Conservatives in Action publicly endorsed Chris Vaughn for U.S. Congress and issued a corresponding press release and in 2010, Georgia Conservatives in Action publicly endorsed Nathan Deal in the Georgia GOP Gubernatorial Runoff.

a. **What due diligence did you exercise in advance of contributing $2500 to Georgia Conservatives in Action?**

b. **How did you come to be associated with this organization?**

c. **What Georgia Conservatives in Action events or fundraisers did you attend as a sitting judge or candidate for judge?**

d. **Why did you decide to financially support Georgia Conservatives in Action?**

10. According to Canon 2 of the Code of Conduct for United States Judges, "A judge should avoid impropriety and the appearance of impropriety in all activities."

a. **In 2012, as a sitting state appellate court judge, did you attend a fundraiser in support of Tyler Harper, then-candidate for State Senate from Georgia's 7th District?**

b. **Do you think your attendance may have given the appearance of an endorsement for then candidate Tyler Harper?**

c. **Do you believe your attendance at a candidate fundraising event would avoid "the appearance of impropriety in all activities" under the Federal Code of Conduct?**

d. **Do you believe your attendance at a candidate's political fundraiser would comply with the spirit of the Code of Conduct?**

e. **Have you attended any other fundraisers while serving as a judge, running for election as a judge or since you have been nominated to be a federal judge?**

Chairman Patrick Leahy
Questions for the Record
Nomination of Mark Howard Cohen
To Be U.S. District Judge for the Northern District of Georgia
May 20, 2014

1. Since the time of your representation of the Georgia State Board of Elections in the Georgia photo ID voting law litigation, several photo ID voting laws have been struck down by state or federal courts under various constitutional or statutory provisions. Specifically, courts that heard evidence about the operation of these newly-enacted voting measures invalidated photo ID laws in Texas, Pennsylvania and Wisconsin, among others.

   (a) In light of these rulings, do you acknowledge that certain contemporary photo ID voting laws can abridge, deny or interfere with the right to vote in violation of the law as various courts have held?

   (b) During your hearing you testified, in essence, that different outcomes in photo ID voting cases can be explained by virtue of the State, statute and differing fact circumstances at issue. **In both the state court case in Pennsylvania and the federal court case in Wisconsin identify, with specificity, the legal and factual bases that led to the invalidation of the laws there at issue <u>and</u> explain how the law and facts in those cases differed from the law and facts at issue in the Georgia photo ID voting case that you litigated?**

2. **What are your views of the legal analysis in *Frank v. Walker,* the Wisconsin federal photo ID opinion?**

3. **Was Georgia's photo ID law, as originally passed in 2005, constitutional? If so, why was Georgia's 2005 photo ID law enjoined by a federal court in 2005; and, why, in your view, did the Georgia legislature then amend the law in 2006 to provide an alternative to the financial burdens that the 2005 law imposed upon some voters seeking to obtain acceptable forms of photo ID?**

4. During your hearing, you mentioned the Supreme Court's ruling in *Crawford v. Marion County Election Board,* 553 U.S. 181 (2008).

   (a) Describe your role in Georgia Secretary of State, Karen Handel's decision to file an amicus brief in *Crawford v. Marion County Election Board,* 553 U.S. 181 (2008) where you appeared as counsel of record.

   (b) What guidance, if any, does the ruling in *Crawford* case provide regarding photo ID cases brought under an "as applied" theory?

5. **What factors are relevant to consider under a Section 2 of the Voting Rights Act challenge to a photo ID measure?**

6. **Under the *Burdick* v. *Takushi*, 504 U.S. 428 (1992), balancing test, how much weight should be accorded to an asserted governmental interest that is largely or completely unsupported by evidence when balanced against voters' interests in avoiding new burdens on their right to vote which are supported by evidence?**

7. In his Senate confirmation testimony then-Judge John Roberts testified that "...I have no basis for viewing [Section 2 of the Voting Rights Act] as constitutionally suspect and I don't." **Do you agree with this view that the now-Chief Justice Roberts expressed at the time of his Supreme Court confirmation hearing?**

8. As lead counsel in the Georgia photo ID appeal you defended the argument that you advanced in the lower court that the NAACP, and individual minority voters in Georgia, did not have legal standing to challenge the state's photo ID law in court. Had your argument prevailed, contrary to precedent and the long history of the fight for voting rights in Georgia, access to justice in a core area of constitutional rights would have been closed for organizations and individuals that defend voting rights. The Eleventh Circuit rejected your position.

   (a) How do you square the arguments that you advanced in that case both with the role that civil rights plaintiffs and intervenors have played over many decades enforcing voting rights in the face of discriminatory laws passed by legislatures, and with the Supreme Court and other court precedents on which the Court relied in rejecting your position?

   (b) Do you accept the analysis of the Court of Appeals for the Eleventh Circuit on its standing ruling rejecting your argument in the Georgia photo ID voting case? If so, why? If not, why?

   (c) Do you recognize the role that non-governmental actors play under the nation's civil rights laws as "private attorneys general," and, if confirmed, would you respect the laws and precedents that keep the courthouse door open to parties seeking to vindicate civil and constitutional rights?

9. In the past several years, the Supreme Court struck down a number of federal statutes most notably several designed to protect the civil rights of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, *Flores v. City of Boerne*, 521 U.S. 507 (1997), *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000), *Board of Trustees v. Garrett*, 531 U.S. 356 (1999), and *Coleman v. Court of Appeals of Maryland,* 132 S. Ct. 1327 (2012). The Supreme Court also struck down statutes as falling outside the authority granted to Congress by the Commerce Clause in the case of *U.S. v. Lopez*, 514 U.S. 549 (1995), and *U.S. v. Morrison*, 529 U.S. 598 (2000). Similarly, a majority of the justices of the Court determined that core provisions of the Affordable Care Act were beyond the scope of the Commerce and Spending Clauses in *Nat'l Federation of Independent Business v. Sebelius*, 567 U.S. 1 (2012), and upheld the individual mandate under the taxing power. The Court struck down other federal statutes as violations of the 10th Amendment or the 11th Amendment, and part of a landmark Voting Rights Act, without articulating any clear basis

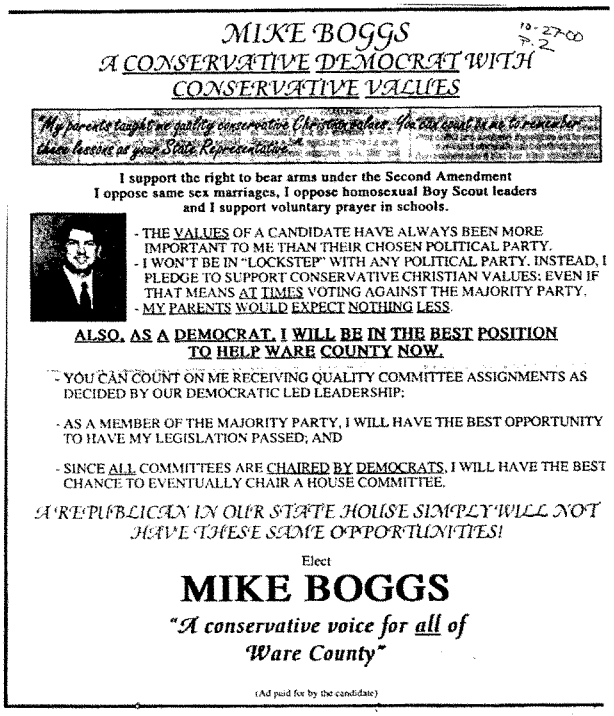
for its unconstitutionality in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). These cases rely upon an expansive view of state's rights, and have been described as shifting powers to state governments as congressional authority is diminished.

(a) What is your view of these decisions? In your opinion, do they constitute "judicial activism"?

(b) What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, the Commerce Clause, under Section 5 of the Fourteenth Amendment, and Section 2 of the Fifteenth Amendment?

Chairman Patrick Leahy
Follow Up Questions for the Record
Nomination of Michael Boggs
To Be U.S. District Judge for the Northern District of Georgia
June 16, 2014

1. At your May 13, 2014 nomination hearing, you testified under oath that there was no additional material responsive to the questionnaire than what you had already submitted to the Senate Judiciary Committee. The May 16, 2014 online edition of the Atlantic Constitution Journal (available at http://politics.blog.ajc.com/2014/05/16/in-georgia-john-lewis-is-now-the-last-word-in-federal-judgeships/) included an image of the following document, which is reportedly a campaign flyer:



MIKE BOGGS

A CONSERVATIVE DEMOCRAT WITH CONSERVATIVE VALUES

"My parents taught me quality conservative Christian values. You don't want me to remember these lessons as your State Representative."

I support the right to bear arms under the Second Amendment
I oppose same sex marriages, I oppose homosexual Boy Scout leaders
and I support voluntary prayer in schools.

- THE VALUES OF A CANDIDATE HAVE ALWAYS BEEN MORE IMPORTANT TO ME THAN THEIR CHOSEN POLITICAL PARTY.
- I WON'T BE IN "LOCKSTEP" WITH ANY POLITICAL PARTY. INSTEAD, I PLEDGE TO SUPPORT CONSERVATIVE CHRISTIAN VALUES: EVEN IF THAT MEANS AT TIMES VOTING AGAINST THE MAJORITY PARTY.
- MY PARENTS WOULD EXPECT NOTHING LESS.

ALSO, AS A DEMOCRAT, I WILL BE IN THE BEST POSITION TO HELP WARE COUNTY NOW.

- YOU CAN COUNT ON ME RECEIVING QUALITY COMMITTEE ASSIGNMENTS AS DECIDED BY OUR DEMOCRATIC LED LEADERSHIP;
- AS A MEMBER OF THE MAJORITY PARTY, I WILL HAVE THE BEST OPPORTUNITY TO HAVE MY LEGISLATION PASSED; AND
- SINCE ALL COMMITTEES ARE CHAIRED BY DEMOCRATS, I WILL HAVE THE BEST CHANCE TO EVENTUALLY CHAIR A HOUSE COMMITTEE.

A REPUBLICAN IN OUR STATE HOUSE SIMPLY WILL NOT HAVE THESE SAME OPPORTUNITIES!

Elect

MIKE BOGGS

"A conservative voice for all of Ware County"

(Ad paid for by the candidate)

(a) **Was this flyer created in connection with your campaign for the state legislature? Did you write or edit any of the content of the flyer?**

(b) **At the bottom of the flyer it states that it is an "Ad paid for by the candidate". How was this flyer used? Did you hand it out to the public? Was it printed in any publications?**

(c) **Can you confirm that you did not have access to a copy of this campaign flyer when you submitted your questionnaire to this Committee on January 14, 2014 or when you submitted an update to your questionnaire on April 10, 2014?**

(d) **Are there any materials from your campaigns that you have not provided to the Committee? If so, please provide these materials to the Committee.**

2. I asked you how you knew that your vote in support of the Confederate symbol on the Georgia state flag "represented the will of your constituents." You answered under oath that the "issue of changing the flag was generally a topic of discussion within my legislative district at the time."

   (a) **Was this a topic of discussion in your district in the fall of 2000? If so, did voters express their views on the Confederate symbol to you during your campaign?**

   (b) **Did you express any views on the Confederate symbol during any of your campaigns? If so, how were these views expressed? For example, did you distribute any campaign literature on the Georgia state flag?**

3. You testified at your hearing that you voted in the Georgia legislature for an amendment to the "Patient Right to Know Act of 2001" to require internet-accessible profiles of doctors to include the number of abortion procedures the doctor had provided in the previous 10 years because you were a "pro-life legislator".

   Why do you think that an amendment publicizing a doctor's name, location, and number of abortion procedures performed is "pro-life"?

4. You answered under oath to a written question asked by Senator Blumenthal that your campaign donations to Georgia Conservatives in Action were made with "the sole specific intent to help with the costs of two events." You described one event as an "Economic Development Summit," but described the second only as "another event sponsored by the organization in 2012".

   Please describe this second event your campaign made a donation to support and produce any documents relevant to that event.

Questions for the Record from Senator Dianne Feinstein for Judge Michael P. Boggs

May 20, 2014

(1) An article you submitted to the Committee from the *Blackshear Times* and dated Wednesday, January 7, 2004 states that you "told the Blackshear Rotary Club Tuesday" that you would "run for Superior Court Judge." When did you first become a candidate for Superior Court Judge? Did you become a judicial candidate on or before Tuesday, January 6, 2004?

(2) When a state constitutional amendment to ban same-sex marriage came before the Georgia House in February 2004, you were the first to rise and speak in support.

a. Why did you vote for this amendment?

b. Why did you choose to speak on it and to be the first speaker to rise in support of the measure, given that, as reflected in your questionnaire responses, you rarely spoke on the House floor?

c. In your remarks, you said: "I want to stand before you today and tell you that it's my opinion, both as a Christian, as a lawyer, and as a member of this House that it's our opportunity to stand up in support of this resolution. I think it's important to recognize the dangers that we face with respect to activist judges, with respect to mayors who are operating in derogation of current state law."

i. The Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), found Section 3 of the federal Defense of Marriage Act unconstitutional. Do you believe the Supreme Court majority in *Windsor* was "activist"?

ii. Numerous courts have applied *Windsor* to conclude that states' bans on same-sex marriage or on recognition of same-sex marriages from other states are unconstitutional. Do you believe that any judge who decides, under the Constitution of a state or the United States, that gay and lesbian Americans have a right to marry or to have a marriage recognized is an "activist judge"?

d. In your remarks, you said: "[I]n 1998, the Georgia Supreme Court [in *Powell v. State*, 510 S.E.2d 18 (1998)] struck down Georgia's sodomy laws and I found it interesting that the lone dissent in that case by Justice Carley speaking with respect to the state regulating the private sexual conduct of consenting adults, that Justice Carley indicated quote that 'just because, that, because this right is not in the context of, or in the text of the Constitution, its boundaries are necessarily unclear.'"

i. Did you believe in 2004 that the six Georgia Supreme Court Justices in the majority in *Powell* were "activist judges"? Do you believe that today?

ii. In 2004, did you agree with Justice Carley's dissent in *Powell*? Do you still agree with it today?

iii. In your statement, you reference Justice Carley's dissent, stating: "because this right is not in the context or, or in the text of the Constitution, its boundaries are necessarily unclear."

1. I could not find the quote you reference in Justice Carley's dissent. What specific part of Justice Carley's dissent did you intend to quote from or otherwise rely on?

2. What is your approach to applying a constitutional right or doctrine that is well-established in judicial precedent but that does not appear in the text of the Constitution?

iv. Justice Carley's dissent quoted from and repeatedly cited *Bowers v. Hardwick*, 478 U.S. 186 (1986). Prior to your remarks, Supreme Court decided *Lawrence v. Texas*, 539 U.S. 558 (2003), which found: "*Bowers* was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. *Bowers v. Hardwick* should be and now is overruled."

1. In 2004, did you believe that *Bowers* was rightly decided? Do you believe that today?

2. Why did you rely on a dissent that itself repeatedly relied on a decision that since had been overruled?

3. Have you ever believed, and do you believe today, that Justice Scalia's dissent in *Lawrence* was correct?

4. Do you believe the Justices in the majority in *Lawrence* were "activist judges"? Do you believe *Lawrence* is an "activist" opinion?

e. Your questionnaire supplemental documents include an article in the *Waycross Journal-Herald* dated July 8, 2004. This article recounts a forum in which you spoke as a judicial candidate. According to the article, you stated: "I was born in Ware County and have tried in my career to improve the community. I ask you to reflect on my career. I have worked for the community because I care about it. **I believe you should elect judges who are active in the community. I am proud of my record. You don't have to guess where I stand – I oppose same-sex marriages . . . . I have a record that tells you exactly what I stand for.** I believe in separation of powers and believe making laws should be left to the legislature."

i. Was conveying your position on an issue in this sort of manner during a judicial campaign a frequent practice for you in 2004? What about during your later judicial campaigns?

ii. For what reason did you convey your position on the issue of same-sex marriage to voters when you were campaigning for judicial office?

iii. Did you ever convey a personal, legislative, or legal position on the issues of abortion, reproductive rights, the Second Amendment, or the Georgia state flag when you were campaigning for elective judicial office?

iv. Can you assure me that this article reflects the only time during any race for elective judicial office in which you conveyed your personal or legislative position, or legal opinion, on a controversial legal or constitutional issue?

(3) You sponsored bills related to parental notification and abortion in the 2003-2004 regular session of the Georgia Legislature. H.B. 466 would have eliminated a "person standing in loco parentis" from the statutory scheme, limiting notification only to actual parents or legal guardians. It also would have required that the minor "be accompanied by a parent or guardian who shall show" government-issued identification. None of these provisions contains an exception for a pregnancy resulting from rape or incest.

a. Why did you sponsor these measures? What did you intend them to accomplish?

b. Do you recall any instance in which you spoke or issued a statement in support of these measures, either on the floor of the House, in a legislative committee, in a political campaign, or in a campaign for judicial office?

c. Here is what I said on the Senate floor in 2006 about parental notification:

"As a mother and a grandmother, I would argue that, in a perfect world, young women and their parents should communicate openly about all major decisions, including whether to terminate a pregnancy. And, in fact, many young women do involve a parent in these decisions. However, the reality is that not all young women live in a household where they can turn to their parents. Some young women face physical, sexual or emotional abuse from their parents; some families do not have open, supporting relationships. For these young women, they may be more comfortable confiding in an older sister, aunt, or a grandparent. Yet this bill would turn these trusted relatives into criminals if they helped her seek an abortion."

i. Prior to sponsoring H.B. 466, did you consider its likely impact of on the young women and families I described in 2006?

ii. Please characterize how you view the likely impact of this measure on those young women and their families, had it been enacted.

iii. Did you intend to criminalize the act of a grandmother, aunt, older sibling, or clergy member helping a minor through a very difficult, personal decision? What if the young woman had been abused by her parent or guardian?

d. The reality is that large numbers of adults in our country lack government-issued identification. Some may be undocumented immigrants with American-born citizen children; others may be low-income or minority individuals; others may be grandparents who are the legal guardians of their grandchildren.

   i. Prior to sponsoring H.B. 466, did you consider its impact on a young woman whose parent or legal guardian lacks government-issued ID? Please characterize how you view the likely impact of this measure on such young women, had the measure been enacted.

e. Georgia provides a so-called "judicial bypass," under which a minor may "petition . . . any juvenile court in the state for a waiver of [the law's parental notification requirements]." Ga. Code Ann. § 15-11-112.

   i. Without divulging any person's private information, identity, or otherwise impacting any person's privacy or anonymity, please tell me whether you have heard or decided any case brought under this statute as a superior court judge and provide pertinent details of any such case.

   ii. You stated during your hearing that you could recall one case arising under the parental notification law in which you sat on the panel as an appellate judge. In a manner that protects individual privacy, I would like a copy of the decision and to know what the situation was, how you handled the case, what factored into your thinking, and what the outcome was.

   Please also describe any related decision or vote you took on whether to hear or rehear a case by the full Court of Appeals. *See* Ga. Code Ann. § 15-3-1.

(4) I would like to ask you about the amendment you supported to put the number of abortions performed by a doctor in the doctor's online physician profile.

This amendment was first offered on the House floor on February 8, 2001, when it was adopted without a recorded vote. An *Atlanta Journal Constitution* editorial from February 13, 2001 recounts that this occurred after a "lengthy debate" in which "opponents of a woman's right to choose --- state Reps. Brian Joyce (R-Lookout Mountain) and Bobby Franklin (R-Marietta) --- tried to add numerous anti-abortion amendments to the bill." You then voted for the bill.

On March 21, 2001, the bill returned to the floor of the House from the Senate. The Senate substitute version did not contain the controversial abortion language. Representative Franklin moved to re-insert it and then agree to the Senate substitute as amended. On this motion, you voted aye. The motion failed 69-86, and the Senate substitute was adopted without the abortion-related language 158-0.

a. Why did you support this amendment?

b. On February 13, 2001, the *Atlanta Journal-Constitution*'s editorial about this bill included numerous examples of violence and said that "[a] pretty good bill was ruined in the Georgia House of Representatives last week with **a terrible amendment that would make targets out of doctors who perform legal abortions**."

   i. Did you regularly read the *Atlanta Journal-Constitution* during your tenure in the legislature?

   ii. Did you read this editorial while H.B. 156 was pending in the legislature in 2001? Prior to voting on this amendment in March 2001, were you otherwise aware of the violence or threats of violence referenced in the editorial?

   iii. Were you present on the House floor during the "lengthy debate" in February 2001 described in this editorial?

   iv. During the "lengthy debate," did any member of the House raise the issue of the serious violence that could occur as a result of this amendment being enacted in a floor speech or with you directly?

c. Following the initial adoption of this amendment in the House on February 8, 2001, approximately six weeks elapsed before you cast a roll call vote on the amendment on March 21, 2001.

   i. During that six-week intervening period, did you learn about, or did anyone otherwise bring to your attention, the serious violence that could occur as a result of this amendment being enacted?

   ii. Senator Franken and other members asked whether, at the time you voted for this amendment, you were aware of the public safety risk. While you said your position was "ill-conceived," you also said you were unaware of the public safety risk at the time.

   Senator Franken asked: "[Y]ou were a State legislator at the time but were not aware of any of the public safety issues that were involved around this whole issue?" You responded: "I was not, and I think that is probably attributable to the fact that this came as a floor amendment, not a bill, not something I had an opportunity to study, not something I had the opportunity to even speak to other legislators about. It happened on the floor . . . ."

   Given the six-week intervening period between February 8, 2001 and March 21, 2001, I do not understand your assertion that this issue was "not something [you] had an opportunity to study, not something [you]had the opportunity to even speak to other legislators about . . . ." Can you please explain further?

iii. Was there any debate on the House floor about the amendment in March 2001, prior to the roll call vote on the amendment? Were you present during such debate? Did such debate include any mention of the potential violence?

iv. Before your March 21 vote on this amendment, were you aware of the widely-reported example of Eric Rudolph, who was charged in October 1998 with the 1996 Atlanta Olympics bombing as well as with the bombings of two women's health clinics, one of which was the Sandy Springs clinic in Georgia referenced in the above editorial?

v. Before your March 21 vote on this amendment, were you aware of any other violence or threats directed toward legal abortion providers or patients?

d. You repeatedly sponsored bills to create a "Choose Life" license plate program in the State of Georgia. Under H.B. 254 (2003), the money collected would be distributed to "not for profit agencies . . . whose services are limited to counseling and meeting the needs of pregnancy women who are committed to placing their children for adoption." The bill also states: "Funds may not be distributed to any agency that is involved or associated with abortion activities . . . ."

i. Whom did you intend or expect these measures to fund? Please state whether you expected funding recipients to include organizations known as crisis pregnancy centers.

ii. Do you recall any instance in which you spoke or issued a statement in support of these measures, either on the floor of the House, in a legislative committee, in a political campaign, or in a campaign for judicial office?

iii. As you may know, organizations known as crisis pregnancy centers have been criticized for deceptive tactics with respect to vulnerable women.

For example, *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council Baltimore*, 721 F.3d 264 (4th Cir. 2013) (en banc) concerned the constitutionality of a disclosure law for such entities. The decision references parts of the legislative record that describe situations in which women are given misleading information about options available to them and may not be seen by true medical professionals.

1. At the time you sponsored the "Choose Life" license plate measures, had anybody brought to your attention, or were you otherwise aware, that this bill might generate funds for crisis pregnancy centers?

2. If so, had anybody brought to your attention, or were you otherwise aware of, any criticisms of crisis pregnancy centers similar to what I described above?

e. The Supreme Court reiterated in *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007): "Before viability, a State 'may not prohibit any woman from making the ultimate decision to terminate her pregnancy.' It also may not impose upon this right an undue burden, which exists if a regulation's "purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.'" (quoting *Casey*, 505 U.S. at 879)).

   Thus, the Ninth Circuit has held that Arizona may not "prohibit abortion beginning at twenty weeks gestation, before the fetus is viable." *Isaacson v. Horne*, 716 F.3d 1213, 1217 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 905 (2014). Concurring, conservative Judge Andrew Kleinfeld wrote: "The question for us is whether the current state of constitutional law prohibits the states from imposing that restriction. It does." *Id.* at 1233 (Kleinfeld, J., concurring).

   i. Will you have any difficulty applying the Supreme Court's clear precedent on this issue, including the clear line the Supreme Court has placed at fetal viability?

f. In response to a question from Senator Blumenthal, you stated: "Senator, to my knowledge, I have never given any public comments on my position on reproductive rights. I have cosponsored some bills in the General Assembly, to my knowledge I also voted on a couple of amendments on the floor of the House that I did not author and had no authorship in, but to my knowledge I have never given any speeches concerning reproductive rights."

   i. Was there any instance in which, in a legislative committee, on the floor, at a constituent meeting, or otherwise, you made any public remarks about reproductive rights, the issue of abortion, or any other related issue?

g. In response to a question from Senator Blumenthal, you stated, in part: "I think, as a legislator casting thousands of votes for amendments and bills and making decisions in committee, it is not, I think, entirely unexpected that there may be some votes that I cast throughout my [legislative] career that in hindsight looking back on them as a legislator trying my best to represent the people that I represented in a very staunchly pro-life district, I may have made some mistakes."

   You also commented during the hearing that your district was a "very conservative, and a very pro-life constituency," and that you believed it "was the obligation of a legislator to vote – listen to and vote – the will of their constituency. Those issues were very important to my constituents, and that's why I supported that floor amendment."

   i. Given that you knew your district was "very staunchly pro-life" while you were in the legislature, I assume you had some way of communicating your position on reproductive rights issues to your constituents. How did you

ensure your constituents were informed about your views and legislative actions on the issue of abortion?

(5) I would like to ask you about a bill (H.B. 1411, 2003-04) that would have prohibited state or local government from "transacting business or otherwise communicating in languages other than" English. The bill also would have stricken existing exceptions, including "[w]hen the public safety, health, or justice requires the use of other languages."

On February 10, 2004, there was a motion on the floor to engross the bill. "If a motion to engross a bill at the second reading is approved . . . [i]n effect, the bill as introduced is engrossed—or certified as the final copy—and it may not thereafter be amended." *See* Edwin L. Jackson, Mary E. Stakes, & Paul Hardy, HANDBOOK FOR GEORGIA LEGISLATORS 182-83 (12th ed. 2001). You voted for the motion to engross, which failed.

a. Did you support this measure? Why did you to vote to engross this measure?

b. I am concerned about the serious implications of this bill had it been enacted – essentially barring first responders, police officers, physicians, 911 operators, or a whole host of other state or local government employees from communicating with non-English-speaking individuals. Did you consider these sorts of situations prior to voting to engross this bill, or any other ramifications it might have?

c. If confronted with a constitutional challenge to such a law as a judge, how would you decide whether it is constitutional? What issues would you consider, assuming the plaintiff had standing to bring the challenge?

d. In your experience as a state court judge, has it ever been necessary or useful in a case for an interpreter or translator to be present to assist a witness or party in answering questions, obtaining the advice of counsel, or communicating with the court? If so, please provide examples.

e. Do you believe H.B. 1411 is consistent with the role of a judge in ensuring that litigants receive due process of law?

f. How do you plan to carry out the statutory and constitutional responsibilities of a District Judge to ensure all litigants, including those with limited English proficiency, are treated fairly and respectfully and are able to understand and participate in court proceedings? *See* 28 U.S.C § 1827.

(6) I would like to ask you about a number of votes you took about the Georgia state flag.

a. Do you agree that there was significant resistance to desegregation in Georgia in the 1950s, including after the *Brown* decision?

b. During your tenure in the legislature, and particularly prior to any of your votes on the Georgia state flag, were you aware of that history?

c. During your tenure in the legislature, and particularly prior to any of your votes on the Georgia state flag, were you aware of any connection between that history and the adoption of the 1956 flag?

d. At your hearing, you said, at the time of your votes on the flag, you were "offended" by the confederate battle emblem. You also said the following: "I found that one of the most challenging things of being a legislator was deciding when to vote the will of my constituents and when to vote the will of myself and my own conscience. It was something I have known other legislators to struggle with; I struggled with it regularly, on that issue particularly." What did your conscience tell you in 2001 and 2003 about the flag?

e. You indicated that this conflict between your conscience and your constituents was something you struggled with "regularly" as a legislator. On what other issues did you have this struggle? Was reproductive rights one of them?

f. During any campaign to serve as a state court judge, did anybody raise with you your votes on the flag? Please describe such interactions and what you said in that context, if you can recall.

(7) In your application to be an appellate judge, you wrote: "At the appellate level, a clerk should be of similar philosophical and judicial leanings as the judge under whom they are employed. The clerk should understand clearly the limited role of the appellate courts in our society and clearly understand the proper delineation in roles between the legislative and judicial branches of government. I would also expect my clerk to share my conservative judicial philosophy."

a. Please describe your "conservative judicial philosophy" and state what you intended to convey by that phrase in your judicial application.

b. What did you mean by the "limited role of the appellate courts in our society" and the "proper delineation in roles between the legislative and judicial branches"?

(8) You also wrote on your appellate judge application: "The judiciary continues to endure criticism, fairly earned in some cases, of abrogating their constitutionally created authority by issuing decisions that venture into policy making. Partisan political campaigns are increasingly politicizing our judiciary in part, because of judicial decisions that have ignored and violated the basic tenets of the judiciary, that policy making is the sole province of a duly elected citizen legislature." You continued that the appellate court should not be "partisan refuges for policy makers."

a. You state that criticism of the judiciary for "abrogating their constitutionally created authority by issuing decisions that venture into policy making" is "fairly earned in some cases."

i. Is this how you define "judicial activism"?

ii. Please name any decisions you believed "abrogate[ed]" the judiciary's "constitutionally created authority." In particular, please state whether you were referring to the following decisions and whether you think any of them is an "activist" decision.

1. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

2. *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

3. *Roe v. Wade*, 410 U.S. 113 (1973).

4. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (opinion of Justices Kennedy, O'Connor, and Souter).

5. *Lawrence v. Texas*, 539 U.S. 558 (2003).

6. Any decision on the issue of whether same-sex couples have the freedom to marry under the state or federal constitution, such as *Goodridge v. Dep't of Public Health*, 798 N.E.2d 941 (Mass. 2003), *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008), *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009), or *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010).

7. Any decision on Section 3 of the federal Defense of Marriage Act, such as *Gill v. Office of Personnel Management*, 699 F. Supp. 2d 374 (D. Mass. 2010), or *Dragovich v. U.S. Department of the Treasury*, 764 F. Supp. 2d 1178 (N.D. Cal. 2011), which had been issued prior to the Supreme Court's decision in *Windsor*.

iii. To what "criticism" were you referring, and why did you believe it was "fairly earned"?

iv. Which judicial decisions did you believe were the cause of "partisan political campaigns" that "politiciz[e] our judiciary"? To which campaigns were you referring? How do you believe particular judicial decisions caused such campaigns to "politicize" the Judiciary?

v. What did you mean by the phrase, "partisan refuges for policy makers"?

Questions for the Record for Judge Michael P. Boggs
Senator Al Franken

1. At your hearing before the Senate Judiciary Committee, we discussed an amendment that you voted for during your time in the Georgia House of Representatives that would have required all doctors to list the number of abortions they had performed in the last ten years in publicly available profiles. This amendment ultimately failed, but would have put doctors who perform abortions at greater risk of harm. You said that you were not aware, at the time you voted for this amendment, that doctors who provided abortions had been targeted and killed, and that clinics where abortions were provided had been bombed. You said you were not aware of the public safety issues associated with requiring doctors to release the number of abortions they had provided, and that you did not have the opportunity to study this amendment or speak with your colleagues about it because it came up on the floor.

   The amendment was originally adopted without a recorded vote in the Georgia House of Representatives on February 8, 2001. The full bill, which included the amendment, was then sent to the Senate for consideration. The Senate passed a version of the bill that did not include the amendment. The bill was then sent back to the House, where your chamber voted on whether to put the amendment back into the bill. This second vote on the amendment occurred on March 21, 2001, and although the amendment failed, you voted to include it in the bill.

   (a) Are you aware that this amendment came up for a vote twice in the Georgia House of Representatives, first on February 8, 2001 and second, on March 21, 2001?

(b) Did you have time to review the amendment or discuss it with your colleagues when it came up for a vote the second time, on March 21, 2001, almost a month and a half after the first time the amendment was proposed and voted on by your chamber, on February 8, 2001?

On February 13, 2001, The Atlanta Journal-Constitution – the main newspaper in Georgia – published an editorial criticizing the Georgia House of Representatives for adopting this amendment. The editorial noted that in "the past six years, at least five abortion-providing doctors have been murdered, and dozens of others have been harassed with bomb scares and threats to harm patients and medical personnel." The editorial called the amendment "dangerous" and said that it "would make targets out of doctors who perform legal abortions."

(c) Were you aware of this editorial or any other news coverage about this amendment during the almost month and a half when the amendment was being considered, from February 8, 2001 (or earlier) until March 21, 2001?

Questions for the Record to Michael Boggs
Submitted by Senator Chris Coons
May 20, 2014

1. In your 2011 application to be a Court of Appeals Judge, you stated that, "the judiciary continues to endure criticism, fairly earned in some cases, of abrogating their constitutionally created authority by issuing decisions that venture into policy making."
    a. To what cases were you referring when you submitted your application in 2011?
    b. For each case or decision, has your opinion changed with respect to whether the judiciary has abrogated its constitutional authority?

2. Canon 7A of the Georgia Code of Judicial Conduct forbids judges to "make a contribution to a political organization." Georgia Conservatives in Action ("GCIA") endorses candidates for elective office and, therefore, may qualify as a political organization under the Code of Judicial Conduct. In September 2012, your campaign committee contributed $1500 to GCIA. During your May 13, 2014 nomination hearing, you testified that you had been unaware of GCIA's political activities at the time that you made that donation. According to an Atlanta Journal-Constitution blog posting (http://politics.blog.ajc.com/2014/05/19/john-lewis-i-would-vote-against-the-confirmation-of-michael-boggs/ accessed on May 19, 2014), however, you attended an October 2010 GCIA event attended by Nathan Deal (then running for Governor), Gary Black (then running for Agricultural Commissioner), and Lt. Gov. Casey Cagle. Nathan Deal had been endorsed for Governor by GCIA on August 7, 2010. At photos of the event, campaign signs appear prominently.
    a. Do you maintain that you were unaware in 2012 that Georgia Conservatives in Action endorsed candidates for elective office?
    b. Did the presence of campaign signs and multiple candidates for statewide office at the October 2010 Georgia Conservatives in Action event in Waycross, GA give rise to a reasonable inference that Georgia Conservatives in Action endorsed any candidates for elective office?
    c. Do you consider Georgia Conservatives in Action to be a political organization under Canon 7A of the Georgia Code of Judicial Conduct?
    d. Do you believe it would be appropriate for a judge to financially support the political activities of an organization like Georgia Conservatives in Action?
    e. Prior to making any contribution to Georgia Conservatives in Action, what steps did you take to ascertain whether contributions to that organization would be permitted under the Georgia Code of Judicial Conduct?

3. Canon 7A of the Georgia Code of Judicial Conduct also provides that a judge shall not "publicly endorse a candidate for public office." According to an Atlanta Journal-Constitution blog posting (http://politics.blog.ajc.com/2014/05/19/john-lewis-i-would-vote-against-the-

confirmation-of-michael-boggs/ accessed on May 19, 2014), you attended a 2012 fundraiser for a candidate for Georgia State Senate.

a. Please describe your participation in fundraisers, speeches, and other events associated with candidates for public office, since 2004.
b. For each, please state whether you believe your participation to have constituted a public endorsement of a candidate for public office in violation of Canon 7A.
c. For each, please describe the steps you took to ascertain whether your participation would be permitted under the Georgia Code of Judicial Conduct.

Senator Blumenthal - Question for Judge Boggs

Choice Amendment

You voted for an amendment that would have identified doctors who performed abortions in profiles developed and maintained by the state of Georgia and made public online. Had the amendment passed, it would have put abortion care doctors' and other medical providers' safety at tremendous risk. At your confirmation hearing, you testified that you were unaware of any public safety concerns with respect to that amendment. However, an editorial in the February 13, 2001 edition of the Atlanta Journal-Constitution that appeared just prior to your vote specifically noted that the Amendment "will simply make the doctors, their offices and patients easier targets." These are words from the newspaper with the largest circulation in Georgia; a newspaper you advertised in.

A. Did you read the February 13 editorial?
B. Did you read the Atlanta Journal-Constitution on a regular basis?
C. Would you have noted editorials that related to your legislative duties?
D. What news did you consume while carrying out your duties as a legislator?

Which publications did you read on a regular basis from 1993 to 2001? If you read different publications during different time periods, please indicate your reading habits by time period.

You were a member of the Democratic Party; the final vote for the amendment was 69 in favor of adopting the amendment and 86 against. 75 members of your party voted against adoption. While 17 members of your party did not vote, only four members of your party voted in favor of adopting the amendment.

A. Did Democratic party leadership in the Georgia House ever suggest to you, directly or indirectly, that the amendment raised safety concerns for doctors?
B. Were you aware that the vast majority of Democrats planned to vote no on the amendment? Did you ever discuss with any of your colleagues why they planned to vote no?
C. When the roll call vote occurred and the legislature rejected the amendment—after the vast majority of Democrats opposed it—did you ever wonder why so many of your colleagues disagreed with the position you took on the amendment?
D. If you wondered, did you ever ask any of your colleagues why they voted no?
E. Did any of your colleagues mention after the vote that they voted no because they were concerned for the safety of doctors?
F. Did you see any press coverage indicating why your colleagues opposed the bill?
G. If after the vote you learned of the safety concerns that led to the amendment being rejected by the House, did you look into these concerns? Did you change your position on the issue?
H. Have you, in the thirteen years between that vote and your testimony during your confirmation hearing, ever said publicly that you regret that vote?

Question for Judge Boggs

Judicial Record

In your testimony, you repeatedly asked to be judged by your judicial record and not by your legislative record. However, based on the materials you provided to the Committee and the answers you provided during your hearing, we still have little to no sense on how you would handle issues such as a woman's right to choose and equality for all citizens.

A. You mentioned that your views "may or may not" have changed regarding marriage equality but noted that you presided over a same-sex adoption hearing.
   a. What are we supposed to infer from your involvement in this case?
   b. Without revealing confidential information, could you explain the extent of your role and involvement in that adoption?
   c. Did the case require you to preside over any contested hearings or rule on any unsettled questions of law?

B. You also testified that you sat on a panel which decided a parental notification case. Unfortunately, that case was not submitted to the Committee, but you agreed to get us the citation for that case.
   a. What was your involvement in the case?
   b. Can you briefly describe the question, facts, and outcome of the case?
   c. How does this case demonstrate that you will uphold the law as it relates to women's reproductive rights?
   d. Why have you not provided this case to the Committee?
   e. During your time as a judge, have you been involved in any way in any other cases that implicate in any way women's reproductive rights, the right to privacy, the rights of same-sex couples and LGBT individuals, or the rights of racial, ethnic or religious minorities?

Question for Judge Boggs

Donation to Georgia Conservatives In Action

In your testimony before the Committee, you repeatedly stated that you should be judged on your record as a judge, not as a legislator, and that you understand the difference between a judge and a legislator. Given the lack of information before the committee on your actions as a judge, I want to ask a question about your actions as a judicial candidate. On September 27, 2012, the Committee to Elect Mike Boggs Judge contributed $1,500 to Georgia Conservatives in Action.

A. At the hearing, you indicated that you were not aware that GCIA endorses candidates. In a recent google search for that organization, four of the first seven results discussed candidate endorsements. If you did not believe that GCIA endorsed candidates when you donated to them, what did you think they did?

On the date you donated to GCIA, the only substantive post on the group's website—a Facebook page—consisted entirely of a link to an article urging Christians to rally behind Pastor Jack Hakimian, who was under fire for comparing homosexuality to, in the article's words, "other sinful lifestyles like drug abuse and witchcraft."

A. At the time you donated to GCIA, were you aware of the group's support for Pastor Hakimian?
B. Did you worry that your support—as a sitting judge—for a group with GCIA's agenda could lead LGBT litigants to question your impartiality in their cases?
C. Given that you donated from your judicial campaign account to GCIA, do you agree that homosexuality is akin to drug abuse and witchcraft? If not, can you provide the Committee with any evidence of any public statement that you believe LGBT Americans deserve the same rights as everybody else?

Question for Judge Boggs

Flag Vote Disavowal

You expressed regrets to the Committee over your vote to keep the Confederate battle cross as a prominent part of the Georgia flag and explained your votes as motivated by the will of your constituents, who wanted a referendum on the issue.

A. Please provide any public statements you made prior to your confirmation hearing that indicate this regret.

Senator Blumenthal

Second Round QFRs for Boggs:

1. You have indicated in your testimony before the Committee and in your written responses that on a number of issues your views have or may have evolved. Yet there is no evidence in the record to support this evolution. For each of the following issues, please provide evidence that your views evolved before you were nominated to serve as a federal judge:
    a. The inclusion of a confederate symbol on the Georgia state flag.
    b. The constitutionality of same-sex marriages.
    c. The wisdom of the amendment to the Patient Right to Know Act of 2001 that would have required abortion providers to disclose their personal information and how many abortions they had performed.

2. In your response to a question I asked about your donations to Georgia Conservatives in Action, you mention you did not check GCIA's Facebook page before donating $1000 in April 2012 and $1500 in September 2012 from your judicial campaign account. Your support for this group raises impartiality concerns; LGBT litigants might question the neutrality of a judge who supported a group that urged Christians to rally behind a pastor who compared homosexuality to "other sinful lifestyles like drug abuse and witchcraft." You have stated that you personally knew the co-founders of Georgia Conservatives in Action and that your donations were personally solicited by these co-founders.
    a. What materials, if any, did you consult before deciding to contribute to this organization? What information did these sources convey about the work that GCIA did or the candidates they supported? Please provide copies of these materials to the Committee.
    b. In their requests for donations, what representations did the co-founders of GCIA make about their positions on issues that might come before the judiciary?
    c. In response to a question I asked about your financial support of GCIA, you stated that your contributions were provided solely for the purpose of helping with the costs of two events. One of these events was the Economic Development Summit. You do not name the other event. Please name and describe the second event that you financially supported through your donation to GCIA. In your description, please include what the purpose of the event was and whether the event was designed to benefit any candidate or candidates for office, and which candidate or candidates.
    d. You stated that prior to donating to GCIA, you checked their tax status to ensure that GCIA was a non-profit organization that you were allowed to donate to under the Code of Judicial Ethics. Did you take any steps beyond checking their tax status?

3. Question 12a of the Committee questionnaire calls for you to provide any "published material you have written or edited." The Atlanta Journal Constitution has reported on a

campaign flyer that conveys your views on hot button issues likely to be considered by the judiciary and that was not included in the materials you submitted to the Committee.

a. Why wasn't this flyer provided to the Committee?
b. Are there other materials—written either by you or by staff for any of your campaigns—that convey your views on issues that could come before the federal judiciary but have not yet been submitted to the Committee?
c. If such materials exist, please provide copies to the Committee and indicate why they have been withheld.
d. Are you aware of any materials created by groups not associated with your campaigns that speak to your view on issues that might come before the federal judiciary? Please provide all materials that you are aware of that discuss your campaign or your views on issues that might come before the federal judiciary.

4. In response to a written question from Senator Feinstein, you stated that you supported creating a "Choose Life" license plate because there would be an organization within your district who could apply to be a beneficiary of the money that would be raised from the sale of these license plates.
   a. Could you provide the name of this organization and describe the work they did for the people of your district?
   b. How did you learn of this organization and the benefits it would gain from this legislation? What discussions did you have with this organization relating to this legislation?

5. As part of your written response to this committee, you had submitted an appellate decision where you were one of the three judges on the panel. This decision upheld a juvenile court's decision that a minor, despite already being a parent, was not mature enough to make the decision to have an abortion without parental consent. In responding to a question regarding this decision, you stated that your role as an appellate judge was severely constrained by the "any evidence" rule, which requires that a trial court decision supported by any evidence must be upheld.
   a. I would imagine that as an appellate judge you frequently heard cases in which you were expected to use the "any evidence" standard in evaluating a lower court judgment. In those cases, what percentage of the time did you overturn the lower court's decision?

6. You have stated that you have attended campaign events as recently as 2012. In response to a question from Senator Leahy, you stated that "[a]s expressly permitted by the Georgia Code of Judicial Conduct, I have periodically attended various partisan and nonpartisan candidate fundraisers throughout my ten-year judicial career. I have not done this regularly. Since I was nominated to be a federal judge, I have attended one fundraiser for a candidate running in a nonpartisan election for Superior Court Judge in Atlanta. "
   a. Please provide a complete list of the candidates that you have
      i. Donated money to.
      ii. Attended campaign events for.
   b. For each candidate listed above, to the best of your knowledge, please describe the positions that each candidate took on the following issues

i. A women's right to choose
ii. LGBT marriage
iii. The inclusion of a confederate symbol on the Georgia state flag.

Senator Chuck Grassley
Questions for the Record

Julie Elizabeth Carnes
Nominee, United States Circuit Judge for the Eleventh 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: I do not believe that a judge's gender, ethnicity, or any other demographic factor should influence the judge's decision as to the outcome of a case. A judge should objectively decide the facts of the case and apply the applicable law, with no thumb on the scale that would favor or disfavor any person or group based on gender, ethnicity, or other extraneous factor.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is the commitment to follow the rule of law in adjudicating cases. Realization of this attribute requires several discrete traits. First, in all decisions, large or small, a judge must act fairly by applying legal principles consistently and by exercising any appropriate discretion even-handedly as to all parties. Second, to be able to apply the rule of law, a judge must first know what the applicable legal principles are in a particular case. Given the complexities of federal litigation, a judge therefore cannot fulfill a commitment to follow the rule of law without a strong work ethic. I believe that I have demonstrated the above traits throughout my judicial career.

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 good judge must have a keen sense of fair play and be committed to acting fairly in each case before her. A judge should be open-minded as to all arguments presented and even-handed in her rulings. A judge must also be willing to put in the time necessary to render decisions that are correctly reasoned. Because the perception of justice can often be as important as the actual rendering of justice, a judge should be transparent in her decision-making and lucid as to the reasons for a decision. As to personal demeanor, a judge should be pleasant and courteous, and should try to put attorneys and litigants at ease. A judge should not be unfairly demanding, and should be considerate of lawyers and litigants with regard to scheduling and other similar types of issues that often accompany litigation. I believe that I possess the above traits.

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: I am fully committed to following precedents of higher courts, whether or not I necessarily agree with those 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: To the extent that the dispute involved construction of language in a statute, regulation, constitutional provision or other written document, I would first review the provision to determine whether a reading of its plain language resolved the issue. If not, I would then apply the appropriate canons of construction. In addition, I would look to Supreme Court and Eleventh Circuit case law in an effort to find persuasive authority concerning the issue before me or concerning an analogous type of issue. If no helpful Supreme Court or Eleventh Circuit authority existed, I would look for persuasive authority from 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: Should I be confirmed to the Eleventh Circuit, the only circumstance in which I would be permitted to reconsider precedential decisions of that court would be when sitting with the court *en banc*. As a member of a federal court of appeals, I would be bound to apply all applicable precedent from the United States Supreme Court, whether or not I agreed with a particular decision.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A congressional enactment should be declared unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000). Even when an enactment does exceed constitutional limits, it should not be struck down on constitutional grounds if there is an alternative ground for invalidating the statute. *See Clark v. Martinez*, 543 U.S. 371, 380-81 (2005).

8. **Please describe your understanding of the workload of the Eleventh Circuit. If confirmed, how do you intend to manage your caseload?**

Response: I understand that the workload of the Eleventh Circuit is substantial, as only the Ninth and Fifth Circuits have more appeals filed each year. Further, the Eleventh Circuit has the highest number of filings, per active judge, than any other federal circuit. If confirmed, I will first seek the input of current Eleventh Circuit judges as to their procedures for expeditiously resolving cases. I will then adopt, for my own chambers, what I discern to be the best practices among those judges. To efficiently, but also fairly,

resolve all cases before me, I will continue to exhibit the same strong work ethic on the circuit that I have demonstrated as a district court 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: In my view, it is never proper for a judge to rely on foreign law or the views of the "world community" in determining the meaning of the Constitution absent a decision by the Supreme Court that clearly and absolutely compels such reliance in the given case.

10. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I offer my twenty-two year record on the bench of the Northern District of Georgia as evidence that, if confirmed, my decisions will remain grounded in precedent and the text of the law, rather than in any underlying 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: I offer my twenty-two year record on the bench of the Northern District of Georgia as evidence that, if confirmed, I will put aside any personal views and be fair to all who appear before me.

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: The Eleventh Circuit applies the prior precedent rule, which means that all Eleventh Circuit panel decisions must follow binding circuit precedent unless (1) the Supreme Court has either overruled the precedent or issued a decision that conflicts with that precedent or (2) the Eleventh Circuit, sitting *en banc*, has overturned the precedent. *See United States v. Vega-Castillo*, 540 F.3d 1235, 1236-37 (11th Cir. 2008). Pursuant to Federal Rule of Appellate Procedure 35(a), the court should only sit *en banc* when "necessary to secure and maintain uniformity of the court's decisions," or when the court is presented with a "question of exceptional importance."

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: In cases in which I am called upon to make a factual determination, I first research and identify the legal principles that will be applicable to the case, after which I hold a hearing. My ultimate factual findings are based on credibility determinations as to

the witnesses and on a thorough familiarity with the written record. In cases where no judicial factual findings are required, I first review the briefs and read any applicable statutes, rules, or contracts at issue. Then, as to cases arising under federal question jurisdiction, I do research to identify applicable Supreme Court or Eleventh Circuit authority, both precedential and persuasive. As to cases arising under diversity jurisdiction, I research applicable state court authority. If there is no governing authority from the above courts, I consider, as potentially persuasive authority, decisions from other courts. Before issuing the opinion, I will have read the entire factual record of the case and will apply the applicable legal standard to those facts.

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: Because circuit court judges decide cases either in panels of three judges or *en banc*, the issuance of opinions is necessarily a collaborative process. For that reason, I believe that collegiality is essential for a circuit court to function well. If confirmed to the Eleventh Circuit, I will treat with respect and civility my colleagues and their positions on a given issue. While it is the duty of each judge to honestly convey his or her reasoning and conclusions, I believe that personal attacks against a colleague undermine not only the person against whom they are directed, but also the court itself.

15. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

Response: Yes. *Windsor* held that Section 3 of the Defense of Marriage Act ("DOMA") "is unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment of the Constitution." *United States v. Windsor*, 133 S. Ct. 2675, 2695 (2013). The statement quoted in the above question limits the holding of *Windsor* to the facts before the Court, and is therefore part of the case's holding.

ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

[1] *United States v. Windsor*, 133 S. Ct. 2675, 2696 (2013).

Response: By "lawful marriages," the Court was referring to "those persons who are joined in same-sex marriages made lawful by the State" and "those whom the State, by its marriage laws, sought to protect in personhood and dignity." *Windsor*, 133 S. Ct. at 2695-96.

iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes.

iv. **Are you committed to upholding this precedent?**

Response: Yes. I will uphold all current Supreme Court precedent.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The Court's opinion recognizes the "virtually exclusive province of the States" to define and regulate marriage, subject to "discrete" exceptions in which Congress has properly "regulate[d] the meaning of marriage in order to further federal policy," and "subject to constitutional guarantees." *United States v. Windsor*, 133 S. Ct. 2675, 2690-92 (2013) (internal quotation marks omitted).

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I am committed to giving full force and effect to all portions of *Windsor* that are applicable to the facts in the case before me.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

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[2] *Id.* at 2689-2690.
[3] *Id.* at 2691.

Response: Yes. The Court's full opinion is binding precedent entitled to full force and effect by lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I am committed to giving full force and effect to all portions of *Windsor* that are applicable to the facts in the case before me.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The Court's full opinion is binding precedent entitled to full force and effect by lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I am committed to giving full force and effect to all portions of *Windsor* that are applicable to the facts in the case before me.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The Court's full opinion is binding precedent entitled to full force and effect by lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I am committed to giving full force and effect to all portions of *Windsor* that are applicable to the facts in the case before me.

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

16. **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.

17. **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: Unless Supreme Court or Eleventh Circuit precedent has clearly directed consideration of the "current preferences of the society" in a specific context that mimics the case before the court, a circuit judge should not consider such preferences in deciding a constitutional challenge or a challenge to longstanding circuit precedent.

18. **What is your judicial philosophy on applying the Constitution to modern statutes and regulations?**

    Response: The Constitution applies to modern statutes and regulations in the same way that it applies to older legislation.

19. **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 17 above, absent binding precedent requiring that a judge attempt to identify the evolving norms and traditions of society, a judge should not base an interpretation of the Constitution on such speculation. The Constitution enshrines timeless values and was not intended to be dispensed with simply because of a perception that certain provisions no longer enjoy popularity with particular segments of society. The Supreme Court, however, has held that, in some contexts, an appraisal of the "evolving standards of decency" can be appropriate. *See, e.g., Trop v. Dulles*, 356 U.S. 86, 100-101 (1958).

20. **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: Current Supreme Court jurisprudence recognizes "some space for legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment

Clause." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). The Court has elsewhere characterized this legislative discretion as "room for play in the joints" between the two clauses. *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 669 (1970). Because of this, the Supreme Court currently recognizes that "the government may . . . accommodate religious practices . . . without violating the Establishment Clause," provided that the accommodation does not "devolve into 'an unlawful fostering of religion.'" *Cutter*, 544 U.S. at 713 (quoting *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 334-35 (1987) and *Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, 144-45 (1987)).

21. Do you believe that the death penalty is an acceptable form of punishment?

Response: The Supreme Court has held that the death penalty is an acceptable form of punishment in certain circumstances, so long as procedural safeguards are observed. *See, e.g.*, *Gregg v. Georgia*, 428 U.S. 153 (1976). If confirmed, I will apply all binding precedent on that subject.

22. 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: To the extent that this statement refers to a view that the meaning of the Constitution changes over time, I disagree with it. The brilliance of the United States Constitution is that the drafters identified timeless principles whose wisdom and permanence resonate with each new age. Granted, technological and other developments cause our country to function far differently than at the time of its founding, thereby presenting legal scenarios that were perhaps not envisioned by the Founders. Nevertheless, the bedrock principles articulated in the Constitution remain the standard by which we evaluate these new legal issues. Any changes to the Constitution should occur not by disregarding provisions that might seem outdated or inconvenient, but by the intentionally arduous task of amending the Constitution, the process for which is set out in Article V.

23. Do you believe there is a right to privacy in the U.S. Constitution?

Response: While the Supreme Court has not found a general right to privacy protected by the Constitution, it has declared that various provisions in the Bill of Rights and the Fourteenth Amendment encompass privacy rights and interests. For example, the Court has found privacy interests in the First Amendment right of association, the marital relationship and the rearing of children, in one's bodily integrity, and in one's home. *See, e.g.*, *NAACP v. Alabama*, 357 U.S. 449, 462 (1958); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *Missouri v. McNeely*, 569 U.S.__, 133 S. Ct. 1552, 1558 (2013); and *Kyllo v. United States*, 533 U.S. 27, 34-40 (2001). Further, the Court has described the Fourth Amendment as protecting "privacy interests." *Kentucky v. King*, 563 U.S.__, 131 S. Ct. 1849, 1862 (2011).

a. Where is it located?

Response: The Supreme Court has found privacy interests to exist in the First, Third, Fourth, and Fifth Amendments, and also in the Due Process Clause of the Fourteenth Amendment. Please see my citations in Question 23, above; *see also Katz v. United States*, 389 U.S. 347, 350 n.5 (1967).

b. From what does it derive?

Response: Please see response to Questions 23 and 23(a).

c. What is your understanding, in general terms, of the contours of that right?

Response: The contours of the privacy interests found by the Supreme Court would depend upon the particular Constitutional provision at issue and the facts of the case before the court. As a member of a subordinate court, I would be guided by the Supreme Court's determinations as to the contours of the right.

24. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

a. **Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?**

Response: No, I do not believe that the manner in which a court should find rights granted in the Constitution is by "reading between the lines." Rather, the Supreme Court has stated that the proper inquiry for determining whether an unenumerated right is protected by the Constitution is to evaluate whether that alleged right, objectively viewed, is "deeply rooted in this Nation's history and tradition" and is "'implicit in the concept of ordered liberty' such that neither 'liberty nor justice would exist if [it was] sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (quoting *Moore v. City of E. Cleveland*, 431 U.S. 494, 504 (1977) and *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)).

b. Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?

Response: Absent a requirement by the Court to do so, and a definition of what those terms mean, I do not believe that it is appropriate for a judge to go searching for "penumbras" or "emanations" in the Constitution.

25. 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: It is important that a circuit court judge base her decision only on the trial record before her. A circuit judge's independent research, and then reliance on that research to reach a decision, deprives a litigant of an opportunity to challenge the research done by the judge or to offer research that reaches a different conclusion.

b. **When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?**

Response: If such evidence had been admitted by the trial court and if such evidence met the requirements for admissibility set out in Federal Rule of Evidence 702 and binding precedent interpreting that rule, a circuit judge may then consider the studies.

26. **What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

Response: Other than rejecting rational basis review, the Supreme Court has not articulated a standard of scrutiny for lower courts to apply to Second Amendment challenges. *Dist. of Columbia v. Heller*, 554 U.S. 570, 628 n.27 (2008). The Eleventh Circuit has adopted a two-step inquiry for review of such claims. *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1260 n.34 (11th Cir. 2012). First, the court must "ask if the restricted activity is protected by the Second Amendment." *Id.* Then, "if necessary, [the court] would apply the appropriate level of scrutiny." *Id.* While the Eleventh Circuit did not identify what level of scrutiny to apply at the second step, the cases that it favorably cited note that the appropriate level of scrutiny depends upon "how severely the prohibitions burden the Second Amendment right." *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011); *see also Ezell v. City of Chicago*, 651 F.3d 684, 709 (7th Cir. 2011) (requiring a "more rigorous showing than [intermediate scrutiny] . . . if not quite 'strict scrutiny'" because the ordinance at issue "c[ame] much closer to implicating the core Second Amendment right."); *United States v. Chester*, 628 F.3d 673, 682-83 (4th Cir. 2010); *United States v. Reese*, 627 F.3d 792, 801-02 (10th Cir. 2010); and *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010).

27. **What would be your definition of an "activist judge"?**

Response: An activist judge is one who approaches a particular case with a determination to reach an outcome that accords with the judge's own personal views and policy preferences, as opposed to an effort to conduct an impartial review of the record and an objective analysis of applicable law.

28. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on May 20, 2014. After conducting research and drafting my answers, I reviewed my responses with a representative of the Office of Legal Policy of the Department of Justice. I continued reviewing and editing my responses and, on May 22, 2014, I authorized the Office of Legal Policy to submit them on my behalf to the Committee.

29. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Julie Elizabeth Carnes
Nominee, United States Circuit Judge for the Eleventh 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: I believe that a judge should act fairly and be committed to following the law applicable to the facts in each particular case. Further, a judge should approach her work with humility, with a keen awareness of the distinct and limited role that an Article III judge plays in our system of government, and with a commitment not to overstep those bounds. I have not thoroughly studied the complete writings of any particular Justice and am therefore unable to say which Justice's philosophy might be most analogous to my own.

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: When precedent does not supply an answer to a question of constitutional interpretation, a court should consider original sources in construing the text of the particular provision at issue. The Supreme Court has most recently looked to original public meaning when considering the meaning of a constitutional provision. *See, e.g., Dist. of Columbia v. Heller*, 554 U.S. 570 (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: A federal appellate judge has no authority to overrule any Supreme Court precedent, and I would not attempt to do so were I to be confirmed as an appellate judge. As to Eleventh Circuit precedent, the prior precedent rule provides that only the Supreme Court or the Eleventh Circuit sitting *en banc* can overrule existing circuit precedent. *See United States v. Vega-Castillo*, 540 F.3d 1235, 1236-37 (11th Cir. 2008). A circuit court should only sit *en banc* when "the proceeding involves a question of exceptional importance" or it "is necessary to secure or maintain uniformity of the court's decisions." FED. R. APP. P. 35(a) (2013).

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: Based on the particular facts before it in the *Garcia* case, the Supreme Court held that state sovereign interests were adequately protected through "procedural safeguards inherent in the structure of the federal system." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985). In other cases, however, the Court has relied, among other things, on the Tenth Amendment to articulate judicially-recognized limitations on federal power *vis-a-vis* state sovereign interests. *See, e.g., New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997).

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 recognized three broad categories of activity that Congress may regulate under the Commerce Clause: (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce, and (3) those activities that substantially affect interstate commerce. *Perez v. United States*, 402 U.S. 146, 150 (1971). In *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court invalidated federal statutes as exceeding Congress's Commerce Clause authority. In doing so, the Court emphasized the non-economic nature of the conduct regulated by the statutes at issue. *See Morrison*, 529 U.S. at 610-11, 613; *Lopez*, 514 U.S. at 560-61, 566-67. However, the Court has not held that Congress may never regulate non-economic activity. Further, in a concurring opinion, Justice Scalia has written 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: The President's power to issue executive orders "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). In gauging the extent of the President's power in a particular situation, the Supreme Court has relied on the "tripartite" method of analysis articulated in Justice Jackson's concurring opinion in *Youngstown,* noting that the latter sets forth "the accepted framework for evaluating executive action in this area." *Medellin v. Texas*, 552 U.S. 491, 524 (2008).

7. When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has explained that a right is considered fundamental for purposes of substantive due process analysis when, viewed objectively, it is "'deeply rooted in this Nation's history and tradition'" and is "'implicit in the concept of ordered liberty' such that 'neither liberty nor justice would exist if [it were] sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal citations omitted).

8. When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court applies strict scrutiny to classifications that are "seldom relevant to the achievement of any legitimate state interest," and the Court has identified "race, alienage, [and] national origin" as fitting within that category. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Strict scrutiny also applies "when state laws impinge on personal rights protected by the Constitution." *Id.* The Court applies intermediate scrutiny to classifications, such as gender, that "generally provide[] no sensible ground for differential treatment." *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 what my personal assessment of the need for racial preferences in public higher education may be in fifteen years, I will follow applicable precedent on that point. The current controlling authority in this area can be found in such cases as *Grutter*, cited above, and *Fisher v. Univ. of Texas*, 570 U.S.__, 133 S. Ct. 2411 (2013). Absent a change in that precedent, I would be obligated to follow those cases and any other applicable Supreme Court or Eleventh Circuit authority.

Senator Chuck Grassley
Questions for the Record

Jill Pryor
Nominee, United States Circuit Judge for the Eleventh Circuit

1. **You indicated in your questionnaire that have unable to find notes, transcripts, or recordings for several of your speeches. Could you provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the following talks?**

   a. **May 28, 2009, panel discussion entitled "Confessions of a Female Trial Team."**

      Response: This program concerned the jury trial in the *Kellett v. PricewaterhouseCoopers* case in which I participated. In that case, the lead trial attorney for each of the three different groups of defendants was a woman. In 2008, the other two women and I had the idea for a presentation like this because, in our collective experience, it was rare to have a woman leading the trial of a large complex case, much less three in one case. Following the 2008 program, we were asked to do it again for a wider audience of Georgia Association for Women Lawyers members. We spoke in a question and answer format to an audience of women lawyers about our experience trying this case. We told "war stories" about how we prepared for and conducted the trial and the lessons we learned from it. We compared some of the conventional wisdom or myths about how jurors perceive women lawyers with our own experience, noting in particular that there is no single style of presentation that is most effective for female lawyers in the court room.

   b. **February 5, 2008, panel discussion on jury trial in *Kellett v. PricewaterhouseCoopers*.**

      Response: This presentation was the 2008 program referenced above, conducted for a meeting of a group of more senior women attorneys. It was very similar in substance to the one discussed above.

2. **You indicated that you supervised an associate in your firm who was co-counsel in a challenge to the constitutionality of a local ordinance under which protestors were denied the opportunity to protest during the Masters Tournament. What was the general nature of this case?**

Response: After the plaintiff organizations applied for and were denied permits under an ordinance requiring permits for public demonstrations involving groups of five or more people, they sued the consolidated city/county government to enjoin enforcement of the ordinance, claiming that it violated the First Amendment right to free speech. The district court denied relief. On appeal, the Eleventh Circuit reversed, holding that the ordinance was an unconstitutional prior restraint on speech. *Burk v. Augusta-Richmond County*, 365 F.3d 1247, 1251-55 (11th Cir. 2004). The Eleventh Circuit held the ordinance was not content-neutral because it targeted only political expression, not all speech, and it was not sufficiently tailored to a compelling governmental interest to survive strict scrutiny. *Id.*

3. **You indicated that you have limited experience in criminal law. If confirmed, what you anticipate being the most difficult part of the transition and how will you prepare yourself?**

   Response: Because I have focused primarily on civil law in my practice, I think the most difficult part of the transition, if I am confirmed, will be getting up to speed on the Federal Rules of Criminal Procedure, the Sentencing Guidelines, and the details of substantive criminal law. In my law practice, when I encounter areas of law in which I have less experience, I research the field of law thoroughly, until I am comfortable that I have mastered it. If confirmed, I will approach criminal cases in the same way, including studying the Federal Rules of Criminal Procedure, the Sentencing Guidelines, and substantive law. I will also avail myself of judicial training in criminal law, such as the programs and online resources provided by the Federal Judicial Center.

4. **You have, at times, worked with the ACLU on legal matters. Please list the matters on which you worked with the ACLU.**

   Response: While I served on the ACLU of Georgia's Legal Committee from 1999-2005 and in that capacity attended meetings at which various legal matters were discussed, I have worked with the ACLU as counsel on only two cases: the case discussed in response to Question 2 and an amicus brief filed jointly on behalf of the ACLU of Georgia and the National Association of Criminal Defense Lawyers in the case of *Garner v. Jones*, 529 U.S. 244 (2000).

5. **Please describe any and all work that you have done with the Civil Justice PAC.**

   Response: I have not done any work with the Civil Justice PAC. This PAC is run by the Georgia Trial Lawyers Association (GTLA). While I served on the Editorial Committee of the GTLA's magazine from 1996-2000, I have not done any work with its PAC.

6. **Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: No, I do not believe that demographic factors such as gender or ethnicity should have any influence on the outcome of a case. Each case should be decided based on the applicable law and precedent and the facts in the record.

7. **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 integrity. Having integrity means, among other things, approaching each case objectively and impartially, regardless of any personal beliefs or opinions the judge might hold; having a sense of fairness and the desire to administer equal justice under the law, independent of popular opinion or public or other pressure; and maintaining a strong work ethic grounded in the recognition that the judge is a guardian of the Constitution and the American judicial system. I believe that I have demonstrated integrity throughout my career as a lawyer, whether I was dealing with clients, my colleagues at the law firm, judges and court staff, or opposing parties and counsel.

8. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge must be open-minded, impartial, patient, courteous, and respectful toward every party who comes before the court. It is critical to the mission of the federal courts that every litigant perceives that he or she has been heard with an open and unbiased mind and that justice has been administered fairly and objectively. Also important is that a judge be open-minded, courteous, and respectful when dealing with colleagues on the court and court staff. At the same time, the judge must be sufficiently independent-minded that the judge will faithfully apply the established law to the facts in the record and not be swayed by popular opinion or fear of criticism.

9. **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, I am fully committed to following faithfully the binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals and, if confirmed, will give this precedent full force and effect. Personal views have no place in judicial decision-making, which must be fair and impartial and based exclusively on the objective application of the law to the facts in the record.

10. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If I were confirmed and faced with a case of first impression (where there was no controlling, dispositive precedent), I would look for guidance in sources that have been approved by the Supreme Court and Eleventh Circuit. For example, if the case concerned the construction of a statute, I would look first at the text and, if ambiguity remained, then apply the canons of construction. I would review any analogous decisions from the Supreme Court and Eleventh Circuit, as well as persuasive authority from other circuits. I would consider the briefing and argument of the parties, confer with my colleagues on the Court, and decide the case based on the facts in the record and the applicable law as described above.

11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: If I am confirmed, any personal belief I might hold that the Supreme Court or Eleventh Circuit Court of Appeals had erred in rendering a decision would have no effect on my duty to apply that binding precedent.

12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: It is appropriate to declare a statute enacted by Congress unconstitutional only if (1) the constitutional question cannot be avoided in deciding the case and (2) the statute cannot be interpreted in such a way that it is consistent with the Constitution.

13. Please describe your understanding of the workload of the Eleventh Circuit. If confirmed, how do you intend to manage your caseload?

Response: I understand that in terms of judicial workload, the Eleventh Circuit is the busiest federal circuit court in the nation. This extremely heavy workload is potentially a threat to the thorough and timely administration of justice. If confirmed, first, I will work very hard, as I have done for nearly 25 years in my private law practice. Second, I will strive for the greatest possible efficiency in my chambers' practices and procedures. I will

seek the advice of experienced colleagues and court staff regarding best practices for efficient and effective management of my chambers and docket.

14. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: A circuit judge should not rely on foreign law or the views of the world community unless required by Supreme Court precedent to do so.

15. 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 doctrine of *stare decisis* plays an important role in our nation's judicial system, ensuring stability and predictability in the law and promoting respect for the authority of the federal courts. Political ideology or motivation should never affect the outcome of a case. If confirmed, I will faithfully apply precedent and the text of the law in my judicial decision-making.

16. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: I believe that integrity, including the ability to set aside any personal views and be fair and impartial to all who appear before the court, is the most important attribute for a judge. As the Commentary to Canon 1 of the Code of Conduct for United States Judges states, "Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges." If confirmed, I will consider it my solemn duty to administer justice fairly, equally, and with an open mind. Throughout my career, I have endeavored to maintain objectivity and utmost integrity in my law practice and to treat all participants in the legal process, including litigants and opposing counsel, with respect and professionalism.

17. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: A panel of the Eleventh Circuit has no power to overturn another Eleventh Circuit panel's precedent. A panel decision may only be overturned by the full court sitting *en banc* or, of course, by the Supreme Court. Under Federal Rule of Appellate

Procedure 35, *en banc* consideration may be granted only in extremely limited circumstances, where necessary to secure or maintain uniformity of the court's decisions or where the proceeding involves a question of exceptional importance. Even in these circumstances, overruling precedent is disfavored and should not be undertaken without careful consideration.

18. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: In my law practice, before I can be effective as an advocate and advise my clients appropriately, I must understand the law and facts objectively and be able to look at them from the perspective of the judge or jury who will be deciding the case. While this role is ultimately different from that of a judge, I have some experience looking at cases from a judge's perspective from my service as law clerk for the Honorable J.L. Edmondson on the Eleventh Circuit. I also believe that my decades of experience as an appellate practitioner will assist me in making the transition to appellate judge. If confirmed, I will use similar skills to analyze the facts and the law in each case that comes before me, considering the briefs and argument of counsel, my own legal research, and the insights of my colleagues on the panel.

I anticipate that the most difficult part of the transition for me will be moving from a law firm to a judicial office where the internal practices and procedures are very different. And, given the Eleventh Circuit's very large workload, if I am confirmed, it will be imperative for me to hit the ground running. In making the transition, I will apply my decades of experience in managing my caseload, office, and staff. I will also look to my colleagues on the Court and experienced court staff for guidance in mastering court practices and procedures, as well as my docket.

19. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work and interaction with colleagues on the Court?

Response: I believe that collegiality plays an extremely important role in the work of a circuit court, which does not issue opinions by individual judges but only by panels. I know from my tenure as a law clerk on the Eleventh Circuit and my association with the Court over the years that the Eleventh Circuit has a very strong tradition of collegiality. I would endeavor to preserve and continue this tradition should I have the honor of joining

20. At a speech in 2005, Justice Scalia said, "I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says."

a. Do you agree with Justice Scalia?

Response: I am unfamiliar with this speech; however, I agree with Justice Scalia that the role of a judge is to interpret the Constitution as written, regardless of any personal views the judge might have about what Constitution should provide.

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. A judge should faithfully apply precedent and, if no binding precedent exists, interpret the law by relying on sources whose use for that purpose has been sanctioned by the Supreme Court and the Eleventh Circuit.

21. Do you think judges should consider the "current preferences of the society" when ruling on a constitutional challenge? What about when seeking to overrule longstanding Supreme Court or circuit precedent?

Response: No. The current preferences of the society should have no bearing on constitutional interpretation or the application of precedent.

22. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

Response: If I am confirmed and faced with a case or controversy in which it is necessary to decide how the Constitution applies to modern statutes or regulations, I will review the texts of the relevant statutes or regulations and, if they are ambiguous, apply the appropriate rules of statutory construction. I will review the text and structure of the relevant constitutional provision, as well as any applicable precedent from the Supreme Court and the Eleventh Circuit interpreting that constitutional provision and, if further interpretation is needed, look to historical sources that other precedents have already cited approvingly to determine its meaning. If it is possible to avoid declaring the statute or regulation unconstitutional, either because it can be interpreted in a manner that does not conflict with the Constitution or because the constitutional question can be avoided, I will avoid invalidating the statute or regulation.

23. 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: I do not believe that a judge's opinions of the evolving societal norms and traditions have any role in interpreting the Constitution. In the limited context of the Supreme Court's Eighth Amendment jurisprudence, the Court has looked to the "evolving standards of decency" to determine what constitutes cruel and unusual punishment. *Trop v. Dulles*, 356 U.S. 86, 101 (1958). If confirmed, I will follow all Supreme Court and Eleventh Circuit precedent.

24. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?

Response: In *Cutter v. Wilkinson*, 544 U.S. 709 (2005), the Supreme Court addressed the interplay between the Establishment and Free Exercise Clauses of the First Amendment, holding that the government may accommodate religious practices without violating the Establishment Clause. Acknowledging that the two clauses "are frequently in tension," the Court "reaffirmed 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." *Id.* at 719 (internal citations omitted).

25. Do you believe that the death penalty is an acceptable form of punishment?

Response: The Supreme Court has held that the death penalty is constitutional as long as appropriate procedural protections are in place and it is not applied to persons who lack the mental capacity for the requisite intent/understanding of their crimes, such as the intellectually disabled or persons under age 18. If confirmed, I will apply this Supreme Court precedent to any death penalty cases that come before me.

26. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: While the Constitution must be applied to new technologies and factual situations that obviously did not exist when it was adopted, Supreme Court precedent instructs that the meaning of the Constitution does not change. If confirmed, I will follow Supreme Court precedent on constitutional interpretation.

27. Do you believe there is a right to privacy in the U.S. Constitution?

Response: The Supreme Court has recognized privacy interests inherent in fundamental rights protected by the Constitution. For example, the Supreme Court has found a privacy interest in the freedom of association under the First Amendment, *see NAACP v. Alabama,* 357 U.S. 449 (1958); considered "expectations of privacy" in Fourth Amendment cases, *Missouri v. McNeely,* ___ U.S. ___, 133 S. Ct. 1552, 1558 (2013); *see Kyllo v. United States*, 533 U.S. 27, 40 (2001); and recognized "marital privacy" as part of the liberty that the Fourteenth Amendment protects. *Washington v. Glucksberg,* 521 U.S. 702, 721 (1997); *see Griswold v. Connecticut*, 381 U.S. 479 (1965).

a. Where is it located?

See response to Question 27.

b. From what does it derive?

See response to Question 27.

c. What is your understanding, in general terms, of the contours of that right?

See response to Question 27.

28. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

Response: If I were confirmed, I would not interpret the Constitution based on "reading between the lines." The Supreme Court has held that certain rights are fundamental and entitled to protection even though not explicitly set forth in the Constitution. Such rights must be "careful[ly] descri[bed]" by their proponents and "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 citations and quotations omitted). If confirmed, I would apply Supreme Court and Eleventh Circuit precedent in any case that presented this question.

b. **Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?**

Response: No. A circuit judge should interpret the Constitution by applying precedent of the Supreme Court and his or her own circuit.

29. **In *Brown v. Entertainment Merchants Association*., Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.**

a. **When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?**

Response: Generally speaking, it would be inappropriate for a judge to base his or her opinion on research conducted outside the record on appeal. Supplementation of the record on appeal with items originally not contained in the record is permitted only in limited circumstances. *See* Fed. R. App. P. 10, 16.

b. **When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?**

Response: It might or might not be appropriate for appellate judges to base their opinions on psychological or sociological scientific studies – as long as those studies are contained in the record on appeal – depending upon the facts in the case and the issues on appeal. For example, scientific studies might be relevant to a challenge to the admission or exclusion of expert testimony under Federal Rule of Evidence 702.

30. **What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

Response: While the Supreme Court has not precisely determined the appropriate standard of scrutiny that would apply in a Second Amendment challenge to a federal or state gun law, the Supreme Court has stated that the standard would be higher than rational basis. *See District of Columbia v. Heller,* 554 U.S. 570, 628 n.27 (2008). In *GeorgiaCarry.Org v. Georgia*, 687 F.3d 1244 (11th Cir. 2012), the Eleventh Circuit considered a facial challenge under the Second Amendment to a Georgia statute prohibiting the carrying of guns in places of worship; however, because the court found the statute to be constitutional on its face, the court did not reach the issue of the proper standard of scrutiny to be applied.

31. **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 Supreme Court precedents faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I am fully committed to following faithfully the binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals and, if confirmed, will give such precedent full force and effect. Personal views have no place in judicial decision-making, which must be fair and impartial and based exclusively on the objective application of the law to the facts in the record.

32. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

    a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

        i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

        Response: Yes.

        ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

        Response: My understanding is that Justice Kennedy is referring to the first sentence of the same paragraph, which concerns "same-sex marriages made lawful by the State."

        iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

        Response: Yes.

[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

iv. **Are you committed to upholding this precedent?**

Response: Yes. If confirmed as a judge on the Eleventh Circuit, I would be bound to uphold this precedent, just as I would be bound by every other Supreme Court precedent.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes, this portion and all other portions of the Court's opinion are binding and entitled to be given full force and effect.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed as a judge on the Eleventh Circuit, I would be bound to uphold this precedent in its entirety, just as I would be bound by every other Supreme Court precedent.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes, this portion and all other portions of the Court's opinion are binding and entitled to be given full force and effect.

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed as a judge on the Eleventh Circuit, I would be bound to uphold this precedent in its entirety, just as I would be bound by every other Supreme Court precedent.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes, this portion and all other portions of the Court's opinion are binding and entitled to be given full force and effect.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed as a judge on the Eleventh Circuit, I would be bound to uphold this precedent in its entirety, just as I would be bound by every other Supreme Court precedent.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

Response: Yes, this portion and all other portions of the Court's opinion are binding and entitled to be given full force and effect.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed as a judge on the Eleventh Circuit, I would be bound to uphold this precedent in its entirety, just as I would be bound by every other Supreme Court precedent.

33. **What would be your definition of an "activist judge"?**

Response: I understand the term "activist judge" to refer to someone who ignores or departs from precedent in order to render opinions that are consistent with the judge's personal views and beliefs and/or to accomplish a political agenda.

34. **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.

35. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions via email from the Department of Justice's Office of Legal Policy (OLP) on May 20, 2014. I reviewed them, conducted research on the legal issues, consulted my Senate Questionnaire in connection with questions referring to items contained in it, and drafted and revised my responses. I then reviewed my responses with an attorney in the OLP and finalized them.

36. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Jill A. Pryor, Nominee,
United States Circuit Judge for the Eleventh Circuit, to
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.

Response: I believe that an appellate judge must respect the limited role of judges and appellate judges in particular, applying the law to the facts in the record of each case with faithful adherence to precedent. An appellate judge must also apply the appropriate standard of review, affording the required degree of deference to the district courts' decisions. A circuit judge should attempt to give clear, cogent guidance to the district courts and the parties without deciding or opining upon issues that are not necessary to the resolution of the case or controversy before the court. The judge must administer justice fairly and impartially, setting aside any personal views, motivation, or feelings the judge might have, and avoid any activity that might create even the appearance of impropriety. The judge must at all times treat litigants, counsel, colleagues, and court staff with courtesy, respect, and dignity. The judge must also work very diligently to decide cases in a timely manner, recognizing that justice delayed can sometimes amount to justice denied. While I do not identify any single Justice's judicial philosophy as analogous with mine, I believe that all excellent jurists share these same values.

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 *District of Columbia v. Heller,* 554 U.S. 570 (2008), the Supreme Court construed the Second Amendment by looking to the original public meaning of its terms. In construing the Suspension Clause and the writ of habeas corpus in *Boumediene v. Bush*, 553 U.S. 723 (2008), the Court looked to the intent of the framers of the Constitution. If confirmed, I will faithfully follow these and all other applicable Supreme Court precedents regarding the proper methodology for interpreting the particular constitutional provision at 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: An Eleventh Circuit panel's decision may be overruled only by the Eleventh Circuit sitting *en banc* or by the United States Supreme Court. Federal Rule of Appellate Procedure 35 provides that rehearing *en banc* will be ordered only where it is "necessary to secure or maintain uniformity of the court's decisions" or the case "involves a question of exceptional importance." Further, even if *en banc* review is granted, the decision to overrule precedent must always be approached with caution. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent unless and until it is overruled.

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 judge on the Eleventh Circuit, I will be bound by all Supreme Court precedents, including the *Garcia* case, as well as more recent precedents such as *New York v. United States*, 505 U.S. 144 (1992), and *Printz v. United States*, 521 U.S. 898 (1997), both of which held that the federal laws at issue were unconstitutional because they violated state sovereignty.

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 regulated activity in striking down federal laws as unconstitutional under the Commerce Clause. *See United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). The Supreme Court has not, however, ruled that non-economic activity could never be regulated under the Commerce Clause. *See Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring) (concluding that the Commerce Clause power, in conjunction with the Necessary and Proper Clause, permits Congress to regulate "even non-economic local activity if that regulation is a necessary part of a more general regulation of interstate commerce."). If confirmed, I will follow all Supreme Court and Eleventh Circuit precedent.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court addressed the judicially enforceable limits on the President's ability to issue executive orders in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), in which the Court held unconstitutional the President's seizure of the steel mills during the Korean War. The President's authority to act must come from an act of Congress or the Constitution. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent when considering any case involving executive orders or executive actions.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has held that certain rights are fundamental and entitled to constitutional protection where the claimed right is "deeply rooted in this nation's history and tradition . . . and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal citations and quotations omitted). The right must also be "careful[ly] descri[bed]." *Id.* (citations omitted). If confirmed as a judge on the Eleventh Circuit, I will apply Supreme Court precedent such as *Glucksberg*, as well as any applicable Eleventh Circuit precedent, when considering 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: Supreme Court precedent holds that strict scrutiny must be applied to classifications that are "so seldom relevant to the achievement of any legitimate state interest," such as race and national origin. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Under strict scrutiny, the state action must be narrowly tailored to a compelling governmental interest. Intermediate scrutiny is applied to classifications such as gender, which "frequently bear[] no relation to ability to perform or contribute to society." *Id.* at 440-41. To survive intermediate scrutiny, the state action must serve important governmental objectives and must be substantially related to the achievement of those objectives. If confirmed, I will faithfully apply this precedent.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I am not in a position to know whether the majority's prediction in the *Grutter* case will prove to be accurate; however, if confirmed, I will abide by the Supreme Court's holding in that case and in *Fisher v. University of Texas at Austin*, ___ U.S. ___, 133 S. Ct. 2411 (2013), that the use of racial classifications in public university admissions is constitutional only if it can survive strict scrutiny.

Senator Grassley
Questions for the Record

Leslie Joyce Abrams,
Nominee, U.S. District Judge for the Middle District of Georgia

1. **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 listen and apply the law impartially to the individual facts of each case. If a judge is able to do this, each party will have an opportunity to be heard and will receive justice through a fair and impartial process. 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: The appropriate temperament of a judge is measured and decisive. The most important elements of such a temperament are patience, an open mind, humility, devotion to justice, and a strong work ethic. I meet this standard.

3. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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: Adherence to the rule of law is the cornerstone of our legal system and a principle I hold dear. If lower courts failed to follow the precedents of higher courts, our system would fail. I am wholly committed to following the precedents of higher courts and giving them full force and effect.

4. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: In a case of first impression involving the interpretation of a statute, I would first look to the text of the statute to determine if the plain language could resolve the issue. If not, I would then look to relevant or analogous Supreme Court or Eleventh Circuit precedent. If necessary, I would review the precedents of other circuits for persuasive authority. Lastly, I would look to the sources of legislative history deemed appropriate for consideration by the Supreme Court and the Eleventh Circuit. In non-statutory cases, I would be guided first by relevant and analogous Supreme Court and

Eleventh Circuit precedent and, if necessary, relevant and analogous precedent of other circuits.

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 as a district judge, I would apply Supreme Court and Eleventh Circuit precedent without regard to my own opinion as to whether such precedent was rightly or wrongly decided.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Federal statutes are presumed to be constitutional. If a question of constitutionality arises, a federal judge should first determine whether the case is properly cognizable and whether it can be resolved without reaching the constitutional issue. If the judge determines that the constitutional question must be addressed, then it would be appropriate for her to declare a statute unconstitutional if the statute contravenes a constitutional provision or if Congress exceeded its constitutional 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: The laws of other countries and international authority are never controlling when determining the meaning of the Constitution.

8. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

   Response: Political ideology and motivation have no place in a courtroom. Rather, the application of relevant law to a given set of facts is the only appropriate consideration of a judge. While I recognize that my role as an advocate is vastly different than the role I will have if I am confirmed, the legal arguments I have made during my career in private practice and as a prosecutor have been grounded in the relevant law and facts of each case rather than in any personal motivation. I assure the Committee that I will continue to follow this practice if I am confirmed.

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: I believe that the attorneys who have worked with me as co-counsel or opposing counsel would attest to the fact that I have been fair in all of my cases, and I

assure the Committee that I will put aside any personal views and be fair to all who appear before me if confirmed.

10. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would adopt the best practices that I have observed in my practice in federal court to manage my caseload. One method I would employ to ensure effective and efficient case management would be to issue clear standing orders regarding scheduling and pre-trial procedures so that advocates know what to expect. I would also establish a realistic but firm schedule to make sure cases remain on track. Most importantly, I would strive to be prepared for court sessions, resolve motions promptly, and rule in a timely 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: Yes. Judges are central to controlling the pace and conduct of litigation. If confirmed, I would establish a realistic but firm pretrial schedule and strive to resolve motions promptly and issue rulings in a timely manner.

12. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: If confirmed, I will reach decisions in cases that come before me by reviewing the facts as presented by each side, reviewing the relevant law, and then applying that law to the facts in an impartial manner. My primary sources will be Supreme Court and Eleventh Circuit precedent. The other judges of my court will also be invaluable sources of information.

The most difficult part of the transition, if I am confirmed, will be moving from the highly collaborative environments of a large firm and the U.S. Attorney's Office to the more isolated chambers of a judge; however, I have met all of the judges in the Middle District and I believe that the collegiality of the bench will ease my transition.

13. Please list your representation of any Guantanamo Bay detainees, including the clients' names and the dates on which your representation began and terminated. Please include Westlaw citations to all court submissions you made on their behalf and/or submit copies thereof.

Response: As an associate at Kilpatrick Stockton LLP (now Kilpatrick Townsend, LLP), I was part of a team of attorneys representing several detainees at Guantanamo Bay in *Mohammon et al v. Bush*, 1:05-CV-02386 (D.D.C., Jan. 13, 2005). While I entered appearances on behalf of three detainees, all of whom were represented by Kilpatrick, I actually represented and worked only on Sharaf al Sanani's case. I did not represent al

Sanani in court, nor did I ever meet or speak to him. I have listed all three detainees for whom I entered a notice of appearance and the dates of representation in the chart below, and I have provided copies of the Notice of Appearance and the Notices of Withdrawal. I note that Petitioner Ali Sher Hamidullah's name is included on the Notice of Withdrawal entered on December 13, 2007; but I never entered a Notice of Appearance to represent Hamidullah, and I believe his name was included in error. I also note that my work on al Sanani's case ceased when I left Kilpatrick in June 2007.

Detainee	Notice of Appearance Filed	Notice of Withdrawal Filed
Sharaf al Sanani (*Sami Muhydeen, Next Friend*)	June 28, 2006	December 13, 2007
Fahd Abu Hafsa (*Jamal Kiyemba, Next Friend*)	June 28, 2006	January 18, 2007
Omar Ramah (*Omar Deghayes, Next Friend*)	June 28, 2006	January 18, 2007

I performed Westlaw and Lexis searches and reviewed the *Mohammon* docket to identify the submissions made on behalf of al Sanani, Hafsa and Ramah by Kilpatrick during the period of my representation. I have provided copies of these submissions to the Committee.

14. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

Response: Yes. The statement that the "opinion and its holding are confined to those lawful marriages," *id.*, is part of the holding in *Windsor*.

ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

Response: I understand the phrase "lawful marriages" to refer to "those persons who are joined in same-sex marriages made lawful by the State." *United States v. Windsor*, 133 S. Ct. 2675, 2695 (2013).

iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes. The Court explicitly stated, "[t]his opinion and its holding are confined to those lawful marriages." *Id.* at 2696.

iv. **Are you committed to upholding this precedent?**

Response: Yes. If I am confirmed, I am committed to faithfully upholding this and all Supreme Court precedent.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The entirety of *Windsor*, including this portion, is binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If I am confirmed, I am committed to giving full force and effect to the entirety of *Windsor* and all Supreme Court opinions.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The entirety of *Windsor*, including this portion, is binding Supreme Court precedent entitled to full force and effect by the lower courts.

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If I am confirmed, I am committed to giving full force and effect to the entirety of *Windsor* and all Supreme Court opinions.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The entirety of *Windsor*, including this portion, is binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If I am confirmed, I am committed to giving full force and effect to the entirety of *Windsor* and all Supreme Court opinions.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The entirety of *Windsor*, including this portion, is binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If I am confirmed, I am committed to giving full force and effect to the entirety of *Windsor* and all Supreme Court opinions.

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**

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

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: On May 20, 2014, I received these Questions for the Record. I prepared my answers, forwarded my responses to an attorney in the Office of Legal Policy of the Department of Justice for review, and revised my responses where I believed it was appropriate.

17. **Do these answers reflect your true and personal views?**

    Response: Yes.

Questions for the Record
Senator Ted Cruz

Responses of Leslie Joyce Abrams
Nominee, U.S. District Judge for the Middle District of Georgia

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: My judicial philosophy is that a judge must be fair and impartial and respect the rule of law. The role of a judge is to apply the applicable law to the facts of each individual case. I have not studied the judicial philosophies of the individual Justices of the Supreme Court to an extent that would allow me to analogize my philosophy to a specific Justice's philosophy.

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: The Supreme Court has applied originalism in cases including *District of Columbia v. Heller*, 554 U.S. 570 (2008), in which the Court looked to the original public meaning of the Second Amendment. If confirmed, I would follow Supreme Court and Eleventh Circuit precedent in interpreting the Constitution.

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: As a district court judge I would not have authority to overrule legal precedent, and there is no circumstance where I would do so.

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: The Supreme Court's holding in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) is binding on a district court judge. If confirmed, I would apply this precedent.

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 identified three categories of activity which Congress may regulate under the Commerce Clause. *See United States v. Lopez*, 514 U.S. 549, 558-59 (1995); *United States v. Morrison*, 529 U.S. 598, 609 (2000). These categories are: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *Id.* In his concurring opinion in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia stated, "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." If confirmed, I would apply the law as identified in *Lopez*, *Raich*, *Morrison* and all other relevant Supreme Court and Eleventh Circuit precedent to determine whether the regulation of a particular activity is covered under the Commerce Clause.

6. **What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), set forth the analysis to use when determining whether the President has exceeded executive authority. If confirmed, I would apply this analysis to assessing the limits of any presidential executive orders or actions.

7. **When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: The Supreme Court defined rights and liberties as "fundamental" for purposes of Due Process Clause protection when the right or liberty 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) (internal quotations and citations omitted). If confirmed, I would apply Supreme Court and Eleventh Circuit precedent when ruling on a case where fundamental rights were implicated.

8. **When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: The Supreme Court has held that a classification is subject to heightened scrutiny under the Equal Protection Clause when the classification involves a suspect class, such as race, alienage, national origin, or gender. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985). If confirmed, I would apply Supreme Court and Eleventh Circuit precedent when determining the appropriate level of scrutiny under the Equal Protection Clause.

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: If confirmed, I will follow the controlling precedent of the Supreme Court, including *Grutter* and *Fisher v. University of Texas at Austin, et al.,* 570 U.S. ___ (2013), on the appropriate use of racial preferences in public higher education.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMER MOHAMMON, et al. Detainee, SHARAF AL SANANI, Petitioner, and Sami Muhyideen, as Next Friend of Mr. Sharaf Al Sanani; FAHD ABU HAFSA, Petitioner, and Jamal Kiyemba, as Next Friend of Mr. Fahd Abu Hafsa; OMAR RAMAH, Petitioner, and Omar Deghayes, as Next Friend of Mr. Omar Ramah, Petitioners. v. GEORGE W. BUSH, et al., Respondents.	Civil Action No. 05-2386 (RBW) NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that the attorney listed below will represent Petitioners, Sharaf Al Sanani, Fahd Abu Hafsa and Omar Ramah, in this matter. Service upon counsel may be made to:

Leslie J. Abrams
KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309

Counsel for Petitioner certifies, pursuant to L. Cv. R. 83.2(g), that she is representing Petitioners without compensation.

Dated: June 28, 2006.

Respectfully submitted.

/s/ Leslie J. Abrams
Leslie J. Abrams, Ga. Bar # 001441
KILPATRICK STOCKTON LLP
Attorney for Petitioners Sharaf Al Sanani,
Fahd Abu Hafsa and Omar Ramah
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530
LAbrams@KilpatrickStockton.com
(404) 815-6500 / (404) 815-6555 (fax)

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and accurate copy of the foregoing upon the following persons, by first-class mail in addition to the service that automatically occurs by virtue of the electronic filing of this document:

The Honorable Alberto Gonzales
United States Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

The Honorable Kenneth L. Wainstein
United States Attorney for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20530

Terry Henry, Esq.
Andrew I. Warden, Esq.
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Room 7144
Washington, D.C. 20530

This 28th day of June, 2006.

/s/ Leslie J. Abrams
Leslie J. Abrams, Ga. Bar # 001441

Attorney for Petitioners Sharaf Al Sanani,
Fahd Abu Hafsa and Omar Ramah

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMER MOHAMMON, et al. Detainees, FAHD ABU HAFSA, Petitioner, and Jamal Kiyemba, as Next Friend of Mr. Fahd Abu Hafsa; OMAR RAMAH, Petitioner, and Omar Deghayes, as Next Friend of Mr. Omar Ramah, Petitioners, v. GEORGE W. BUSH, et al., Respondents.	Civil Action No. 05-2386 (RBW) NOTICE OF WITHDRAWAL

PLEASE TAKE NOTICE that undersigned counsel is withdrawing from the representation of Petitioners Fahd Abu Hafsa and Omar Ramah.

Undersigned counsel will continue to represent Petitioner Sharaf Al Sanani in this action. Additionally, counsel will be filing a separate Notice of Appearance on behalf of other Petitioners in this action.

Dated: January 18, 2007.

Respectfully submitted.

/s/ Leslie J. Abrams
Leslie J. Abrams, Ga. Bar # 001441
KILPATRICK STOCKTON LLP
Attorney for Petitioners Sharaf Al Sanani,
Fahd Abu Hafsa and Omar Ramah
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMER MOHAMMON, *et al.*, Petitioners v. GEORGE W. BUSH, *et al.*, Respondents	No. 05-CV-2386 (RBW)

NOTICE OF WITHDRAWAL

PLEASE TAKE NOTICE that Leslie Abrams, Esq. has left the law firm of Kilpatrick Stockton LLP and her name should be removed from the Court's docket as counsel for Petitioners Sharaf Al Sanani a/k/a Sharaf Amhad Muhammad Masud (ISN 170) and Ali LNU a/k/a Ali Sher Hamidullah (ISN 455) in the above-captioned matter.

PLEASE TAKE FURTHER NOTICE that A. Stephens Clay, James F. Bogan, and C. Allen Garrett of Kilpatrick Stockton, LLP continue to remain counsel for Petitioners Sharaf Al Sanani a/k/a Sharaf Amhad Muhammad Masud (ISN 170) and Ali LNU a/k/a Ali Sher Hamidullah (ISN 455) in the above-captioned matter. All forthcoming papers must now be served upon Messrs. Clay, Bogan, and Garrett.

Dated: Washington, DC
December 13, 2007

Respectfully submitted,

Counsel for Petitioners Sharaf Al Sanani and Ali LNU:

/s/ Leslie Abrams
A. Stephens Clay (Pursuant to LCvR 83.2(g))
James F. Bogan (Pursuant to LCvR 83.2(g))
C. Allen Garrett (Pursuant to LCvR 83.2(g))
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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2007, I caused the foregoing Notice of Withdrawal to be served on all counsel via the Court's Electronic Filing System.

/s/ Leslie J. Abrams
Leslie J. Abrams

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMER MOHAMMON, *et al.*,	)	
Petitioners,	)	No. 05-CV-2386 (RBW) (AK)
v.	)	
GEORGE W. BUSH, *et al.*, Respondents.	)	

MOTION FOR ORDER REQUIRING RESPONDENTS TO PROVIDE COUNSEL FOR PETITIONER SHARAF AL SANANI AND THE COURT WITH 30-DAYS' ADVANCE NOTICE OF ANY INTENDED REMOVAL OF PETITIONER FROM GUANTANAMO

Pursuant to Rule 65 of the Federal Rules of Civil Procedure and the All Writs Act, 28 U.S.C. § 1651, Petitioner Sharaf Al Sanani a/k/a Sharaf Ahmad Muhammad Masud (ISN 170) ("Petitioner"),[1] by and through his undersigned counsel, respectfully moves for an order requiring Respondents to provide counsel for Petitioner and the Court with advance notice of any intended removal of Petitioner from Guantánamo Bay Naval Base in Cuba.

STATEMENT OF FACTS

Petitioner is a citizen of Yemen who is being detained as an "enemy combatant" at the Guantánamo Bay Naval Base in Cuba. As set forth in habeas petition filed on December 21, 2005, he denies being an "enemy combatant" and contends he is being detained in violation of the Constitution, treaties and laws of the United States.

[1] On June 27, 2006, this Court ruled that the Amended Protective Order should be entered as to all Petitioners in this case, except those who already had petitioners pending or whom Respondents were unable to identify. *See* Order (dkt. No. 66) at 4-5; *see also* Order, dkt. No. 108 (entered July 26, 2006). On July 26, 2006, Respondents filed a Status Report stating that the Petitioner could not be identified. *See* Status Report, Exhibit A, No. 57 (excerpts attached hereto as Exhibit A. After being presented with compelling evidence that Sharaf Al Sanani was the detainee identified by the government as Sharaf Ahmad Muhammad Masud (ISN 170), Respondents agreed not to challenge Petitioner's identity. *See* E-mail from Andrew Warden to Vinay J. Jolly (October 13, 2006), copy attached as Exhibit B.

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Petitioner in the instant case has reason to fear he will be transferred to a country where he will be tortured and/or detained indefinitely without due process of law. Upon information and belief, the United States has secretly removed detainees and others suspected of terrorist crimes to other countries for interrogation or detention without complying with extradition or other legal process. This practice, known as "rendition," "irregular rendition," or "extraordinary rendition," is understood to be used to facilitate interrogation by subjecting detainees to torture.

According to reports by American and foreign news organizations, including the *Washington Post*, the *Los Angeles Times*, and the British Broadcasting Corporation, the United States Government has repeatedly transferred detainees into the custody of foreign governments that employ inhumane interrogation techniques. According to a recent article in the *New Yorker*, the "rendition" process was originally "a program aimed at a small, discrete set of suspects – people against whom there were outstanding foreign arrest warrants," but after September 11 came to include a "wide and ill-defined population that the Administration terms 'illegal enemy combatants.'" Jane Mayer, *Outsourcing Torture*, New Yorker, Feb. 14, 2005, at http://www.newyorker.com/fact/content/?050214fa_fact6, ¶ 7. According to the *Washington Post*,

> Since Sept. 11, the U.S. government has secretly transported dozens of people suspected of links to terrorists to countries other than the United States, bypassing extradition procedures and legal formalities, according to Western diplomats and intelligence sources. The suspects have been taken to countries . . . whose intelligence services have close ties to the CIA and where they can be subjected to interrogation tactics – including torture and threats to families – that are illegal in the United States, the sources said. In some cases, U.S. intelligence agents remain closely involved in the interrogation, the sources said.

Rajiv Chanrasekaran & Peter Finn, *U.S. Behind Secret Transfer of Terror Suspects*, Wash. Post, Mar. 11, 2002, at A1; *see also* Dana Priest & Barton Gellman, *U.S. Decries Abuse But Defends Interrogations,* Wash. Post, Dec. 26, 2002, at A1. The countries to which detainees may be

brought are known to practice torture. *See, e.g.*, Megan K. Stack & Bob Drogin, *Detainee Says U.S. Handed Him Over For Torture,* L.A. Times, Jan. 13, 2005, at A1 ("News accounts, congressional testimony and independent investigations suggests that [the CIA] has covertly delivered at least 18 terrorism suspects since 1998 to Egypt, Syria, Jordan and other Middle Eastern nations where, according to State Department reports, torture has been widely used on prisoners.").

According to recent news accounts, Guantánamo detainee Mamdouh Habib was rendered to Egypt by the United States *before* being moved to Cuba. During his six months in Egyptian custody, Mr. Habib was allegedly tortured without mercy:

> He said that he was beaten frequently with blunt instruments, including an object that he likened to an electric "cattle prod." And he was told that if he didn't confess to belonging to Al Qaeda he would be anally raped by specially trained dogs. . . . Habib said that he was shackled and forced to stand in three torture chambers: one room was filled with water up to his chin, requiring him to stand on tiptoe for hours; another chamber, filled with water up to his knees, had a ceiling so low that he was forced into a prolonged, painful stoop; in the third, he stood in water up to his ankles, and within sight of an electric switch and a generator, which his jailers said would be used to electrocute him if he didn't confess.

Mayer, *Outsourcing Torture* at ¶ 54. The credibility of Mr. Habib's account is bolstered by the State Department, which has consistently identified the Egyptian government as a practitioner of torture. In a report released on February 28, 2005, for example, the State Department found that "there were numerous, credible reports that security forces tortured and mistreated detainees" and that "torture and abuse of detainees by police, security personnel, and prison guards remained common and persistent." Dep't of State, *Country Reports On Human Rights Practices, Egypt 2004*, at http://www.state.gov/g/drl/rls/hrrpt/2004/41720.htm, § 1(c).

Petitioner also has reason to fear that he will be transferred into the custody of the government of Yemen or a third country for continued illegal detention without due process of

law. On information and belief, a number of detainees have been removed to countries – including Pakistan and Kuwait – where they have been imprisoned and denied access to the courts. Moreover, recent news reports indicate that the United States government has contemplated transferring "large numbers of Afghan, Saudi and Yemeni detainees from the military's Guantánamo Bay, Cuba, detention center into new U.S.-built prisons in their home countries." Dana Priest, *Long-Term Plan Sought For Terror Suspects*, Wash. Post, Jan. 2, 2005, at A1.

ARGUMENT

Under the All Writs Act, 28 U.S.C. § 1651(a), this Court has the inherent power "to issue injunctions to protect its jurisdiction." *SEC v. Vision Communications, Inc.*, 74 F.3d 287, 291 (D.C. Cir. 1996); *Envtl. Def. Fund v. EPA*, 485 F.2d 780, 784 n.2 (D.C. Cir. 1973). Petitioner's request meets the most fundamental purpose of preliminary injunctive relief, "to preserve the status quo between the parties pending a final determination of the merits of the action." 13 James Wm. Moore, et al., *Moore's Federal Practice* § 65.20 (3d ed. 2004).

Each of the four factors to be weighed in awarding preliminary injunctive relief favors the requested injunction here: (1) Petitioner will suffer irreparable harm if the injunction is denied; (2) no harm will be suffered by Respondents if the injunction is granted; (3) Petitioner are likely to succeed on the merits of their claims; and (4) there is a clear public interest in preventing the United States Government from rendering individuals to foreign countries for detention and torture. *See Al-Fayed v. CIA*, 254 F.3d 300, 303 & n.2 (D.C. Cir. 2001); *Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1317-18 (D.C. Cir. 1998); *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1066 (D.C. Cir. 1998).

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Petitioner stands to suffer immeasurable and irreparable harm – from torture to possible death – at the hands of a foreign government. Transfer to another country, even if "only" for continued imprisonment, also circumvents Petitioner's right to adjudicate the legality of their detention in this Court. By contrast, Respondents, who have already held Petitioner for several years, are asked only to provide counsel and the Court with adequate notice of any intended removal of Petitioner from Guantánamo.[2] Respondents can suffer no conceivable harm from complying with such a request.

Petitioner is likely to succeed on the merits of his claims. Petitioner has properly invoked the jurisdiction of this Court. *See Rasul v. Bush*, 124 S. Ct. 2686, 2698 (2004). Judge Green has already ruled that detainees in similar circumstances to Petitioner have stated actionable claims under the Due Process Clause and the Geneva Conventions. For the United States Government to remove Petitioners to countries that would afford no such protections would be to flout Judge Green's ruling and defeat the Court's jurisdiction. Such a transfer would also violate basic international legal norms embodied not only in the Geneva Conventions but also in the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel and Degrading Treatment and Punishment.

Finally, public policy favors requiring Respondents to provide advance notice to counsel and the Court of any intended removal of Petitioner from the Court's jurisdiction. No matter how satisfied the Executive Branch may be that its actions are lawful, the public good requires that a federal litigant – properly before the Court and represented by counsel – be provided with a meaningful opportunity to contest his transfer into the hands of those who might torture him or detain him indefinitely.

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[2] As of the date of this motion, attorneys from the Atlanta office of Kilpatrick Stockton LLP have not been granted security clearance, despite having submitted their applications in August of 2006.

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CONCLUSION

For the reasons discussed above, the motion should be granted.

Dated: Atlanta, Georgia
November 30, 2006

Respectfully submitted,

Counsel for Petitioner:

/s/ Vinay J. Jolly

A. Stephens Clay IV (Pursuant to LCvR 83.2(g))
James F. Bogan III (Pursuant to LCvR 83.2(g))
C. Allen Garrett Jr. (Pursuant to LCvR 83.2(g))
Vinay J. Jolly (Pursuant to LCvR 83.2(g))
Leslie J. Abrams (Pursuant to LCvR 83.2(g))
Miguel M. Duran (Pursuant to LCvR 83.2(g))
KILPATRICK STOCKTON LLP
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Approved for Public Filing by the CSO

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing **MOTION FOR ORDER REQUIRING RESPONDENTS TO PROVIDE COUNSEL FOR PETITIONER SHARAF AL SANANI AND THE COURT WITH 30-DAYS' ADVANCE NOTICE OF ANY INTENDED REMOVAL OF PETITIONER FROM GUANTANAMO** by serving electronically all attorneys of record for each party via the Court's Electronic Case Filing system.

Respectfully submitted,

Counsel for Petitioner:

/s/ Vinay J. Jolly

A. Stephens Clay IV (Pursuant to LCvR 83.2(g))
James F. Bogan III (Pursuant to LCvR 83.2(g))
C. Allen Garrett Jr. (Pursuant to LCvR 83.2(g))
Vinay J. Jolly (Pursuant to LCvR 83.2(g))
Leslie J. Abrams (Pursuant to LCvR 83.2(g))
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EXHIBIT A

Petitioners in *Mohammon v. Bush*, No. 05-CV-2386 (RBW), Whom Respondents Have Been Unable to Identify as Detainees at Guantanamo Bay

	Petitioner	Citation to Petition	Alleged Citizenship
1.	Abd Al Zaher	¶ 25	Azerbijian
2.	Abdal Rauf Asibi	¶ 286	Libya
3.	Abdul Rahman	¶ 91	Yemen
4.	Abdul Rhman	¶ 77	Tajikistan
5.	Abdullah Ajaibi	¶ 310	Saudi Arabia
6.	Abdullah LNU	¶ 154	Uzbekistan
7.	Abdullah LNU	¶ 216	Syria
8.	Abdunoor (Abdurahman) LNU	¶ 120	Algeria
9.	Abdurahman LNU	¶ 160	Yemen
10.	Abu Abdullah	¶ 192	Algeria
11.	Abu Ahmed	¶ 69	Sudan
12.	Abu Ahmed	¶ 212	Syria
13.	Abu Ahmed Al Jofi	¶ 49	Saudi Arabia
14.	Abu Rad Al Jofi	¶ 47	Saudi Arabia
15.	Abu Rahan	¶ 27	Bangladesh
16.	Adel LNU	¶ 232	Turkestan
17.	Ahmed Omar	¶ 318	Yemen

EXHIBIT A

Petitioners in *Mohammon v. Bush*, No. 05-CV-2386 (RBW), Whom Respondents Have Been Unable to Identify as Detainees at Guantanamo Bay

	Petitioner	Citation to Petition	Alleged Citizenship
18.	Ahmed Tripoli	¶ 298	Libya
19.	Ali Al Kazmi	¶ 85	Yemen
20.	Ali Al Qatari	¶ 117	Yemen
21.	Ali LNU	¶ 156	Uzbekistan
22.	Ali Waili Khavimi	¶ 320	Yemen
23.	Amir LNU	¶ 67	Sudan
24.	Edress LNU	¶ 107	Yemen
25.	Esam LNU	¶ 103	Yemen
26.	Esmail Ali Ahmad Khalip	¶ 254	
27.	Fadi Dahimi	¶ 324	Yemen
28.	Fahmi LNU	¶ 101	Yemen
29.	Faisil LNU	¶ 136	Saudi Arabia
30.	Faris Darnawi	¶ 290	Libya
31.	Hadj Arab Nabil	¶ 329	
32.	Hasan Yaunas Balgaid	¶ 280	Libya
33.	Isam Himed Ali	¶ 258	
34.	Khald LNU	¶ 115	Yemen

EXHIBIT A

Petitioners in *Mohammon v. Bush*, No. 05-CV-2386 (RBW), Whom Respondents Have Been Unable to Identify as Detainees at Guantanamo Bay

	Petitioner	Citation to Petition	Alleged Citizenship
35.	Mahamoud Al Bhar	¶ 113	Yemen
36.	Mashal LNU	¶ 41	Saudi Arabia
37.	Mohamed Ali	¶ 105	Yemen
38.	Mohamed Hmadi	¶ 99	Yemen
39.	Mohammed Ahmed Saeed Hidar	¶ 260	
40.	Mohammed Harbi	¶ 306	Saudi Arabia
41.	Mohammed LNU	¶ 210	Syria
42.	Mohammed Zahrani	¶ 308	Saudi Arabia
43.	Moosa LNU	¶ 300	Morocco
44.	Muhammed Dawood	¶ 282	Libya
45.	Nabil Hadj	¶ 328	Algeria
46.	Osama LNU	¶ 97	Yemen
47.	Rashed Al Qamdi	¶ 37	Saudi Arabia
48.	Ridwaan Al Magrebi	¶ 128	Morocco
49.	Sabel LNU	¶ 228	Turkestan
50.	Saib Damawi	¶ 292	Libya
51.	Said Al Russi	¶ 304	Russia

EXHIBIT A

**Petitioners in *Mohammon v. Bush*, No. 05-CV-2386 (RBW),
Whom Respondents Have Been Unable to Identify as Detainees at Guantanamo Bay**

	Petitioner	Citation to Petition	Alleged Citizenship
52.	Saleh LNU	¶ 57	Saudi Arabia
53.	Salih LNU	¶ 294	Libya
54.	Salman Al Bahri	¶ 130	Saudi Arabia
55.	Seed LNU	¶ 111	Yemen
56.	Shah Baba	¶ 242	Pakistan
57.	Sharaf Al Sanani	¶ 109	Yemen
58.	Thabid LNU	¶ 236	Turkestan
59.	Yagoob Al Soury	¶ 75	Syria
60.	Zabin Thaha Assammery	¶ 200	Saudi Arabia
61.	Zaker Chan	¶ 79	Tajikistan
62.	Zeyad Al Gassmy	¶ 61	Saudi Arabia

Exhibit B

Jolly, Vinay

From: Andrew.Warden@usdoj.gov
Sent: Friday, October 13, 2006 3:30 PM
To: Jolly, Vinay
Subject: RE: Mohammon et al. v. Bush, Case No. 1:05-cv-02386-RBW: Identification of Sharaf Al Sanani

Vinay,

Thank you for your e-mail below. Based on the additional information you have provided, we are no longer in a position to contest the identification of petitioner Sharaf Al Sanani.

Best regards,

Andrew

-----Original Message-----
From: VJolly@kilpatrickstockton.com [mailto:VJolly@kilpatrickstockton.com]
Sent: Thursday, October 12, 2006 11:19 AM
To: Warden, Andrew (CIV)
Subject: RE: Mohammon et al. v. Bush, Case No. 1:05-cv-02386-RBW: Identification of Sharaf Al Sanani

Andrew:

Thanks for your e-mail. We appreciate your efforts in investigating the facts we have presented regarding Sharaf Al Sanani's identity. To facilitate your efforts, I am enclosing a revised Declaration from Zachary Katznelson, which includes an additional identification of Sharaf Masood as Sharaf Al Sanani by Jamal Kiyemba, a former detainee at Guantánamo who was released in February of 2006. We will refrain from filing our Motion for Access and will look forward to receiving a response from you by the end of the week. If you will not agree that Sharaf Al Sanani is the detainee identified by the government as Sharaf Ahmad Muhammad Masud (ISN 170) by the close of business on Monday (October 16), however, we must proceed with filing our motion, in order to get a ruling prior to an upcoming visit to Guantanamo by co-counsel. Thanks again for your efforts to resolve this issue.

Regards,

Vinay

-----Original Message-----
From: Andrew.Warden@usdoj.gov [mailto:Andrew.Warden@usdoj.gov]
Sent: Wednesday, October 11, 2006 4:11 PM
To: Jolly, Vinay
Subject: RE: Mohammon et al. v. Bush, Case No. 1:05-cv-02386-RBW: Identification of Sharaf Al Sanani

Vinay,

Thanks for your e-mail. We are in the process of conferring with DoD regarding the additional information you have provided concerning the identity of petitioner Al Sanani. I anticipate providing a response to your e-mail below later this week. We would appreciate a few additional days to confer with our client before any motions are filed in this matter.

Best regards,

Andrew

Andrew I. Warden
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW, Room 6120
Washington, DC 20530
Tel: 202.616.5084
Fax: 202.616.8470

-----Original Message-----
From: VJolly@kilpatrickstockton.com [mailto:VJolly@kilpatrickstockton.com]
Sent: Friday, October 06, 2006 10:14 AM
To: Warden, Andrew (CIV)
Subject: Mohammon et al. v. Bush, Case No. 1:05-cv-02386-RBW: Identification of Sharaf Al Sanani

Dear Mr. Warden:

We represent Sharaf Al Sanani, whom Respondents have identified as one of the Petitioners in Mohammon v. Bush, No. 05-CV-2386 (RBW), that they cannot identify as a detainee at Guantanamo Bay. Our investigation has revealed a number of facts showing that Sharaf Al Sanani is the detainee identified by the government as Sharaf Ahmad Muhammad Masud, ISN 170, a citizen of Yemen who was born in Sana'a in 1978. Among other facts, we have learned that:

1. There is only one Guantanamo Bay detainee named "Sharaf," from Yemen or from any other country, and the name "Al Sanani" means "from Sana'a."

2. Guantanamo detainee Sami Al Hajj, Sharaf Al Sanani's Next Friend, has stated that Sharaf Al Sanani speaks good English, reached high school in Sana'a, and was in his "mid-twenties." Mr. Al Hajj also noted that Sharaf Al Sanani was the only Sharaf in Guantanamo.

3. Guantanamo detainee Osama Abu Kabir has stated that Sharaf Al Sanani's ISN is 170; that he (Al Sanani) is "light-skinned"; that he is "about 28 or 30"; and that he speaks English. Mr. Kabir also noted that Sharaf Al Sanani was the only Sharaf in Guantanamo.

4. Hassan Masood, the brother of Sharaf Ahmed Mohammed Masood (the phonetic equivalent of Sharaf Ahmad Muhammad Masud, ISN 170), has stated that his brother is a detainee at Guantanamo Bay; that his brother's ISN is 170; that his brother speaks English and finished high school at Sana'a; and that Sharaf is 28 years old. He further stated that American officials has visited his sister's home in Yemen, asked questions about Sharaf, and reported to Sharaf's sister that he is imprisoned at Guantanamo. These officials reviewed pictures of Sharaf, and Mr. Masood subsequently has provided a picture of Sharaf to counsel.

5. Mr. Zachary Katznelson of the Reprieve firm has documented these facts in a declaration and has included the picture of Mr. Masood in that declaration. I attach a copy of Mr. Katznelson's Declaration (with Mr. Hasood's picture attached) to this e-mail.

Please let us know by close of business Wednesday, October 11, if you will agree that Sharaf Al Sanani is Sharaf Ahmad Muhammad Masud, ISN 170, such that the Amended Protective Order can be entered and Mr. Masud can have access to counsel. If you do not agree, we will be forced to file a motion for access to counsel.

Regards,

Vinay Jolly

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t 202 508 5800

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMER MOHAMMON, *et al.*, Petitioners, *v.* GEORGE W. BUSH, *et al.*, Respondents.	No. 05-CV-2386 (RBW) (AK)

PROPOSED ORDER

Upon consideration of Petitioner Sharaf Al Sanani a/k/a Sharaf Ahmad Muhammad Masud's November 28, 2006 Motion for an Order requiring Respondents to provide counsel for Petitioner and the Court with advance notice of any intended removal of Petitioner from Guantánamo Bay Naval Base in Cuba it is hereby

ORDERED that the Motion is GRANTED.

SO ORDERED.

Dated: _____

_____
United States District Court Judge

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMER MOHAMMON, *et al.*,	)	
Petitioners,	)	No. 05-CV-2386 (RBW) (AK)
v.	)	
GEORGE W. BUSH, *et al.*,	)	
Respondents.	)	

REPLY MEMORANDUM IN SUPPORT OF MOTION FOR THIRTY DAYS' ADVANCE NOTICE OF ANY INTENDED REMOVAL OF PETITIONER SHARAF AL SANANI FROM GUANTANAMO

Petitioner Sharaf Al Sanini a/k/a Sharaf Ahmad Muhammad Masud (ISN 170) ("Petitioner"), by and through undersigned counsel, respectfully files this reply in support of his simple request for thirty days' advance notice of any removal from Guantánamo.

Since Messrs. Prosper and Waxman prepared their Declarations back in May and June of 2005, much has changed on the detainee-transfer front, and not simply the number of detainees transferred. As of December 17, 2006, more than 380 detainees have been removed from Guantanamo, 114 in 2006 alone. *See* DoD News Release dated December 17, 2006 (copy attached as Exhibit A). On that date, the Government announced that it had transferred seven detainees to Afghanistan, five detainees to Yemen, three detainees to Kazakhstan, one detainee to Libya, and one detainee to Bangladesh. *Id.* Just three days earlier, sixteen detainees were transferred to Saudi Arabia. *See* DoD News Release dated December 14, 2006 (copy attached as Exhibit B). In contrast to the discreet list of transferee countries identified in 2005, detainees have now been transferred to Albania, Afghanistan, Bahrain, Egypt, Iran, Iraq, Jordan, Kazakhstan, Libya, Maldives, Sudan, Tajikistan, Turkey, Uganda, and Yemen. *Id.*

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Numerous judges of this Court have granted the modest relief requested here, rejecting Respondents' speculative assertions about the potential impact of such rulings. Indeed, according to a recent analysis of this issue, the decisions granting such relief significantly outnumber the rulings denying it. *See* Robert M. Chesney, *Leaving Guantanamo: The Law of International Detainee Transfers*, 40 U. Rich. L. Rev. 657, 667 & nn.35-38 (2006). Despite all of the rulings granting the requested relief, the "sky has not fallen" on Respondents' diplomatic relations efforts, as confirmed by the continued stream of detainee transfers.

Moreover, notwithstanding Respondents' doubletalk regarding "assurances" received from countries known to violate human rights, a serious risk remains that Respondents will transfer Petitioner from the "frying pan" of illegal detention into the "fire" of a foreign torture den. Against this tangible possibility of the most extreme irreparable injury imaginable (torture and possibly death) is the *de minimus* burden of providing thirty days' advance notice of a transfer – a notice Respondents already provide after-the-fact. *See, e.g.,* Dkt. 39 (notice of transfer of Saleh Mohammed Ali Azoba to Saudi Arabia). Furthermore, as several judges have noted in granting these motions, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Abdah v. Bush*, No. Civ. A. 04-1254, 2005 WL 711814 (D.D.C. Mar. 29, 2005); *Al-Joudi v. Bush*, No. Civ. A. 05-301 (GK), 2005 WL 774847 (D.D.C. Apr. 4, 2005).

Accordingly, the modest relief requested, as balanced against the serious threat of irreparable harm, requires no careful analysis of the Military Commissions Act of 2006 ("MCA"). Petitioner's motion should be granted, and Respondents should be ordered to provide this Court and counsel with thirty days' advance notice of any intended removal of Petitioner from Guantáanamo Bay.

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I. Factual Developments Since the Government's Outdated Declarations

Respondents continue to rely upon Declarations prepared in 2005 by then-Ambassador Pierre-Richard Prosper and then-Deputy Assistant Secretary of Defense for Detainee Affairs Matthew C. Waxman. *See* Opp., Exhibits 1-2. According to the later of these Declarations (Mr. Waxman's June 2, 2005 Declaration), the vast majority of removals from Guantanamo were for "release," with only sixty-seven detainees "transferred to the control of other governments for further detention, investigation and/or prosecution, as appropriate." Waxman Decl. ¶ 4.

According to Mr. Waxman's listing of transferee countries, most detainees had been sent to Pakistan or European countries such as the United Kingdom, France, Belgium, and Sweden. *Id.* Only four detainees had been transferred to Saudi Arabia. *Id.* None had been sent to most of the countries now on Respondents' list, such as Albania, Afghanistan, Bahrain, Egypt, Iran, Iraq, Jordan, Maldives, Sudan, Tajikistan, Uganda, and Yemen. *Compare id. with* Exhibit A.

Beginning in July of 2005, Respondents became increasingly willing to transfer detainees to governments with well-established histories of human rights violations. In that month, detainees were sent to Sudan, Afghanistan, Saudi Arabia, and Jordan. *See* DoD News Release dated July 20, 2005 (Exhibit C). By the end of the year, more detainees had been send to Saudi Arabia, and additional detainees had been transferred to Kuwait and Bahrain. *See* DoD News Releases dated November 3, 2005, and November 5, 2005 (Exhibits D and E). In 2006, Respondents began transferring larger groups of detainees to Saudi Arabia. *See* DoD News Release dated May 18, 2006 (fifteen detainees) (Exhibit F); Exhibit B (sixteen detainees). Respondents continue to transfer to Afghanistan and to countries such as Bahrain, Iran, Libya, and Yemen. *See* Exhibit A; DoD News Releases dated October 12, 2006 and October 16, 2006 (Exhibits G and H).

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Interestingly, in the most recent News Releases, Respondents have discontinued the practice of disclosing the total number of detainees "transferred" rather than "released," instead euphemistically disclosing only the total number of detainees who "have departed Guantánamo for other countries." *See* Exhibits A-B, G-H. Respondents have long since abandoned tallying the number of detainees transferred to a particular country, such as Saudi Arabia. *See id.*

The human rights violations of many of these transferee countries have been well-documented, including by the Department of State. As a citizen of Yemen, Petitioner most likely would be transferred for continued detention by his own government (although, as Respondents note, a detainee can be transferred to any interested government "willing to accept responsibility for ensuring, consistent with their laws, that the detainees will not continue to pose a threat to the United States or its allies"). Waxman Decl. ¶ 3. Such a transfer would subject Petitioner to the control of a government with an abominable human-rights record, as recently reported in the Department of State's most recent report on Yemen's Human Rights Practices (available at http://www.state.gov/g/drl/rls/hrrpt/2005/61703.htm). *See* Prosper Decl. ¶ 6 & n.1 (stating that the Human Rights reports are to be consulted in making transfer decisions).

The report's opening summary identifies extreme fundamental violations such as "acknowledged torture," "poor prison conditions," "prolonged pretrial detention," a "weak judiciary," "government corruption," and "trafficking in persons." *Id.* The discussion of "Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment" explains:

> The law prohibits such practices; however, members of the Political Security Office (PSO) and Ministry of Interior (MOI) police forces tortured and abused persons in detention. Authorities used force during interrogations, especially against those arrested for violent crimes. Although penal law permits amputations and physical punishment such as flogging for some crimes, which the government maintains is in accordance with Shari'a (Islamic law), there were no reports of amputations or floggings during the year.

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> Torture continued to remain a problem in PSO prisons, which were not monitored by other government agencies. There were credible reports pointing to a preferred use of nonphysical abuse, such as sleep deprivation, cold water, and threats of sexual assault, as the primary form of torture in PSO prisons. In October two former PSO prisoners reported being repeatedly tortured and made to sleep without blankets in cold cells while being held without charge. There were reports that the MOI's Criminal Investigative Department (CID) routinely used torture to obtain confessions. On February 4, CID forces investigating a theft case in Dhamar governorate rounded up five suspects who were reportedly beaten during interrogation. One suspect confessed to the crime and was referred to the Attorney General's office for prosecution. The other four were released. Defense attorneys and some human rights NGOs observed that most confessions introduced as evidence against defendants in criminal courts were obtained through torture. Government sources vehemently denied this.

Report § 1.c.

The section of the report discussing the "Prison and Detention Center Conditions" Petitioner would face upon transfer to Yemen is equally bleak:

> Although some observers noted improvements in MOI prison conditions in the past year, local and international observers reported that prison conditions, particularly in rural areas, remained poor and did not meet internationally recognized standards. Although the MHR and a number of NGOs were granted limited access to MOI prisons, the government severely limited access to PSO prisons by independent human rights observers.
>
> During his six-month incarceration in the Sana'a Central Prison, Abdulkarim al-Khaiwani, who was imprisoned on violations of the press law and treason charges (see section 2.a.), was beaten several times by other prisoners.
>
> Many prisons, particularly in rural areas, were still overcrowded with poor sanitary conditions and inadequate food and health care. In some cases prison authorities exacted bribes from prisoners to obtain privileges or refused to release prisoners who completed their sentences until family members paid a bribe.

Id.

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Both Declarations offered by Respondents seek to justify transfer to countries with a risk of torture by noting that "appropriate assurances" will be given by the transferee government. Waxman Decl. ¶ 6; Prosper Decl. ¶¶ 7-9. Here again, however, Yemen has a well-documented history of violating its own stated laws and policies, not only with respect to torture (*see* Report § 1.c), but also with respect to virtually every other human rights criteria measured in the Report, including "Arbitrary Arrest and Detention" (*id.* § 1.d) "Denial of Fair Public Trial" (*id.* § 1.e), "Arbitrary Interference with Privacy, Family, Home or Correspondence" (*id.* § 1.f), "Freedom of Speech and Press" (*id.* § 2.a), and "Freedom of Peaceful Assembly and Association" (*id.* § 2.b).

Perhaps the most distressing prospect of being turned over to a Yemeni government obliged to continue his incarceration is the likely possibility that Petitioner will be continue to be detained for additional years without being charged with any crime. Despite constitutional and other legal provisions, "arbitrary arrest and prolonged detention without charge or, if charged, without a public preliminary judicial hearing within a reasonable time remained common practices." Report § 1.d. Thus, a "large percentage of the total prison population consisted of pretrial detainees, some of whom have been imprisoned for years without charge." *Id.* Even if he is charged, Petitioner could never expect a fair trial. *See id.* § 1.e.

All of the above findings were made by the U.S. Government itself. Non-governmental organizations have long reported on torture and abuses in Yemen, which emerged from a civil war only a decade ago. In a September 2003 report entitled *Yemen: The Rule of Law Sidelined in the Name of Security* (Exhibit I), Amnesty International described how Yemen's enforcement of laws against torture had significantly deteriorated since the September 11, 2001 attacks. Specifically referencing detainees held on suspicions of terrorist activity in connection with the U.S.S. Cole and September 11, 2001 incidents in Yemen, the report noted how "[s]ome detainees

said that they were not tortured ... but others said they were beaten with electric batons, handcuffed and shackled, and subjected to insults and verbal abuse. Others said they were threatened with the imprisonment of their female relatives if they did not confess." *Id.* at 8. This report referenced a statement made by Yemen's Minister of Interior on July 16, 2003, in which he said that 195 people accused of belonging to Al Qaeda remained detained, but "did not refer to any judicial process for these detainees because the rule of law has been sidelined. They are held totally at the mercy of the government and security forces, far removed from judicial scrutiny." *Id.* at 1. In the weeks and months following this statement by the Minister to Yemen's Parliament, "[a]rrests were made without the judicial supervision required by law, and detainees have invariably been subjected to lengthy incommunicado detention, during which some of the detainees alleged that they were tortured or ill-treated." *Id.*

Yemen authorities do not even claim to comply with international human rights obligations and with their own law, instead arguing they had no choice but to "'fight terrorism' and avert the risks of military action against Yemen by the US in the wake of the 11 September events." Amnesty International Report, at 3. *See also id.* at 6 ("After 11 September, the government's message to Amnesty International has been articulated as the 'fight against terrorism' to preserve the security of the country which necessitates action by the arresting authorities beyond the confines of the law and Yemen's international human rights obligations."). The report concludes by noting how "the Yemeni Government has sidelined the rule of law and its human rights obligations in the name of 'fighting terrorism' and 'national security.' It has given the green light to the security forces, particularly the Political Security, to act with impunity in total disregard for the law and the role of the judiciary .... What is more disturbing

about these human rights violations is that they are being carried out as a deliberate policy by the government." *Id.* at 26.

Reports of abuse and torture of detainees in Yemen are widespread, and the Government is disingenuous in its attempts to suggest otherwise. It is similarly absurd for the Respondents to seek to avoid an injunction by claiming that the Petitioner has not proven that a transfer is "imminent." The Respondents' own affidavits assert that "[t]he United States has no interest in detaining enemy combatants longer than necessary," and Mr. Prosper even complains that judicial review of a decision to transfer the Petitioners may "undermine the United States' ability to reduce the number of individuals under U.S. control." Prosper Decl. ¶¶ 2, 12.

The United States Government has publicly announced its goal of reducing the population of Guantánamo to some 100 "hard-core detainees." *See* Chesney, *supra*, 40 U. Rich. L. Rev. at 665 & n.25 (citing Robin Wright & Josh White, *U.S. Holding Talks on Return of Detainees*, Wash. Post, Aug. 9, 2005, at A13). Earlier news reports similarly confirmed that the Government has a "plan to cut by more than half the population at its detention facility in Guantanamo Bay, Cuba, in part by transferring hundreds of suspected terrorists to prisons in Saudi Arabia, Afghanistan and Yemen, according to senior administration officials." *See* Douglas Jehl, *Pentagon Seeks to Transfer More Detainees from Base in Cuba*, N.Y. Times, Mar. 11, 2005.

II. Decisions of Multiple Judges of this Court Granting the Relief Sought in this Motion

Respondents selectively point to two decisions rejecting detainee requests for advance notice of transfer. *See* Opp., at 3. Even Respondents, however, begrudgingly acknowledge one of the many decisions rejecting their position and providing the modest relief Petitioner seeks. *See id.* at 17 n.7 (citing *Al-Marri v. Bush*, Civ. A. No. 04-2035, 2005 WL 774847 (D.D.C. Apr.

4, 2005)). In fact, the decisions granting detainees their requests for a mere month of advance warning of transfer far outnumber the handful of cases adopting Respondents' position. *See* Chesney, *supra*, 40 U. Rich. L. Rev. at 667 & nn.35-38 (surveying entire Guantánamo docket and finding "twenty-seven pro-detainee decisions imposing the requested notice requirement and six pro-government decisions denying that relief," with one "split decision").

In *Abdah v. Bush*, No. Civ. A. 04-1254, 2005 WL 711814 (D.D.C. Mar. 29, 2005), for example, Judge Kennedy granted a motion for preliminary injunction seeking precisely the relief Petitioner seeks here. Quoting the leading *CityFed* decision cited by Respondents (Opp., at 11), *Abdah* explained that "[i]f the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak." 2005 WL 711814, at *3 (quoting *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 746 (D.C. Cir. 1985)).

The factor forming the "'basis'" of a request for injunctive relief is the risk of irreparable harm. *Id.* Transferred detainees face two such risks: (1) being sent to countries "for torture or indefinite imprisonment without due process of law" and (2) having their habeas claims terminated by executive "fiat." *Id.* at *3-*4. As in *Abdah*, Respondents here embrace the claim that transfer eliminates jurisdiction, confirming the risk of irreparable harm. Opp., at 11-12.

As to the requirement of a likelihood of success on the merits, the *Abdah* court dismissed Respondent's frivolous argument that "advocating for release into freedom" somehow means the same thing as "transfer from ongoing detention in one locale to ongoing detention in another." *Id.* at *4 & n.3. Respondents nevertheless repeat that argument here, again suggesting that transferring a detainee for torture basically provides all the relief sought under his habeas claim. Opp., at 12-13. Rejecting this absurd contention and focusing on the true merits of a transfer challenge, *Abdah* found a strong likelihood of success on a claim by a detainee that a putative

transfer should be blocked as an improper attempt to eliminate an otherwise valid habeas claim. 2005 WL 711814, at *5 (citing, *inter alia*, Fed. R. App. P. 23(a)); *see also Kurnaz v. Bush*, No. Civ. A. 04-1135 (ESH), 2005 WL 839541, at *2 (D.D.C. Apr. 12, 2005) (explaining that Fed. R. App. P. 23(a) protects district court's as well as appellate court's jurisdiction over pending habeas petitions) (citing *Jago v. U.S. District Court*, 570 F.2d 618, 623 (6th Cir. 1978)).

As for Respondents' claimed "parade of horribles" arising from judicial review of a proposed transfer, the *Abdah* court correctly noted that nothing in the narrow relief requested by the detainees would mandate the two purported evils of diplomacy described, *i.e.*, disclosure of governmental communications with the transferee country or internal governmental analyses of the propriety of the transfer. *Id.* at *5. To the contrary, the only burden imposed by the relief was a minimal delay in one aspect of the government's management of the detainees, which was insufficient to outweigh the harm to detainees from potential loss of their entire claim. *Id.* at *6.

As to the public's rights, the *Abdah* court summarily rejected Respondents' self-serving contentions that the "public interest" element automatically was met because Respondents represent the Government. *Id.* To the contrary, "the public has a strong interest in ensuring that its laws do not subject individuals to indefinite detention without due process; 'it is always in the public interest to prevent the violation of a party's constitutional rights.'" *Id.* (quoting *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994)).

Two days after *Abdah*, Judge Urbina granted substantially similar relief to other petitioners, explaining that a transfer "would abuse the process now put in place for the purpose of adjudicating matters on their merits." *Al-Oshan v. Bush*, Civ. A. No. 05-0520 (RMU), Order Granting, *inter alia*, 30 Days' Notice of Any Intent to Move Petitioners, at 2 (D.D.C. Mar. 31, 2005) (Exhibit J). Thus, Respondents were precluded from removing the Petitioners in that case

"unless this court and counsel for petitioners receive thirty days' advance notice of such removal." *Id.* at 3. On April 1, Judge Friedman followed *Abdah* and *Al-Oshan* and granted substantially similar injunctive relief against Respondents. *Al-Shiry v. Bush*, Civ. A. No. 05-0490 (PLF), Order (D.D.C. Apr. 1, 2005) (Exhibit K).

On April 4, 2005, Judge Kessler entered two separate orders granting the same relief Petitioner seeks here. *See Al-Joudi v. Bush*, Civ. A. No. 05-301 (GK), 2005 WL 774847 (D.D.C. Apr. 4, 2005); *Al-Marri v. Bush*, Civ. A. No. 04-2035 (GK), Mem. Order (D.D.C. Apr. 4, 2005) (Exhibit L). Judge Kessler identified two "obvious and substantial threats" faced by detainees such as Petitioner: (1) "transfer to a country where they might be tortured or indefinitely confined," such as Saudi Arabia, Pakistan, or Morocco (citing Department of State Human Rights reports); and (2) the "potential elimination of their habeas claims." 2005 WL 774847, at *4. Both of these threats are "serious" and "imminent." *Id.*

Judge Kessler took a different approach to the requirement of a likelihood of success on the merits. *Id.* at *4-*5. Rather than focusing on the narrow issue of a possible success on a transfer challenge, she considered the merits of the ***entire*** habeas claim that potentially would be eliminated by an executive transfer. *Id.* In this Circuit, the "likelihood of success" prong is met by the presence of questions that "so 'serious, substantial, difficult and doubtful, as to make them a fair ground of litigation.'" *Id.* at *5 (quoting *Washington Metro. Area Transit Comm'n v. Holiday*, 559 F.2d 841, 844 (D.C. Cir. 1977)). As confirmed by the continued disunity of decisions even within this Court and the Supreme Court's repeated rulings on detainee-related issues, the Guantánamo cases manifestly present significant and serious questions. *Id.* at *5.

In an effort to show harm, Respondents again relied upon its assertions that having to defend transfers potentially would impair its negotiations with foreign governments regarding

the transfers. *Id.* As in *Abdah*, the *Al-Joudi* court dismissed such contentions as "speculation" as to future possible efforts to defend a proposed transfer (*id.* at *5 n.12):

> The Court fails to see any injury whatsoever that the Government would suffer from granting the requested preliminary injunction. Petitioners request only 30 days' notice of transfer – a narrow and discrete request that would impose no burden on the Government. Beyond "vague premonitions" that such relief would harm the executive's ability to conduct foreign policy, there is no concrete evidence that such notice actually will intrude upon executive authority. For example, granting Petitioners' request for 30 days' notice of transfer would not require the Court to second-guess foreign policy decisions of the Executive, would not require the Government to divulge information relating to its negotiations with foreign governments, and would not prevent the Government from speaking with one voice.

Id. at *5 (citations omitted). On balance, the "minimal burden" on the Government of filing "a few pieces of paper" did not "outweigh the imminent threats of indefinite detention, potential torture, and the elimination of Petitioners' claims before this Court." *Id.* at *6

On the public interest element, while the Government again endeavored to "conflate[] the public interest with the Government's own position," the public interest "undeniably is served by ensuring that Petitioner's constitutional rights can be adjudicated in an appropriate manner." *Id.*

Judge Huvelle followed all of the above decisions in *Kurnaz v. Bush*, No. Civ. A. 04-1135 (ESH), 2005 WL 839542, at *2 (D.D.C. Apr. 12, 2005), with a small modification: notice was required for any "transfer" but not for a mere "release." Among other things, Judge Huvelle was concerned about transfers to a United States Government custodian in a foreign country; transfers in which the detainee would still be held under the direction and control of the United States (albeit through a foreign agent); and transfers to a country where the detainee could not possibly have had an occasion to violate the law. *See* 2005 WL 839542, at *2.

***

Thus, numerous judges of this Court already have granted precisely the type of relief sought by Petitioner. Notwithstanding Respondents' dire warnings as to the implications of providing this limited relief, these rulings have not had any appreciable impact on the Government's transfer process whatsoever. To the contrary, the risks presented to the detainees has increased in the interim, because Respondents are increasingly willing to ship detainees to known human rights violators.

Under Respondents' own argument, moreover, a significant "risk" of transfer – the potential loss of valid *habeas* claims – is enhanced by the recent ruling in *Quassim v. Bush*, 466 F.3d 1073 (D.C. Cir. 2006). *See* Opp., at 11-12 & n.5. Although Petitioner does not agree that the reasoning of *Quassim* (which held that the ***release*** of detainees from Guantanamo mooted their habeas claims) applies equally to ***transfers*** for continued detention, the fact remains that Respondents continue to assert that their unilateral decision to transfer a detainee would terminate that detainee's habeas claim, thereby confirming that there remains a risk of irreparable harm (loss of valid *habeas* claims) from such a transfer.

Nor is there any legitimate fear of "disclosure" of confidential communications between the Government and a foreign government. Respondents' alleged "chilling effect" would come from "public" disclosures. Opp., at 9-10. In this case, however, secure facilities have already been established specifically for the handling, review, and maintenance of classified information. Respondents have failed to identify any manner in which "sensitive" negotiations would be affected if they were "disclosed" only to the Court and counsel in this case.

The Respondents assert that they, and only they, can determine whether or when a Guantanamo detainee should be transferred to a foreign country, and that they will do so unless they, in their alleged sole and unreviewable discretion, find it "more likely than not" that the

transferee "will" be tortured. Waxman Decl. ¶ 6; Prosper Decl. ¶ 4. In other words, Respondents claim that this Court can do nothing to prevent the loss of its jurisdiction or the violation of applicable law, so long as the Secretary of the Navy, apparently, can convince himself that there is only a 50% chance that a detainee "will" (not may) be tortured. Regardless of how satisfied the Executive Branch may feel about its own decisions, when a federal litigant is properly before a Court that has exercised jurisdiction over the underlying claims in a case, that litigant must be provided a meaningful opportunity to contest a transfer seeking to place him outside the Court's jurisdiction or otherwise into the hands of a police state that will torture him.

For this reason, the Respondents' lengthy discussion of extradition proceedings is not relevant. *See* Opp., at 20-22. This is not an "extradition" issue, for the Government in no way claims that these transfers follow the formal process that applies to extradition or that the transfers are otherwise subject to procedural protections. The "rule of non-inquiry" posited by Respondents may or may not limit the inquiries conducted in extradition proceedings, but this is not an extradition case, and the rule cannot in any event prevent federal courts from acting to protect their own jurisdiction over an underlying substantive claim in an already-existing case.

Finally, it is important to note that this motion does not of itself prevent any transfers the Government wishes to effect. All that is sought is thirty days' advance notice of a transfer. If that motion is granted and the Government provides such notice, Petitioner may well decide not to challenge the Government's proposed transfers. Respondents' claims of harm to the diplomatic process are, at best, premature. Given the limited relief sought by Petitioner as compared to the risk of incalculable harm if he was transferred to a country such as Yemen, the injunctive relief factors tilt heavily in Petitioner's favor. Petitioner's motion for thirty-days' advance notice should be granted.

Approved for Public Filing by the CSO

III. It is Not Necessary to Examine the MCA's Constitutionality to Rule on This Motion

Respondents open their Opposition with their standard mantra about the impact of the recently-enacted MCA (as well as the DTA) upon the jurisdictional bases for all of these cases. *See* Opp., at 1-4. Yet they also acknowledge, as they must, that the constitutionality of the MCA was fully briefed in the D.C. Court of Appeals as of November 20, 2006. *Id.* at 4. There is no good reason for this Court to undertake a searching constitutional analysis of the MCA when the jurisdictional issues inevitably will undergo a full cycle of appellate review. This relief sought in this motion would do nothing more than provide a mechanism to preserve the *status quo* while the jurisdictional issues (and any subsequent merits issues) are fully litigated.

To the extent the Court wishes to examine the issues presented by the MCA, Petitioner hereby refers to and incorporates by reference the analysis of the MCA found in pages 2-14 of the "Reply Memorandum Supporting Request for 30-Days' Advance Notice of any Intended Removal of Petitioner from Guantanamo" filed by Petitioner Maher El Falsteny on November 28, 2006 (dkt. no. 219).

IV. Conclusion

Inflicted torture cannot be undone. This Court's ability to enforce its orders, if lost, may be impossible to regain. Petitioner's requested relief does nothing more than preserve this Court's jurisdiction and ability to enforce its orders. Respondents are simply wrong in claiming that this Court must stand aside, or even assist, while Respondents transfer illegally-held prisoners into the custody of a torture-practicing foreign state, in violation of the United States' obligations under international and domestic law.

Approved for Public Filing by the CSO

For the foregoing reasons and the reasons stated in the motion, Petitioner respectfully requests that this Court grant the motion.

Dated: Atlanta, Georgia
December 18, 2006

Respectfully submitted,

Counsel for Petitioner:

/s/ Vinay Jolly

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James F. Bogan III (Pursuant to LCvR 83.2(g))
C. Allen Garrett Jr. (Pursuant to LCvR 83.2(g))
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Approved for Public Filing by the CSO

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing **REPLY MEMORANDUM IN SUPPORT OF MOTION FOR ORDER REQUIRING RESPONDENTS TO PROVIDE COUNSEL FOR PETITIONER SHARAF AL SANANI AND THE COURT WITH 30-DAYS' ADVANCE NOTICE OF ANY INTENDED REMOVAL OF PETITIONER FROM GUANTANAMO** by serving electronically all attorneys of record for each party via the Court's Electronic Case Filing system.

Respectfully submitted,

Counsel for Petitioner:

/s/ Vinay J. Jolly

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EXHIBIT A

U.S. Department of Defense
Office of the Assistant Secretary of Defense (Public Affairs)

News Release

On the Web:
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IMMEDIATE RELEASE

No. 1287-06
December 17, 2006

Detainee Transfer Announced

The Department of Defense announced today that it transferred seven detainees from Guantanamo Bay, Cuba, to Afghanistan, five detainees to Yemen, three detainees to Kazakhstan, one detainee to Libya, and one detainee to Bangladesh. Additionally, one detainee was released to Yemen. These detainees were recommended for transfer or release by multiple review board processes conducted at Guantanamo Bay.

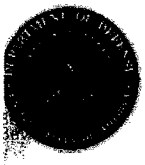
Aproximately 85 detainees remain at Guantanamo who the U.S. Government has determined eligible for transfer or release through a comprehensive series of review processes. Departure of these remaining detainees approved for transfer or release is subject to ongoing discussions between the United States and other nations. The United States does not desire to hold detainees for any longer than necessary. The department expects that there will continue to be other transfers and releases of detainees.

There are ongoing processes to review the status of detainees held at Guantanamo. A determination about the continued detention, transfer, or release of a detainee is based on the best information and evidence available at the time, both classified and unclassified.

This increases the number of detainees who have departed Guantanamo this year to 114. Since 2002, approximately 380 detainees have departed Guantanamo for other countries including Albania, Afghanistan, Australia, Bangladesh, Bahrain, Belgium, Denmark, Egypt, France, Germany, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Libya, Maldives, Morocco, Pakistan, Russia, Saudi Arabia, Spain, Sweden, Sudan, Tajikistan, Turkey, Uganda, United Kingdom, and Yemen.

Approximately 395 detainees remain at Guantanamo.

EXHIBIT B



U.S. Department of Defense
Office of the Assistant Secretary of Defense (Public Affairs)

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MMEDIATE RELEASE

No. 1279-0
December 14, 200

Detainee Transfer Announced

The Department of Defense announced today that it transferred 16 detainees from Guantanamo Bay, Cuba, to Saudi Arabia. These detainees were all recommended for transfer by an administrative review board conducted at Guantanamo Bay.

With today's transfer, approximately 100 detainees remain at Guantanamo who the U.S. government has determined eligible for transfer or release through a comprehensive series of review processes. Departure of these remaining detainees approved for transfer or release is subject to ongoing discussions between the United States and other nations. The United States does not desire to hold detainees for any longer than necessary. The department expects that there will continue to be other transfers and releases of detainees.

There are ongoing processes to review the status of detainees held at Guantanamo. A determination about the continued detention or transfer of a detainee is based on the best information and evidence available at the time, both classified and unclassified.

This transfer increases the number of detainees who have departed Guantanamo this year to 96. Since 2002, approximately 360 detainees have departed Guantanamo for other countries including Albania, Afghanistan, Australia, Bahrain, Belgium, Denmark, Egypt, France, Germany, Iran, Iraq, Jordan, Kuwait, Maldives, Morocco, Pakistan, Russia, Saudi Arabia, Spain, Sweden, Sudan, Tajikistan, Turkey, Uganda, United Kingdom, and Yemen.

Approximately 415 detainees remain at Guantanamo.

EXHIBIT C

U.S. Department of Defense
Office of the Assistant Secretary of Defense (Public Affairs)

News Release

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ttp://www.defenselink.mil/Releases/Release.aspx?
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MMEDIATE RELEASE

No. 739-0
July 20, 200

Detainee Transfer Announced

The Department of Defense announced today that it released or transferred eight detainees from Guantanamo Bay, Cuba. This movement included the releases of one detainee to Sudan, two to Afghanistan, three detainees o Saudi Arabia, one to Jordan and one detainee transferred to the government of Spain. This movement ncreases the number of detainees who have departed GTMO to 242.

This movement included three detainees found no longer to be enemy combatants by a Combatant Status Review Tribunal. One detainee found no longer to be an enemy combatant was released to Sudan, one was eleased to Saudi Arabia and one was released to Jordan.

This movement included three detainees recommended for release by the Administrative Review Board - the wo detainees released to Afghanistan and one detainee released to Saudi Arabia.

There are ongoing processes to review the status of detainees. A determination about the continued detention or transfer of a detainee is based on the best information and evidence available at the time. The circumstances n which detainees are apprehended can be ambiguous, and many of the detainees are highly skilled in concealing the truth.

During the course of the war on terrorism, the department expects that there will be other transfers or releases of detainees.

Because of operational and security considerations, no further details can be provided.

Prior to this transfer, DoD has transferred or released 234 detainees from GTMO - 167 for release, and 67 transferred to other governments (29 to Pakistan, five to Morocco, seven to France, seven to Russia, four to Saudi Arabia, one to Spain, one to Sweden, one to Kuwait, one to Australia, nine to Great Britain and two to Belgium). There are approximately 510 detainees currently at Guantanamo.

EXHIBIT D

U.S. Department of Defense
Office of the Assistant Secretary of Defense (Public Affairs)

News Release

On the Web:
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IMMEDIATE RELEASE

No. 1140-05
November 03, 2005

Detainee Transfer Announced

TheDepartmentof Defense announced today that it transferred five detaineesfromGuantanamo Bay, Cuba to Kuwait. This movement increases the number of detainees who have departed Guantanamo Bay to 252.

These detainees were recommended for transfer by the administrative review board.

There are ongoing processes to review the status of detainees. A determination about the continued detention or transfer of a detainee is based on the best information and evidence available at the time. The circumstances in which detainees are apprehended can be ambiguous, and many of the detainees are highly skilled in concealing the truth.

During the course of the war on terrorism, the department expects that there will be other transfers or releases of detainees.

Because of operational and security considerations, no further details can be provided.

With this transfer, DoD has transferred or released 252 detainees from Guantanamo Bay – 179 for release and 73 transferred to other governments, including Australia, Belgium, Denmark, France, United Kingdom, Kuwait, Morocco, Pakistan, Russia, Saudi Arabia, Spain and Sweden.

There are approximately 500 detainees currently at Guantanamo Bay.

EXHIBIT E

U.S. Department of Defense
Office of the Assistant Secretary of Defense (Public Affairs)

News Release

On the Web:
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IMMEDIATE RELEASE

No. 1151-05
November 05, 2005

Detainee Transfer Announced

The Department of Defense announced today that it released or transferred four detainees from Guantanamo Bay, Cuba. This movement included the release of one detainee to Saudi Arabia and the transfer of three detainees to Bahrain. This movement increases the number of detainees who have departed GTMO to 256.

This movement included three detainees approved for transfer to Bahrain through the administrative review board.

There are ongoing processes to review the status of detainees. A determination about the continued detention or transfer of a detainee is based on the best information and evidence available at the time. The circumstances in which detainees are apprehended can be ambiguous, and many of the detainees are highly skilled in concealing the truth.

During the course of the war on terrorism, the department expects that there will be other transfers or releases of detainees.

Because of operational and security considerations, no further details can be provided.

With this transfer, DoD has transferred or released 256 detainees from GTMO 180 for release and 76 transferred to other governments, including Australia, Belgium, Denmark, France, United Kingdom, Kuwait, Morocco, Pakistan, Russia, Saudi Arabia, Spain and Sweden.

There are approximately 500 detainees currently at Guantanamo.

EXHIBIT F

U.S. Department of Defense
Office of the Assistant Secretary of Defense (Public Affairs)

News Release

On the Web:
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IMMEDIATE RELEASE

No. 458-06
May 18, 2006

Detainee Transfer Announced

The Department of Defense announced today that it transferred 15 Saudi detainees from Guantanamo Bay, Cuba, to Saudi Arabia. This movement consisted of detainees approved for transfer by an Administrative Review Board (ARB) decision at Guantanamo.

With today's transfer, approximately 120 detainees remain at Guantanamo who the U.S. government has determined eligible for transfer or release through a comprehensive series of review processes. Departure of these remaining detainees approved for transfer or release is subject to ongoing discussions between the United States and other nations. The United States does not desire to hold detainees for any longer than necessary. The department expects that there will continue to be other transfers or releases of detainees.

There are ongoing processes to review the status of detainees held at Guantanamo. A determination about the continued detention or transfer of a detainee is based on the best information and evidence available at the time, both classified and unclassified. The circumstances in which detainees are apprehended can be ambiguous, and many of the detainees are highly skilled in concealing the truth.

With this transfer, 287 detainees have departed Guantanamo - 192 released and 95 transferred to other governments, including Albania, Afghanistan, Australia, Bahrain, Belgium, Denmark, France, Great Britain, Kuwait, Morocco, Pakistan, Russia, Saudi Arabia, Spain, Sweden and Uganda.

Approximately 460 detainees remain at Guantanamo.

EXHIBIT G

U.S. Department of Defense
Office of the Assistant Secretary of Defense (Public Affairs)

News Release

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MMEDIATE RELEASE

No. 1023-0
October 12, 200

Detainee Transfer Announced

The Department of Defense announced today that it transferred 16 detainees from Guantanamo Bay, Cuba, to Afghanistan, and one detainee to Morocco. These detainees were recommended for transfer following multiple review processes conducted at Guantanamo Bay.

With today's transfer, approximately 110 detainees remain at Guantanamo who the U.S. government has determined eligible for transfer or release through a comprehensive series of review processes. Departure of these remaining detainees approved for transfer or release is subject to ongoing discussions between the United States and other nations. The United States does not desire to hold detainees for any longer than necessary. The department expects that there will continue to be other transfers and releases of detainees.

There are ongoing processes to review the status of detainees held at Guantanamo. A determination about the continued detention or transfer of a detainee is based on the best information and evidence available at the time, both classified and unclassified.

With this transfer, approximately 335 detainees have departed Guantanamo for other countries including Albania, Afghanistan, Australia, Bahrain, Belgium, Denmark, Egypt, France, Germany, Iran, Iraq, Jordan, Kuwait, Maldives, Morocco, Pakistan, Russia, Saudi Arabia, Spain, Sweden, Sudan, Tajikistan, Turkey, Uganda, United Kingdom, and Yemen.

Approximately 440 detainees remain at Guantanamo.

EXHIBIT H

U.S. Department of Defense
Office of the Assistant Secretary of Defense (Public Affairs)

News Release

On the Web:
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Public contact:
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IMMEDIATE RELEASE

No. 1037-06
October 16, 2006

Detainee Transfer Announced

The Department of Defense announced today that it transferred one detainee to Bahrain, one detainee to Iran and two detainees to Pakistan. These detainees were all recommended for transfer due to Administrative Review Board processes conducted at Guantanamo Bay.

With today's transfer, approximately 110 detainees remain at Guantanamo who the U.S. government has determined eligible for transfer or release through a comprehensive series of review processes. Departure of these remaining detainees approved for transfer or release is subject to ongoing discussions between the United States and other nations. The United States does not desire to hold detainees for any longer than necessary. The department expects that there will continue to be other transfers and releases of detainees.

There are ongoing processes to review the status of detainees held at Guantanamo. A determination about the continued detention or transfer of a detainee is based on the best information and evidence available at the time, both classified and unclassified.

With this transfer, approximately 340 detainees have departed Guantanamo for other countries including Albania, Afghanistan, Australia, Bahrain, Belgium, Denmark, Egypt, France, Germany, Iran, Iraq, Jordan, Kuwait, Maldives, Morocco, Pakistan, Russia, Saudi Arabia, Spain, Sweden, Sudan, Tajikistan, Turkey, Uganda, United Kingdom, and Yemen.

Approximately 435 detainees remain at Guantanamo.

EXHIBIT I

[EMBARGOED FOR: 24 September 2003] **Public**

amnesty international

Yemen

The Rule of Law Sidelined in the Name of Security

Amnesty International September 2003 *AI Index: MDE 31/006/2003*

Yemen
The Rule of Law Sidelined in the Name of Security

1. Introduction

On 16 July 2003 the Minister of Interior of Yemen told Parliament that 95 people accused of belonging to *al-Qa'ida* were released because they "had changed their ideas", and that 195 others remained in detention because they "persist in holding on to the ideas they believe in". He did not refer to any judicial process for these detainees because the rule of law has been sidelined. They are held totally at the mercy of the government and security forces, far removed from judicial scrutiny.

The case of these detainees reflects a significant regression in the government's human rights policy and practice since the 11 September 2001 attacks on the US, which Amnesty International condemned unreservedly. Ten days after these attacks the Yemeni Prime Minister announced "we have decided that investigation[s] must be carried out into anyone who had any connections (with) Afghanistan".[1]

In the weeks and months following this statement, security forces carried out mass arrests targeting Yemeni and foreign nationals, including women, and children as young as 12 years of age. Arrests were made without the judicial supervision required by law, and detainees have invariably been subjected to lengthy incommunicado detention, during which some of the detainees alleged that they were tortured or ill-treated. Most of the Yemenis who were arrested were held for weeks or months before they were released uncharged or tried. Those who remain continue to be held indefinitely outside any recognized legal framework, without charge and without judicial supervision. Most foreign nationals were deported after weeks or months of interrogation in incommunicado detention. They were denied access to asylum procedures and the judiciary to challenge their deportation, and no assessment of the risks of torture or execution in the countries to which they were sent were known to have been carried out.

Government political discourse, coupled with security forces acting beyond judicial control and with total impunity, generated a climate of fear among civil

1 See, for example, the Yemeni Arabic weekly al-*Ayyam*, dated 22 September 2001.

society which had been progressively developing into a vibrant agency for positive human rights changes. It initially remained silent in the face of the blatant disregard for the human rights achievements made by Yemen in recent years. This silence facilitated the persistent pattern of harassment against journalists. Reporting events in the wake of the 11 September attacks required extreme caution from journalists in order to avoid warnings, threats or arrest by security forces. However, Amnesty International is encouraged by the re-emerging voice of civil society, including journalists, calling for the restoration of the rule of law and respect for Yemen's international human rights obligations.

During 2002 Amnesty International delegates visited Yemen twice, in February and August, and held talks with government authorities on the deteriorating human rights situation in the country. The authorities, while recognizing that they were in breach of their international human rights obligations and their own laws, argued that this was because they had to "fight terrorism" and avert the risks of military action against Yemen by the US in the wake of the 11 September events. Amnesty International, while understanding the new security and international relations challenges faced by Yemen, believes that the solution to such challenges cannot lie in sacrificing human rights and the rule of law. At times of security crises, such as the one brought about by the 11 September events, human rights need more, not less, protection.

2. Background

Yemen has made noticeable institutional legal progress in the field of human rights over the last decade. It has become a state party to most international human rights instruments and its legislation governing arrest and detention is consistent with international human rights standards. This has been accompanied by significant growth in governmental human rights institutions which resulted in the appointment in 2001 of a Minister of State for Human Rights and the upgrading of this position to ministerial level in 2003. There has also been significant development of non-governmental human rights organizations and an emerging civil society concerned with issues of social justice and human rights.

The government has also developed substantive dialogue with international non-governmental human rights organizations, including Amnesty International, and has cooperated with United Nations human rights thematic mechanisms, and the Office of the High Commissioner for Human Rights. Human rights organizations have been granted access to Yemen to carry out investigations into human rights violations, including the detention of prisoners of conscience, torture, extrajudicial

executions, the death penalty, "disappearances", discrimination against women, concerns about juvenile justice, and laws inconsistent with international human rights standards.

Regrettably, this progress is today threatened by the changes in regional and world politics brought about by the 11 September 2001 attacks on the US. The government's security policies adopted in the wake of 11 September events represent a serious setback to its previous progressive undertakings and a further drift away from its obligations under international human rights treaties, including Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) which states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

3. Arbitrary arrest and detention

Article 47(b) of the Constitution categorically prohibits arrests made without warrant issued by a judge or prosecutor. This protection from arbitrary arrest is backed up by strict safeguards contained in the Code of Criminal Procedures (CCP). Article 7 of the CCP provides that arrest is not permitted except for acts punishable by law. Under Articles 70 and 72 of the CCP arrests must be carried out with a written and signed order from the competent authority. The order may also be oral, but this is allowed only when the arrest is carried out in the presence of the authority competent to issue the arrest order.[2] In addition, Article 246 of the Penal Code provides for a maximum of five years imprisonment for any official who subjects any person to arbitrary arrest.

In reality, few political detainees have been apprehended in a manner that accords with the law. Instead, arrests have been made without any judicial supervision by members of the Political Security, a security force under the nominal control of the Interior Ministry. In various locations across the country, the common pattern has been for security officers, in uniform or in plain clothes, to remove an individual from his home or work during the mid-afternoon or early evening, without providing any reason or indication of the destination.

In the wake of the 11 September events, those arrested in this manner included many individuals with connections to Afghanistan, but also individuals who had no such connection. They included Ali Mikon, a 17-year-old British national holding a

2 For detailed analysis of the legal safeguards against arbitrary arrest in Yemen see Amnesty International's report: "Yemen, Ratification without implementation: The state of human rights in Yemen", AI Index: MDE 31/01/97, March 1997, PP 5-10.

student visa valid from 21 February 2001 to 21 February 2002. He was with three of his friends, also British nationals, one of them aged 15. All four were arrested on 31 December 2001 at 11.00 pm from the Yarmouk Hotel in Sana'a and taken to the Political Security headquarters. They were detained until 30 January 2002, when they were deported to the UK. They were never charged with any criminal offence. During their detention they were held in communal cells with other children and adults, including Ismail Shuhada, a 12-year-old Indonesian national who was arrested with 42 other Indonesians and detained for weeks or even months before they were released. This practice is in violation of the Convention on the Rights of the Child, ratified by Yemen. In 1999 when it examined Yemen's report on implementing this Convention, the UN Committee on the Rights of the Child expressed concerns about the general situation of the administration of juvenile justice in Yemen.[3]

Two academics, Dr Abdelsalam Nur al-Din, British national and Director of the Centre for Red Sea Studies (CRSS) at Exeter University in the United Kingdom, and his colleague, Dr Ahmad Saif, a Yemeni national, were on an official business visit to Yemen to establish joint cooperation projects between the CRSS and Yemen University when they were detained. Prior to their arrest they had meetings with government ministers and other officials, many of whom they knew personally. They were arrested by members of the Political Security force on 26 October 2001, at their hotel in Sana'a, and were detained incommunicado for three days. They were interrogated about their visit to Yemen and about their views of Osama bin Laden. They were released only after Yemeni government officials intervened. They were arrested without a warrant and were never brought before a judge.

In some cases relatives of someone sought by the security forces have been held in an attempt to force the person to hand himself in. Amnesty International considers that anyone held solely because of their relationship to another individual would be a prisoner of conscience and as such should be immediately and unconditionally released. In the evening of 21 September 2001 members of the Political Security in Ibb went to the house of Rashad Muhammad Sa'id Isma'il to arrest him. When they did not find him, they took his father, Muhammad Isma'il, aged 47, and detained him. Two days later they detained Rashad's father-in-law, 'Abd al-Karim Ahmad Naji al-Bu'dani, aged 60. As a result Rashad gave himself up on 27 September and his relatives were released without charge. In a separate case in Hudayda in December 2001, a relative of the detainee[4] told Amnesty International "security men in four vehicles came to the house at about 11.00 am. They broke the

3 See Concluding Observations of the Committee on the Rights of the Child: Yemen. 10/05/99. CRC/c/15/Add.102, Para 34.
4 The names have been withheld at their request.

door and took over the house while the mother was washing clothes. They asked her 'where is Sulayman?' She told them he was out. One officer said to her 'you bring him or we will take you and the rest of the family."

The arrests described above were carried out without a judicial warrant and without any judicial supervision. Although arbitrary arrest, particularly by the Political Security, is a long standing pattern of human rights violations in Yemen, it has since 11 September 2001 become further entrenched and is marked by three new developments.

- Prior to 11 September 2001 when arresting authorities acted with impunity they did so without explicit political legitimacy. By contrast, in the wake of 11 September events, such arrests became a deliberate public policy of the government.

- Prior to the 11 September events the practice of arrest by security forces was mainly limited to political opponents and critics of the state, such as members of political parties, journalists and writers. In post 11 September, guided by the vague term of "fighting terrorism", in cooperation with other security forces in the region and beyond, such as the US security forces, the practice of arrest by Yemeni security forces has progressively become borderless. Many relatives of detainees have told Amnesty International that the Political Security frequently threatens handing detainees over to US security forces to take them to Guantánamo Bay.

- There is a noticeable change in the government's message in its dialogue with Amnesty International. Prior to the 11 September events the government maintained that while it was not perfect, any arbitrary arrest taking place in the country was not the result of government policy. After 11 September, the government's message to Amnesty International has been articulated as the "fight against terrorism" to preserve the security of the country which necessitates action by the arresting authorities beyond the confines of the law and Yemen's international human rights obligations.

4. Incommunicado detention and allegations of torture and ill-treatment

Khaled Salah 'Abdullah's brother, Muhammad, was a teacher in the small town of Hudayda. In September 2001 he was arrested at home after he accompanied three friends seeking visas for Saudi Arabia. After 20 days, the family learned that they would be able to see Muhammad, but when Khaled and another brother tried to visit

him in the offices of the Political Security, they too were arrested. Khaled and his other brother were held for three months without any notice to their family and without access to a lawyer. During that time they were repeatedly blindfolded and questioned about the whereabouts of their brother's passport.

Individuals held by the Political Security are commonly subjected to a prolonged initial period of detention where communication with the outside world is denied. In many cases, family members may have to wait weeks or months before they learn where their relatives are being held. Several families reported that they were able to visit their relatives only when the Political Security was ready to acknowledge that they were holding them. For those arrested after 11 September 2001, it appears in many cases that it was only through the diligent search by family members and friends that the detainee's location was verified. In one case, that of Salih Mana' al-Najar, his relatives informed Amnesty International that it was by coincidence that they managed to establish his whereabouts. Salih Mana' al-Najar was arrested on 18 October 2001 in Sana'a. His relatives visited different places of detention in Sana'a and sought the help of an officer in the Political Security to establish his whereabouts, but to no avail. Three weeks later, and while the family was still searching for him in Sana'a, they were informed by someone that he had seen Salih handcuffed on the Yamania airline flight from Sana'a to Aden. One relative told Amnesty International, "When we received this information we went directly to the Director of the Political Security in Aden and asked him about Salih...the Director was surprised at how we found out...He told us that Salih's case is in Sana'a". Salih's parents were allowed to visit him approximately one month after his arrest.

Due to the systematic practice of incommunicado detention and the secrecy surrounding the fate of detainees, Amnesty International has not been able to obtain sufficient information to enable it to make an accurate assessment of the scale and frequency of torture and ill-treatment. However, it has received a number of complaints of torture and ill-treatment of some of those detained including, for example, Dr Abdelsalam Nur al-Din and Ali Mikon.

Dr Abdelsalam Nur al-Din was reportedly made to stand blindfolded with his hands pressed against the wall and was beaten with a stick on his back and punched in the chest. He was also said to have been held in solitary confinement in a small cell with very little ventilation, denied regular access to toilets and sometimes drinking water, and threatened with further torture, execution and "disappearance".

Ali Mikon told Amnesty International, "one morning...I had a bad stomach pain and was desperate to use the toilet, but the guard said no because other detainees

were using it. I had to use a bucket with a friend holding a blanket hiding me from other detainees in the cell...when I took the bucket out the guard hit me in the chest...and threatened to make me use the bucket again next time".

A special commission of inquiry set up by the Yemeni Parliament in September 2002 to look into the conditions of detention of detainees held in connection with the attack on the USS Cole on 12 October 2000, and those held in the wake of the 11 September 2001 event observed: "Some detainees said that they were not tortured...but others said they were beaten with electric batons, handcuffed and shackled, and subjected to insults and verbal abuse. Others said they were threatened with the imprisonment of their female relatives if they did not confess".[5]

5. Indefinite detention without charge or trial

Yemen's legal system provides significant safeguards against indefinite detention and is in this regard consistent with international human rights standards. Individuals have the right under Article 76 of the CCP and Article 47(c) of the Constitution to see a judge or prosecutor within 24 hours of being detained, and they have the right to challenge the legal basis of their detention. Articles 73 and 77 of the CCP establish a suspect's right to seek prompt legal assistance.

These provisions are rarely honoured when detainees are held by the Political Security, and this pattern of human rights violations has been exacerbated by the government's security policy in the wake of the 11 September events. None of those arrested after 11 September 2001 are known to have been charged with any criminal offence, and they are invariably denied access to lawyers as well as the opportunity to take proceedings before the judiciary to challenge the legality of their detention. Amnesty International raised these issues with the judiciary and the government and found neither authority concerned about the rights of these detainees.

In meetings with the Attorney General and the Minister of Justice in February 2002, the organization sought clarification of the legal process followed in these cases, together with the role of the judiciary in the arrest and detention of the detainees. Both authorities claimed not to have been aware of any arrests or to have had any role in the proceedings.

5 See Report of the Parliamentary Special Commission of Inquiry into detainees held in connection with the attack on the USS Cole and 11 September 2001, dated 24 September 2002, P 13.

In a second meeting with the Attorney General in August 2002, Amnesty International again sought clarification of the role of the judiciary with regard to the fate of the detainees. Specifically, Amnesty International delegates asked if any judicial proceedings had been initiated to allow them access to lawyers, or to enable them to challenge the legality of their detention if they were not to be charged with recognizably criminal offences and given prompt and fair trials. The Attorney General told delegates that the detainees were not held under his jurisdiction but that he understood that the case of 14 people held in connection with the attack on the destroyer USS Cole was about to be transferred to his office to start their trial proceedings. However, even in this case no trial proceedings are known to have been initiated, almost three years after their arrest.

Amnesty International delegates submitted to the Attorney General a copy of a complaint addressed to him by lawyers from the National Organisation for the Defence of Rights and Freedoms, who had been given power of attorney by some 30 relatives of detainees. The lawyers formulated their complaint under Article 13 (first paragraph) of the CCP, which states that: "Anyone who learns of the arrest of someone without legal reason or his detention in places other than those made for that purpose must inform a member of the public prosecution". They argued that their clients were unlawfully detained, citing Articles 76 and 172 of the CCP. Article 76 states that: "Anyone detained temporarily on suspicion of having committed a crime must be brought before the judiciary within the maximum period of 24 hours from the time of arrest. The judge or member of the public prosecution must inform him of the reasons of arrest, question him and enable him to present his defence or objections, and must promptly issue an order with justification for his preventive detention or release. In any case, it is prohibited to continue the detention for more than seven days without a judicial order."[6]

Article 172 states that no one should be "...detained except by order of the public prosecution or the court and on a legal basis."

The lawyers urged the Attorney General to assume his responsibility and address the cases of their clients as required by Articles 7(2) and 13 of the CCP. Article 7(2) states that the prosecution should "...promptly release everyone whose freedom is, unlawfully restricted, or put in preventive detention for a longer period than is permitted by law, or decided by a court ruling or an order by the judge." Under Article 13 the prosecution is required to promptly release anyone held unlawfully.

6 Amnesty International's translation of Article 76 of the CCP.

Amnesty International delegates asked the Attorney General what steps he would take to address the lawyers' complaint and guarantee them access to their clients in detention. The only undertaking he made in this regard was that he would write a letter to the Director of the Political Security raising the issues. The absence of any commitment to address issues about the legality of detention illustrates the way in which the rule of law is subordinated, and the increasing powers accorded to the security authorities.

With regard to those held in connection with the attack on the Destroyer USS Cole, Yemeni officials indicated to Amnesty International that the government has been planning to bring them to trial but faced strong objections by the US Government. Defendants in this case have been in detention for almost three years and have yet to be formally charged or given access to a lawyer. They include Murad Salih al-Sururi, aged 22. According to his relatives, he was taken into custody suspected of having acted as a witness in the issuing of false identification papers used by one of the suspects in the attack on the USS Cole. His home was searched soon after he was arrested, and, according to one of his brothers, he has been interviewed by agents of the US Federal Bureau of Investigations. Some relatives of detainees have appointed a lawyer but he has been denied access to them in violation of Principle 1 of the Basic Principles on the Role of Lawyers which states that: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings."

With the rule of law sidelined and the door of the judiciary firmly shut in their faces, relatives of the detainees do not know who to turn to in order to seek justice and redress. Many of the families told Amnesty International that they had spent considerable time going from one Political Security detention centre to another looking for their loved ones or to find out why they are being held and what is going to happen to them. In a number of cases, the relatives, with the backing of their community, submitted written appeals to the Political Security. One such appeal was made by the family of the detainee 'Abdullah 'Abdu 'Abdullah al-Khatib, who wrote:

"Dear Director of Hudayada Political Security,

We, the signatories of this letter, testify that 'Abdullah 'Abdu 'Abdullah al-Khatib...had returned from Saudi Arabia in September 2001 in order to complete arrangements for an employment contract in Saudi Arabia. We were surprised to learn that strangers came and took him from his home in al-Shahariya area (in Hudayda) and we had no idea where or why they took him. After one month we learned that he was being detained by the Political Security in Hudayda. We, the

residents of al-Shahariya area, testify before God and before you, and we consider this to be the word of justice, for which we will be responsible until the Day of Judgment, that 'Abdullah has always been of good behaviour and has never acted dishonourably towards his family or the security forces. 'Abdullah is the only breadwinner for his family, which consists of his elderly father and eight other persons.

We are sending you this reference with hope and confidence in God and your sense of justice to urge you to look into his case and release him for the sake of justice and compassion for his parents and young brothers. God is witness to our testimony."

In the meantime, family members as well as the detainees must live with the anguish of uncertainty. For many families, the emotional distress is exacerbated by economic hardship, for in several cases the detainee was the sole source of income for a family of limited means. This human cost is brought on by the government's deliberate disregard for the rule of law and international human rights obligations particularly those enshrined in Article 9(3) of the ICCPR which states: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release..." Similarly, Article 14(3) of the ICCPR provides the right to prompt and fair trial for anyone suspected of a criminal offence.

6. Secret and forcible deportation of foreign nationals

Yemen has for many years provided shelter for thousands of refugees escaping persecution in various countries, particularly those in the Horn of Africa. However, government laws and practice towards those fleeing persecution remains based on political considerations even when these are in flagrant violation of international standards such as the 1951 Convention Relating to the Status of Refugees.

Under Law No. 47 of 1991, foreign nationals resident in the country can be expelled if they are considered a threat to "...the internal or external security and integrity of the state, its national economy and public health or public morals..." The process by which a person may be expelled does not involve the judiciary and contains no safeguards relating to access to asylum procedures and respect for the principle of *non-refoulement* (the prohibition of returning someone to face torture or other grave human rights abuses). The weakness of this legal framework is undermined further by bilateral and multilateral security agreements which are devoid of international safeguards for the protection of people fleeing persecution in their

countries. Such security agreements include the Arab Convention for the Suppression of Terrorism.[7]

For example, in 1998 Fahd Abdullah Jassim al-Malki, a Qatari national, was forcibly handed over by the Yemen authorities to the Qatari government which sought his extradition in connection with the failed coup attempt of 1996. He was not offered the opportunity to seek asylum. Upon his return to Qatar he was reportedly subjected to torture and has been sentenced to death after an unfair trial.

The weakness of the human rights protection regime for foreign nationals has been exacerbated by the 11 September events. Mass deportations of foreign nationals have taken place in secret since then. Most of them were targeted for arrest because of their nationality and religion, held incommunicado for weeks or months and then expelled after interrogation. No one is known to have been given the opportunity to challenge the government's decision before the courts or to seek legal assistance during whatever process the government followed in their expulsion.

When Amnesty International sought clarification of the reasons for the expulsions it was simply informed that they were "illegal residents". However, the organization obtained details of some people who were deported even though their resident permits were valid, and the only reason for their deportation appears to have been connected with the government crackdown on Islamist groups and Islamic religious schools.

Amnesty International requested a list of all those deported together with the country to which they were sent, in order to follow their cases and seek assurances that they would not be subjected to torture and execution in the countries to which they were sent. The government failed to provide this information. However, the deportees are known to have included nationals from Algeria, Egypt, Libya, Pakistan, Sudan, Saudi Arabia, Indonesia, Somalia, the US, UK and France.

In light of the secrecy surrounding these deportations and the human rights records of many of the countries to which the deportees have been sent, the organization remains concerned about the fate and whereabouts of those deported. In Saudi Arabia, for example, torture[8] and executions are grave concerns. In September

7 For analysis of the provisions of the Convention See Amnesty International's report, "The Arab Convention for the Suppression of Terrorism a serious threat to human rights", AI Index: IOR 51/001/2002.

8 For more details see Amnesty International's report "Saudi Arabia Remains a Fertile Ground for Torture with Impunity", AI Index: MDE 23/004/2002, May 2002. See also Amnesty International's report "Saudi Arabia: Defying world trends – Saudi Arabia's extensive use of capital punishment", AI

2002 the Saudi Arabian Minister of Interior announced that a group of Saudi Arabian nationals were handed over to his government by the Yemeni Government and that they were being detained and interrogated. He was quoted as having said that "we will announce the details about them at the appropriate time".[9] No information is known to have been released since then. Such detainees in Saudi Arabia are routinely denied access to lawyers, held without charge or trial, and when they are brought to trial this invariably takes place in secret and without any legal assistance.

Deportations are continuing. Recently, in July 2003, seven Saudi Arabian nationals were said to have been handed over to the Saudi Arabian Government. They were reportedly handed over in exchange for eight Yemeni nationals who had been detained in Saudi Arabia. Neither these seven nor those deported before them are known to have been offered any opportunity to exercise their right to seek asylum or oppose their extradition on the grounds of the risk of torture or execution.

Amnesty International delegates' attempts during their meetings with Yemeni government officials in February and August 2002 to establish the legal framework followed in the deportations shed no light on what processes were being applied nor how the rights of the deportees under international human rights standards were being protected. The Yemeni Government continues to deport foreign nationals with total disregard for its international obligations which include serious assessment of the risks of torture in the country to which a person may be deported. Article 3(2) of the Convention Against Torture requires that in assessing grounds for the risk of torture "...the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

Following its examination of Yemen's report in July 2002, the UN Human Rights Committee, the expert body monitoring the implementation of the ICCPR, expressed "...concern about cases of expulsion of foreigners suspected of terrorism without an opportunity for them to legally challenge such measures. Such expulsions would, furthermore, be decided without taking into account the risks to the physical integrity and lives of the persons concerned in the country of destination".[10]

7. Harassment and detention of journalists

Index: MDE 23/015/2001, November 2001.
9 See for example Agence France Presse report of 11/9/2002.
10 See Concluding observations of the Human Rights Committee: Yemen. CCPR/CO/75. (26/07/2002). Para. 18.

Freedom of the press is guaranteed under the Yemeni Constitution. In reality, however, the margin of freedom of the press is expanded and restricted in accordance with the political circumstances of the day. Seen in this context, freedom of journalists has narrowed in the wake of the 11 September events.

While the Constitution guarantees freedom of expression and thought[11], this is seriously undermined by operational laws, including penal laws, which facilitate the targeting of journalists and critics of state policy. Laws regulating freedom of expression such as Law 25 of 1990 relating to press and publications and the Penal Code, repeatedly qualify such freedom by the vaguely worded phrases of "...within the limits of the law" and for the interests of "national security". In addition to these restrictions which can be made to apply to any situation, freedom of expression is restricted by many other articles which can be equally open to interpretation. For example, Article 103 of Law 25 of 1990, lists 12 restrictions, one of which contains the prohibition of the publication of "...anything that leads to the propagation of ideas against the principles of the Yemeni Revolution or damage to national unity, or distorts the Yemeni heritage of Islamic and Arab civilization". The punishment for acts deemed to be contrary to the terms of this article is a fine of 10.000 Yemeni Riyals (about 40US$) or a maximum imprisonment of one year under Article 104 of the same law. The punishment could be even harsher if the charge is formulated under the Penal Code. For example, if the offence is deemed to amount to apostasy the punishment is death under Article 259 of the code.

The many legal restrictions imposed on freedom of opinion and expression have facilitated a pattern of harassment of journalists and critics of state policy. In September 2001, the Minister of State for Human Rights told the Union of Yemeni Journalists that "press freedom and human rights are two faces of one coin", yet two months later, eight editors of newspapers were summoned to appear before the West Sana'a Court to answer law suits against them. They included a case brought by the Ministry of Information against *al-Shura* newspaper for publishing excerpts from a novel which was deemed by the Ministry to be "inconsistent with the Islamic religion". The consequences suffered by different newspapers include fines, suspension, and continuing threat of imprisonment of editors or proprietors.

Security forces also target individual journalists in the form of warnings, threats, or even arrest and detention if their reporting or criticism is deemed to breach the many restrictions. The events of 11 September have further narrowed the margin of governmental tolerance for journalists' freedom of expression. The detrimental

11 Article 42(3) of the Constitution states that: "Every citizen shall have the right to participate in political, economic, social and cultural life. The state shall guarantee freedom of thought and expression of opinion orally, in writing or in graphic form, within the limits of the law."

effect this has on the role of journalists was clearly visible to an Amnesty International delegation visiting Sana'a in February 2002. Many journalists told the delegation that they had refrained from documenting cases of the mass arrests after 11 September 2001 in Yemen and neighbouring countries for fear of being identified with the views of those arrested, and being subject to arrest themselves. Those who had written about the arrests told the delegation that they had been questioned or received warnings from members of the arresting authorities, particularly the Political Security.

Among those subjected to arrest and detention were Hassan al-Zaidi and Nabil al-Kumaim. Hassan al-Zaidi, a journalist with the weekly newspaper The Yemen Times, was arrested in the wake of the 11 September 2001 events by the Political Security and detained for up to three weeks because of an interview he had conducted with the leader of an Islamist group published in August 2001. He told Amnesty International that publication of his interview only became of interest to the security forces in the wake of 11 September 2001 and that this was the main reason for his arrest and detention. Nabil al-Kumaim, a Sana'a based Yemeni correspondent of the Qatari newspaper *al-Rayah*, was arrested on 29 April 2002 and detained for hours, at night, during which he was interrogated about his knowledge of *al-Qa'ida* organization in Yemen. His interrogation followed a news item in which he referred to a report by another newspaper claiming that members of *al-Qa'ida* were operative in the government security forces. Article 19 (2) of the ICCPR states that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

In July 2002, the UN Human Rights Committee expressed concern about legal restrictions on freedom of the press in Yemen and "about the difficulties encountered by journalists in the exercise of their profession particularly when criticisms of the authorities are expressed". The Committee called on the government to "ensure respect for the provisions of Article 19 of the Covenant".[12]

8. Civil society emerging from a climate of fear

One of the setbacks brought on by the events of 11 September and the subsequent sidelining of the rule of law was the negative impact on civil society and its role as

12 See Concluding observations of the Human Rights Committee: Yemen. CCPR/CO/75. (26/07/2002). Para. 21.

human rights protector. Mass arrests, detention and deportations, backed up by political discourse from the highest authorities of the government portraying those targeted by security forces as "terrorists", generated a climate of fear. This was heightened by a further fear felt widely in society, namely that of a possible US military attack or economic sanctions against the country. Faced with these fears, members of civil society felt that they had no option but to remain silent in the face of the onslaught on human rights by security forces.

This impact was felt by Amnesty International delegates who visited the country in February 2002. During their stay in Sana'a, delegates found that while people were being arrested, detained or deported by the hundreds, no one was coming forward to provide information, not even the relatives of those directly affected. This was a situation never previously encountered by Amnesty International in Yemen, not even during the civil war of 1994. Members of civil society had always been an asset for penetrating the walls of secrecy, which can create a fertile environment for human rights violations.

However, after months of silence, civil society began to regain its ground. Taking the lead in this regard has been the National Organization for the Defence of Rights and Freedoms, led by Yemeni lawyer and member of Parliament Mohammed Nagi Allow. It has provided a focal point for relatives of detainees, and has received much attention from the Yemeni press.

In solidarity with civil society, Amnesty International organized, in August 2002 in Sana'a, a public debate, entitled "Human Rights for All'. Participants included human rights organizations, including women's rights groups, NGOs, journalists, writers and lawyers. The debate began with a panel discussion of the universality of human rights, and was attended by more than 130 people. Following presentations by panellists, participants raised questions about the detainees being held by the Yemeni authorities. Under what circumstances were individuals being held, had any charges been filed, when would detainees be charged, tried, or released? They raised the same questions about the status of Yemeni detainees held by the United States in Camp X-Ray, Guantánamo Bay, Cuba, and asserted that there should be no double standards. The debate was given extensive media coverage in Yemen and other Gulf countries.

This re-emergence of civil society began to generate pressure for the restoration of the rule of law. In September 2002, parliament set up a commission to look into the situation of the detainees. It has been the first and only civil authority to be given access to the detainees with the aim of investigating breaches of their rights.

The message of this re-emerging civil society is clearly that security cannot be purchased at the price of human rights.

9. Government justification and the role of the US

9.1. The Yemeni Government response

The Government of Yemen informed Amnesty International that it had "no option" but to continue the practice of detention without charge or trial of those held and to offer them no opportunity of access to lawyers or the judiciary to challenge the legality of their detention. The authorities argued that the primary reason for the arrests and detentions was the priority of security, not justice. They explained that the security risks which the detainees present for the government lies in their "extremist views" of Islam. Specifically, the government told Amnesty International that its plans were to change the "extremist views" of the detainees rather than to prosecute them and that it had already started a program of re-education. The government had formed a committee of Muslim scholars to engage them in discussion in order to change their views on issues such as *al-Jihad* (holy war) and people of other faiths. The authorities added that having them in detention made the government task easy to accomplish. In particular, the government elaborated its rationale and strategy as follows:

9.1.1 The war in Afghanistan presented Yemen with at least two real dangers for its security and stability. One was the fear that some elements from Islamist movements in Yemen might resort to violent actions, particularly against people from Western countries, in support of the Taliban. The other was the fear of US military action against Yemen because of the involvement of Yemeni nationals in the 11 September attacks on New York and Washington as well as media reports about the presence of suspected members of *al-Qa'ida* in Yemen. Confronted with these threats the Yemeni Government said it had to act to reassure the US Government with full cooperation against "terrorism", in order to avert US military action against Yemen.

9.1.2 After the 11 September events the international community called on its member nations to stand firm against "terrorism". The government said Yemen could not shirk its responsibility towards the international community. Yemen is not alone in adopting the measures it had taken. Countries in Europe and North America, have taken similar measures. Yemeni nationals living in

those countries had been subjected to arbitrary arrest and detention for no reason other than their nationality. Yemeni nationals studying in the US who have returned to Yemen during their vacation to visit their families have been denied visas to return to their studies.

While Amnesty International is well aware of the changes in the international political climate and the pressures brought on Yemen, particularly from the United States, it does not believe that this can be used by the government to justify human rights violations. On the contrary, Amnesty International believes that it is at times of harsh political realities that human rights need more, not less, protection. In the name of "security" children have been detained, peaceful dissent silenced, persons deported to countries where they would face torture or execution, and suspects subjected to indefinite detention without charge or trial and without access to lawyers and the judiciary.

The Yemeni Government was reminded of this danger by the UN Human Rights Committee upon examination of its report on compliance with the ICCPR:
"While it understands the security requirements connected with the events of 11 September 2001, the Committee expresses its concern about the effects of this campaign on the human rights situation in Yemen, in relation to both nationals and foreigners. It is concerned, in this regard, at the attitude of the security forces, including the Political Security, proceeding to arrest and detain anyone suspected of links with terrorism, in violation of the guarantees set out in the Covenant (Article 9). The Committee also expresses its concern about cases of expulsion of foreigners suspected of terrorism without an opportunity for them to legally challenge such measures. Such expulsions would, furthermore, be decided without taking into account the risks to the physical integrity and lives of the persons concerned in the country of destination (Articles 6 and 7)".

The Committee went on to urge the government to "... ensure that the measures taken in the name of the campaign against terrorism are within the limits of Security Council resolution 1373 and are fully consistent with the provisions of the Covenant". It further requested the government to "ensure that the fear of terrorism does not become a source of abuse".[13] The UN Commission on Human Rights has affirmed that "States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law".[14]

13. See Concluding Observations of the Human Rights Committee: Yemen. CCPR/CO/75. (26/07/2002). Para. 18.
14 See Commission on Human Rights resolution 2003/68 adopted on 25 April 2003, Para. 3.

9.2. The role of the US

Yemen-US relations bear direct relevance to the deterioration of the human rights situation in Yemen since the 11 September 2001 events. In the wake of these events the two countries forged a special military and security cooperation. The impact of such cooperation on human rights is manifested in the practice of detention, training of Yemen security forces, and the possible extra-judicial killing of six men in November 2002 (see below).

The US government is holding scores of Yemeni nationals in Guantánamo Bay under conditions which are contrary to international human rights and humanitarian laws.[15] Relatives of these detainees met by Amnesty International in Sana'a informed the organization that they had not received any clarification from the US Government or the Yemeni Government on the legal status or fate of the detainees. Amnesty International raised their cases with Yemeni officials, but they did not provide precise clarification on the legal process followed in these cases, nor on

15 Amnesty International's concerns on all the detainees held in Guantánamo Bay are that the US government has:

- transferred and held people in conditions that may amount to cruel, inhuman or degrading treatment, and that violate other minimum detention standards;
- refused to grant people in its custody access to legal counsel, including during questioning by US and other authorities;
- refused to grant people in its custody access to the courts to challenge the lawfulness of their detention;
- undermined the presumption of innocence through a pattern of public commentary on the presumed guilt of the people in its custody in Guantánamo Bay;
- failed to facilitate promptly communications with or grant access to family members;
- undermined due process and extradition protections in cases of people taken into custody outside Afghanistan and transferred to Guantánamo Bay;
- threatened to conduct trials before military commissions – executive bodies lacking clear independence from the executive and with the power to hand down death sentences, and without the right of appeal to an independent and impartial court;
- raised the prospect of indefinite detention without charge or trial, or continued detention after acquittal, or repatriation that may threaten the principle of *non-refoulement;*

For more detailed accounts of these concerns see Amnesty International's report, "United States of America: Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay", AI Index: AMR 51/053/2002, 15 April 2002 and "United States of America: The threat of a bad example: Undermining international standards as "war on terror" detentions continue", AI Index: AMR 51/114/2003, 19 August 2003.

family access and receipt of information about the fate of the detainees. These conditions of detention have been challenged by the Court of Appeal in the UK in a case involving Feroz Abbasi, UK national, held in Guantánamo Bay. In November 2002, the Court of Appeal, the second highest court in England and Wales, referred to Feroz Abbasi's detention in Guantánamo Bay as "in apparent contravention of fundamental principles recognized by both jurisdictions [US and UK] and by international law".[16]

As mentioned before, US security forces have been directly involved in the questioning of at least those held in connection with the USS Cole case. In addition, the Yemeni authorities have told Amnesty International that their plans to bring these detainees to trial were obstructed by the US authorities. The consequences for the detainees, most of whom have been held for almost three years, are that their right to legal assistance and access to the judiciary to challenge the legality of their detention have been and continue to be denied.

The training of Yemeni security forces by US security forces, has been acknowledged by the two governments. US Defense Secretary Donald H. Rumsfield told news reporters "we have some folks in that country that have been working with the government and helping them think through ways of doing things. It's been a good cooperation...".[17] Similarly, the Foreign Minister of Yemen is reported to have said that "...there is no security agreement with the US...but there is security cooperation in training and exchange of information ... and there are US trainers for the Special Forces and security forces (as well as) exchange of names, particularly these days."[18]

16 The Court of Appeal ruling came as a result of a judicial review, initiated by the mother of Feroz Abbasi, of a March 2002 decision of the High Court that had stated that UK courts had no jurisdiction to rule on her claim that the UK authorities had not been doing enough to ensure respect for the rights of UK nationals detained at Guantánamo Bay. In its November 2002 ruling the Court of Appeal dismissed his mother's claim for relief. Feroz Abbasi from Croydon is one of nine confirmed UK nationals, including Moazzam Begg from Birmingham, England, Asif Iqbal and Shafiq Rasul from Tipton, England, who remained in US military custody at Guantánamo Bay without charge or trial or access to the courts, lawyers or relatives. For more details on this ruling see Amnesty International Press Release, News Flash, "UK: Government must take action to protect UK nationals held in US custody at Guantánamo Bay", AI Index: EUR 45/023/2002, News Service No: 200, 6 November 2002 and Amnesty International's Media Briefing, "UK: Government must act now on behalf of Guantánamo detainees", AI Index: EUR 45/019/2003, News Service No 167, 11 July 2003.
17 Quoted in Associated Press report "U.S. Strike Six in Al Qaeda Missile Fired by Predator Drone; Key Figure in Yemen Among Dead", dated 5 November 2002.
18 See Parliamentary Special Commission of inquiry into the detainees held in connection with the attack on the USS Cole and 11 September 2001, dated 24 September 2002, P 11.

Concerned that transfers of military or police expertise or training must not contribute to human rights violations, Amnesty International sought clarification of this from the US authorities in a letter, dated 6 June 2003, addressed to the Secretary of State, Colin Powell (see section 10 below). Specifically, Amnesty International asked the following questions: Which Yemeni security forces are receiving such training and do they include the Political Security? Have individuals receiving training from the United States authorities been screened for previous involvement in human rights violations in accordance with Section 556 of US Public Law 107 – 105? What human rights provisions are included in the training programs?

In a letter addressed to Amnesty International, dated 11 July 2003, the US State Department acknowledged that "the U.S. has provided military training to Yemen's counter terrorism forces as part of our cooperative efforts in the global war on terrorism". It added that "no...funding or training is provided to any Yemeni security units for which there is credible evidence that they have committed gross violations of human rights". However, the letter did not give any details as to the security branches which received funding or training assistance and whether these included or excluded the Political Security. This branch of the arresting authorities remains the main perpetrator of human rights violations with impunity.

Perhaps the most visible indication for the disregard for human rights in the US-Yemen security cooperation is the killing of six men in the Governorate of Ma'rab on 3 November 2002. The six were driving in a car when they were blown up reportedly by a missile launched by a CIA-controlled Predator drone aircraft. The group were alleged to be suspected members of *al-Qa'ida* and included Ali Qa'id Sinan al-Harithi, a Yemeni national, allegedly a leading member in the organization.

Fearing that the six may have been victims of extrajudicial killing, Amnesty International sought urgent clarification of the circumstances surrounding the killing from the US and Yemeni governments. Amnesty International wrote to both governments, asking if the killings were carried out as a result of cooperation between the two governments or with the agreement or knowledge of the Yemeni government; whether any attempts were made to arrest the six; and what threat, if any, the suspects posed to security forces or others at the time of their killing. Amnesty International stated that if the attack was a deliberate killing, in lieu of arrest, in circumstances in which the men did not pose an immediate threat, the killings would amount to extrajudicial executions in violation of international human rights law.[19] Amnesty

19 See Amnesty International, Yemen/USA: government must not sanction extra-judicial executions, 8 November 2002 (AI Index: AMR 51/168/2002).

International called for an investigation of the killings and for anyone found responsible for any extrajudicial execution to be brought to justice.

Amnesty International has received no direct response from either government. However, the Yemeni government has since declared publicly that it had cooperated with the US Government. The Minister of Interior was reported on 19 November 2002 to have said that the "hunt for the group which ended in their deaths...took place in the context of security cooperation and coordination between Yemen and the United States to fight terrorism".[20] More recently the Yemeni President reiterated his government's role in the operation during an interview with *al-Jazeera* television. In reply to a question on how the US attacked the six he replied "in coordination with us...in coordination with us..." Concerning those killed he said "These are a harmful minority...They are corrupt on earth, they are playing with the national economy and seek to make the country a terrorist country...Let them go (die), three, four, or twenty five for the sake of the country...any traitor...anyone who puts the security of the country at risk let them go".[21] He made no reference to any attempt by the Yemeni or US governments to observe international human rights standards in carrying out this operation.

The US Government has disputed that the killings were extrajudicial executions. In response to the UN Special Rapporteur on extrajudicial, summary and arbitrary executions, the US Government disagreed that "military operations against enemy combatants could be regarded as extrajudicial executions", adding that the "conduct of a government in legitimate military operations, whether against *al-Qa'ida* operatives or any other legitimate military target, would be governed by the international law of armed conflict." It concluded that "enemy combatants may be attacked unless they have surrendered or are otherwise rendered hors de combat", and that any "*al-Qa'ida* terrorists who continue to plot attacks against the United States may be lawful subjects of armed attacks in appropriate circumstances". It stated that the mandate of the Special Rapporteur does not extend to "allegations stemming from any military operations conducted during the course of an armed conflict with *al-Qa'ida*", and that both the Special Rapporteur and the UN Commission on Human Rights lacked competence "to address issues of this nature arising under the law of armed conflict"[22].

20 Agence France Presse report dated 19 November 2002.
21 See *al-Jazeera* program "Without frontiers" (Bila Hudud), broadcast on 16 July 2003.
22 Letter dated 14 April 2003 from the Chief of Section, Political and Specialized Agencies, of the Permanent Mission of the United States of America to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights. E/CN.4/2003/G/80, 22 April 2003.

In Amnesty International's view, it is not at all clear why the laws of war would apply to this situation. Under existing international humanitarian law, it is not possible to have an international armed conflict between a state on the one hand and a non-state actor on the other, should the armed group not form part of the armed forces of a Party to the Geneva Conventions. The Geneva Conventions apply to situations of "armed conflict which may arise between two or more of the High Contracting Parties".[23] There is no armed conflict between the US and Yemen, and the Yemeni Government clearly cooperated in the air strike. In addition, there is no internal armed conflict between the government of Yemen (with the support of US forces) and *al-Qa'ida*. Accordingly, the proper standards applicable to this situation were law enforcement standards according to which the US and Yemen should have cooperated to try to arrest these suspects rather than kill them.

The applicable law enforcement standards include the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials. These set out clearly the limitations that apply to the use of force in situations of law enforcement, most specifically that firearms should only be used if lives are in danger and if no other means are available. Basic Principle 9 states "In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." Principle 8 states "exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles." Further, Principle 1 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states "Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions."

10. Amnesty International's approaches to the two governments

In its investigation of human rights violations in Yemen, Amnesty International approached both the Yemeni authorities and the US authorities for information and policy clarification with regard to the concerns detailed in this report. With regard to the Yemeni authorities the organization raised the following issues:

23 The exception is the case of armed groups fighting against colonial domination, which is not relevant to what the USA deems to be its "war on terror".

- Amnesty International asked the authorities for their reaction to the widespread claim that the Political Security was working very closely with the FBI in the mass arrests it had carried out and that this cooperation included the FBI involvement in the interrogation of detainees. The authorities, while stating that they were fully cooperating with the US in the fight against "terrorism", categorically denied the claim of the FBI being directly involved in the interrogation of detainees. However, the Parliamentary Special Commission of inquiry, the only civilian authority to have been granted access to the detainees so far, has claimed that it was told by those held in connection with the attack on the USS Cole that they were questioned by the FBI by questions put to them through Yemeni interrogators.[24] According to the Commission findings the US interrogators had warned the detainees of their right not to be questioned except in the presence of a lawyer and apparently offered to provide them with lawyers free of charge. The detainees were apparently forced by Yemeni interrogators to refuse the offer and were questioned by the US interrogators through their Yemeni interrogators, without legal assistance.

- Amnesty International sought access to the detainees, but this was not granted. In addition Amnesty International asked for the lists of detainees, together with details of the reasons for their arrest and the authority which ordered the arrest. Amnesty International was told that this was not possible because the list was constantly changing.

- Amnesty International communicated its concerns about the violations of the rights of those held by the US in Guantánamo Bay and sought clarification of any measures taken by the Yemeni Government to ensure that international human rights and humanitarian law are applied to its nationals detained there. The organization raised this issue in meetings with government officials on two occasions. The first occasion was in February 2002 when a government delegation was preparing to travel to Guantánamo Bay. Amnesty International asked if the terms of reference of the visit included looking into the rights of the detainees, and if so, whether the delegation would include lawyers and doctors. The organisation was told that the delegation was facing difficulties in obtaining permission from the US government and to add lawyers and doctors would complicate the matter even further. The second occasion was at the end of August 2002 after the visit by the Yemeni Government's delegation to

24 See Report of the Parliamentary Special Commission of Inquiry into detainees held in connection with the attack on the USS Cole and 11 September 2001, P13.

Guantánamo Bay. Amnesty International asked if the delegation had raised the issue of the detainees' rights, and requested a meeting with members of the delegation in Sana'a. Amnesty International received no clarification except that the delegation had taken medicines for the detainees, and no meeting was arranged.

Similarly, Amnesty International approached the US authorities through the US Embassy in Sana'a and its letter, dated 6 June 2003, addressed to the Secretary of State, Colin Powell, seeking clarification, in addition to the training program of Yemen security forces referred to above, of the following issues:

- In the period following 11 September 2001, many governments, including the United States Government, were concerned that the Yemen Political Security did not notify them of the arrest and detention of their nationals who were subsequently deported. The reasons behind the arrests were, according to various embassies in Sana'a, explained by the Political Security as having to do with their "being Muslims" or students of particular Islamic schools. In light of this fate befalling Yemeni citizens, what is the United States position on the Yemenis currently detained by the Political Security under circumstances that breach the rule of law and Yemen's international human rights obligations?
- Credible sources have informed Amnesty International that the widespread arrests and detention without charge or trial conducted by the Political Security in the wake of 11 September 2001 were prompted by United States pressure and that any inquiries as to the reason of such arrests should be directed to the United States Government. What has been the role of the United States Government in these arrests and the current detention of scores of people particularly in Sana'a, and what efforts have been made by the United States Government to ensure that officials in Yemen respect domestic and international human rights norms with regard to due process? What is the United States reaction to the public perception implicating it in the deterioration of the human rights situation in Yemen since 11 September 2001?

In its 11 July 2003 letter of reply to Amnesty International the US State Department stated that "In concert with partners in the war on terrorism, the Government of Yemen detained suspects accused of links to terrorism after the October 2000 attack on the USS Cole and after the September 11, 2001 attacks. Many detainees were subsequently released following investigation and some cases have begun moving towards trial". No further details about such trials were provided. The arrests referred to here are those detailed in the previous sections of this report which

were carried out without judicial supervision and the detainees were invariably subjected to lengthy incommunicado detention. Those who continue to be held are denied access to lawyers and the judiciary to challenge the legality of their detention. As mentioned before, the letter did not specify whether the Political Security has received training and funding assistance from the US. However, the letter added that "The 2002 Country Report on Human Rights Practices for Yemen notes U.S. concern regarding arbitrary arrests, prolonged detention without charges and pre-trial detainees, among other important issues. ...In order to address the remaining shortcomings addressed in the...Report, the U.S. will continue to provide direct assistance to bolster Yemeni judicial reform efforts, democratic development and human rights awareness by security forces". Amnesty International would welcome any initiatives to end the sidelining of the rule of law by restoring to the judiciary its rightful duty of upholding the rule of law.

11. Conclusion

Amnesty international is concerned that the Yemeni Government has sidelined the rule of law and its human rights obligations in the name of "fighting terrorism" and "national security". It has given the green light to the security forces, particularly the Political Security, to act with impunity in total disregard for the law and the role of the judiciary. Mass arbitrary arrest, detention, and deportations have taken place and continue to take place. More than 200 people, many of them arrested nearly two years ago, continue to be detained without charge or trial and denied access to lawyers or the courts to seek justice.

What is more disturbing about these human rights violations is that they are being carried out as a deliberate policy by the government. The rationale for this situation presented to Amnesty International by the authorities in Yemen was that the government had no option but to break its own laws and its international human rights obligations in order to "fight terrorism" and contain the risks of a US military attack against Yemen. Amnesty International believes that sacrificing human rights can never be the solution.

The government of Yemen cannot be exonerated for the human rights violations which have occurred and continue to occur in the country since 11 September 2001. However, Amnesty International believes that the US Government's security policy towards Yemen has also played a significant role in the deterioration of the human rights situation in the country. It has carried out apparent extrajudicial killings in Yemen. It has close security cooperation with Yemen security forces with no apparent consideration for the upholding of universal human rights. It is detaining scores of Yemeni nationals in Guantánamo Bay with total disregard of their

fundamental human rights, and has turned a blind eye to the similar practices carried out by the Yemeni authorities in their own country, as elsewhere.

Amnesty International recognises the duty of any state to bring to justice anyone suspected of recognizable criminal offences, but this should always be in line with international human rights standards. Amnesty International opposes unconditionally arbitrary arrest, indefinite detention without charge or trial or the imprisonment of people because of their political or religious views, their colour, ethnic origin, language or sex or other identity. The organization equally opposes torture, extra-judicial execution, the death penalty, and the forcible expulsion of anyone to any country where they would face serious human rights abuses including torture or execution. In this regard, Amnesty International calls on the Yemeni and US Governments to ensure that their security cooperation is not purchased at the expense of human rights and urge them to take immediate steps to restore the rule of law and the human rights of the detainees held both in Yemen and in Guantánamo Bay. Amnesty International urges the international community to bring pressure on the Governments of Yemen and the US to address the human rights violations documented in this report.

12.0. Recommendations

12.1 To the Government of Yemen

Amnesty International calls on the Yemeni authorities to:

12.1.1 Release immediately anyone held solely for the non-violent expression of their conscientiously held beliefs, as such detention is contrary to Article 9(1) of the ICCPR;

12.1.2 Ensure that all detainees held by the Political Security on criminal charges are given prompt access to judges in accordance with Article 9(3) of the ICCPR;

12.1.3 Ensure that all detainees are given prompt access to lawyers and to the judiciary to challenge the legality of their detention as recognised by Article 9(4) of the ICCPR;

12.1.4 Take immediate steps to ensure that arrest and detention are always carried under independent and impartial judicial supervision in order to protect suspects from being arrested and detained solely on the basis of their political, religious or other beliefs, ethnic origin, or other discriminatory basis such as the targeting of journalists for their criticism of the state;

12.1.5 Investigate allegations of torture and bring to justice anyone found responsible in accordance with Articles 12 and 13 of the Convention Against Torture.

Such investigations should be carried out by an independent and impartial body;

12.1.6 Halt the expulsion of foreign nationals to countries where they would face serious human rights violations such as torture or execution, and ensure that the rights of refugees and asylum seekers in accordance with, *inter alia*, Yemen's obligations under the 1951 Refugee Convention;

12.1.7 Implement recommendations by UN thematic mechanisms, and the Human Rights Committee.

12.2 To the Government of the US

Amnesty International calls on the US Government to:

12.2.1 Investigate the apparent extrajudicial killing on 3 November 2002 of six alleged suspected members of *al-Qa'ida*, and bring to justice anyone suspected of having been responsible for these killings;

12.2.2 Ensure that human rights standards are strictly adhered to in the cooperation between its security forces and those of Yemen, particularly in the arrest and questioning of detainees, and that such standards are also observed in their training programs for Yemeni forces;

12.2.3 Take immediate steps to restore the rights of Yemeni and other nationals held in Guantánamo Bay and urge the Yemeni Government to do likewise for those held under similar circumstances in Yemen.

12.3 To the international community

Amnesty International calls on the international community to:

12.3.1 Urge the Governments of Yemen and the US to implement the above recommendations.

EXHIBIT J

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SALEH ABDULLA AL-OSHAN *et al.*,	:		
Petitioners/ Plaintiffs,	:		
v.	:	Civil Action No.:	05-0520 (RMU)
GEORGE W. BUSH *et al.*,	:	Document Nos.:	3, 11
Respondents/ Defendants	:		

MEMORANDUM ORDER

GRANTING MOTION FOR STAY;
ORDERING 30 DAYS' NOTICE OF ANY INTENT TO MOVE PETITIONERS;
DENYING WITHOUT PREJUDICE MOTION FOR PRELIMINARY INJUNCTION AS MOOT

This matter comes before the court on the respondents' motion to stay proceedings pending related appeals and for continued coordination. On January 19, 2005, Judge Leon issued opinions in *Khalid v. Bush* and *Boumediene v. Bush* granting the government's motion to dismiss petitions for writ of habeas corpus brought by detainees at the United States Naval Station at Guantanamo Bay, Cuba ("GTMO"). *Khalid v. Bush*, 355 F. Supp. 2d 311 (D.D.C. 2005). On January 31, 2005, Judge Green issued an opinion in *In re Guantanamo Cases*, granting in part and denying in part the government's motion to dismiss in eleven cases consolidated for the purpose of that motion. *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d 443 (D.D.C. 2005). The petitioners in the above cases filed notices of appeal, and the D.C. Circuit has yet to issue an opinion. Accordingly, the state of the law in this circuit concerning the habeas rights of GTMO detainees is unclear.

In its motion to stay, the government points to the inefficiency of resolving the merits of the instant habeas petition prior to the D.C. Circuit issuing a ruling that will cover similar matters. Respondents' Mot. to Stay at 1-2. The government states that during the pendency of the stay the government will not "block counsel access to properly represented petitioners. To that end, respondents do not object to entry in these cases of the protective order previously entered in other Guantanamo detainee cases, along with appropriate supplementary orders, to permit such access." *Id.* at 2.

The court is well aware of the petitioners' concern that the government may remove the petitioners from GTMO in the near future, thereby divesting (either as a matter of law or *de facto*) the court of jurisdiction. Such an outcome would abuse the processes now put in place fo the purpose of adjudicating matters on their merits. *See Rasul v. Bush*, 124 S.Ct. 2686 (2004). Accordingly, the court cannot allow such a scenario to unfold; the court will "guard against depriving the processes of justice of their suppleness of adaptation to varying conditions." *Landis v. North American Co.*, 299 U.S. 248, 256 (1936). Coextensive with the district court's inherent power to stay proceedings is the court's power to craft a stay that balances the hardship to the parties. *Id.* at 255 (noting concerns regarding the stay causing "even a fair possibility . . . [of] damage to some one else"); *see also Clinton v. Jones*, 520 U.S. 681, 707 (1997) (noting tha "burdens [to the parties] are appropriate matters for the District Court to evaluate in its management of the case").

Accordingly, it is this 31st day of March, 2005,

ORDERED that the respondents' motion for stay is **GRANTED**; and it is

FURTHER ORDERED that the respondents, their agents, servants, employees, confederates, and any persons acting in concert or participation with them, or having actual or implicit knowledge of this Order by personal service or otherwise, may not remove the petitioners from GTMO unless this court and counsel for petitioners receive thirty days' advanc notice of such removal; and it is

FURTHER ORDERED that the court **ENTERS** by way of reference the protective ordered previously entered in the other Guantanamo detainee cases. *E.g.*, Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, *In re Guantanamo Detainee Cases*, No. 02-0299 (D.D.C. Oct. 8, 2004 and it is

FURTHER ORDERED that, in light of this order, the petitioners' motion for preliminary injunction is denied without prejudice as moot.

SO ORDERED.

RICARDO M. URBINA
United States District Judge

EXHIBIT K

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADBUL-SALAM GAITHAN MUREEF AL-SHIRY, et al.,	
Petitioners,	
v.	Civil Action No. 05-0490 (PLF)
GEORGE W. BUSH, et al.,	
Respondents.	

ORDER

This matter is before the Court on petitioner's motion for a preliminary injunction enjoining respondents from removing him from the Guantanamo Bay Naval Base and rendering him to the custody of a foreign country without 30 days' advance notice to petitioner's counsel and leave of court. Upon consideration of the arguments of the parties, and in view of the Opinion and Order issued by Judge Henry Kennedy in Abdah v. Bush, Civil No. 04-1254 (D.D.C. Mar. 29, 2005), granting a substantially identical motion for preliminary injunction filed by petitioners in that case and the Memorandum Order issued by Judge Urbina in Al-Oshan, et al. v. Bush, Civil No. 05-0520 (D.D.C. Mar. 31, 2005), ordering the government to give petitioners' counsel 30 days' advance notice before removing petitioners from Guantanamo Bay, it is hereby

ORDERED that the respondents, their agents, servants, employees, confederates, and any persons acting in concert or participation with them, or having actual or implicit knowledge of this Order by personal service or otherwise, may not remove petitioner from the Guantanamo Bay Naval Base unless this court and counsel for petitioners receive thirty days'

advance notice of such removal; and it is

FURTHER ORDERED that in light of this order, [5] petitioners' motion for preliminary injunction is DENIED as moot.

SO ORDERED.

/s/
PAUL L. FRIEDMAN
United States District Judge

DATE: April 1, 2005

EXHIBIT L

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JARALLAH AL-MARRI, et al.,	:	
Petitioners,	:	
v.	:	**Civil Action No. 04-2035 (GK)**
GEORGE W. BUSH, et al.,	:	
Respondents.	:	

MEMORANDUM OPINION

Petitioner, Jarallah Al-Marri, brings this action against Defendants, seeking release from the Guantanamo Bay Naval Station ("GTMO") in Cuba, where he is being detained.[1] This matter is before the Court on Petitioner's Motion for a Preliminary Injunction and Motion for a Temporary Restraining Order, in which he seeks 30 days' notice before any transfer from GTMO. Upon consideration of the Motions, Opposition, Reply, and the entire record herein, and for the reasons stated below, Petitioner's Motion for a Preliminary Injunction is **granted**, and Petitioner's Motion for a Temporary Restraining Order is **denied as moot**.

[1] Technically, there are two Petitioners in this case, one of whom is Jarallah Al-Marri's Next Friend, who obviously is not subject to transfer from Guantanamo. All references herein will be to the one Petitioner.

I. BACKGROUND

A. Procedural History

Petitioner, a citizen of Qatar, has been detained at GTMO for more than three years.[2] On November 10, 2004, he filed a Petition for Writ of Habeas Corpus. He is one of many GTMO detainees who have filed such petitions in the United States District Court for the District of Columbia since the Supreme Court held that "the federal courts have jurisdiction to determine the legality of the Executive's potentially indefinite detention of individuals who claim to be wholly innocent of wrongdoing." Rasul v. Bush, 124 S. Ct. 2686, 2699 (2004).

On November 30, 2004, the Court transferred this case to Judge Joyce Hens Green for coordination and management, as reflected in the September 15, 2004, Resolution of the Executive Session. On December 28, 2004, Respondents filed a Motion to Dismiss, which became ripe on January 21, 2005.

On January 19, 2005, Judge Richard Leon granted the Government's Motion to Dismiss the detainees' Petition for Writ of Habeas Corpus in Khalid v. Bush, 355 F. Supp. 2d 311 (D.D.C. 2005). On January 31, 2005, Judge Green granted in part and denied in part the Government's Motion to Dismiss in eleven consolidated cases.

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[2] Petitioner's counsel has very limited knowledge of Petitioner's precise circumstances. Counsel has met with Petitioner, but only very briefly and before actual representation began, when counsel was visiting other clients at GTMO. Transcript of Motions Hearing ("Tr.") at 12 (March 30, 2005). Counsel is scheduled to meet with his client in the very near future. Id.

In re Guantanamo Cases, 355 F. Supp. 2d 443 (D.D.C. 2005).[3] The cases before Judges Leon and Green have been fully briefed in the United States Court of Appeals for the District of Columbia and are under submission.

On February 3, 2005, Judge Green granted a stay in the eleven cases to which her January 31, 2005, Opinion and Order applied. On March 8, 2005, this Court stayed the instant case until the Court of Appeals resolves the appeals in Khalid and In Re Guantanamo Cases.[4]

B. Transfers from GTMO

Approximately 540 foreign nationals currently are being held at GTMO. Decl. of Matthew C. Waxman ¶ 2 ("Waxman Declaration").[5] The Department of Defense ("DOD") states it is conducting a review of each detainee's case, at least annually, to determine whether continued detention is warranted. Id. at ¶ 3. Since the Government began detaining individuals at GTMO, the DOD has transferred 211 detainees to other countries. Id. at ¶ 4.

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[3] Judge Green's Memorandum Opinion and Order did not apply to eight consolidated cases, including the instant case. In re Guantanamo Cases, 355 F. Supp. 2d at 452 n.15.

[4] The stay issued in this case does not preclude the Court from considering the merits of the instant Motion. The stay was entered to preserve the status quo until resolution of issues on appeal in similar cases. The instant Motion does not require the Court to lift the stay or to adjudicate the case on the merits; rather, it seeks emergency relief to prevent Petitioner's habeas claims from being extinguished and to preserve the status quo. Abdah v. Bush, No. 04-CV-1254, slip op. at 4 (D.D.C. March 29, 2005).

[5] Waxman is the Deputy Assistant Secretary of Defense for Detainee Affairs. Id. at ¶ 1.

Detainees are subject to two types of transfer: (1) transfer to the custody of another country, with the understanding that they will be released, Tr. at 22-23; and (2) transfer to the custody of another country with the understanding that the country's government has "an independent law enforcement interest" in them and that they likely will face continued detention and processing by that country's judicial system. Id. at 24. In each case, the United States loses all control of the detainees once they are transferred to another country. Waxman Decl. at ¶ 5.

Of the 211 detainees who have been transferred, 146 have been transferred with the understanding that they would be released. Id. at ¶ 7. The Government represents that most of those individuals actually have been released, Tr. at 29, but it cannot provide precise numbers. Id.

Sixty-five detainees have been transferred to the control of other countries for detention. Waxman Decl. at ¶ 7. Of that group, 29 were transferred to Pakistan; 9 to the United Kingdom; 7 to Russia; 5 to Morocco; 6 to France; 4 to Saudi Arabia; and 1 each to Australia, Denmark, Kuwait, Spain, and Sweden. Id..

When transfers for detention are being considered, DOD coordinates with various other Government agencies, including the Department of State ("DOS"). Id. ¶ 6. The Government states that, as a matter of policy, it does not "repatriate or transfer individuals to other countries where it believes it is more likely than not that they will be tortured." Id..

The Government claims that it ensures compliance with this policy by obtaining "assurances" from officials within the foreign government. The process for obtaining such assurances "involves a frank dialogue, discussion, [and] communication with officials of the other government." Tr. at 32. The Government evaluates the adequacy of the assurances by considering "the identity, position, or other information concerning the official relaying the assurances," Decl. of Pierre-Richard Prosper at ¶ 8 ("Prosper Declaration")[6]; political or legal developments in the country that would provide context for the assurances, id.; and U.S. relations with the country. Id. Senior Government officials ultimately make the final decision on whether to transfer a detainee. Waxman Decl. at ¶ 7. The Government's papers do not indicate which DOD official has this responsibility.

In recent months, a number of newspaper articles about the transfer and treatment of detainees have been published. Petitioner has submitted as exhibits articles quoting current and former employees of the United States government who have been involved in transferring detainees to other countries, including countries that practice torture. See, e.g., Petr.'s Ex. E (Dana Priest, Jet Is an Open Secret in Terror War, Wash. Post, Dec. 27, 2004, at A1). In addition, Petitioner has submitted articles quoting by name former Guantanamo detainees who allege that they

[6] Prosper is the Ambassador-at-Large for War Crimes Issues and has supervised the operation of the DOS Office of War Crimes Issues. Id. at ¶ 1.

have been moved by the United States government to countries where they have been tortured. See, e.g. Petr.'s Ex. B (Douglas Jehl and David Johnson, Rule Change Lets C.I.A. Freely Send Suspects Abroad, N.Y. Times, Mar. 6, 2005, at A1).

On March 11, 2005, an article in The New York Times reported that DOD plans to transfer "hundreds of suspected terrorists to prisons in Saudi Arabia, Afghanistan, and Yemen." Douglas Jehl, Pentagon Seeks to Shift Inmates from Cuba Base, N.Y. Times, Mar. 11, 2005, at A1.

In response to this article, several petitioners, including the Petitioner in the instant case, filed motions for temporary restraining orders and preliminary injunctions. On March 12, 2005, Judge Rosemary Collyer granted a request for a temporary restraining order in Abdah v. Bush, No. 04-CV-1254 (D.D.C. March 12, 2005) (order granting temporary restraining order) and denied a similar request in John Does 1-570 v. Bush, No. 05-CV-313 (March 12, 2005) (order denying request for temporary restraining order). On March 29, 2005, Judge Henry H. Kennedy granted a Preliminary Injunction in Abdah.

After the Motions were filed in the instant case, the Government represented to this Court that Petitioner was not scheduled for transfer within the next several weeks. In addition, counsel agreed to a combined hearing on the Motion for Temporary Restraining Order and Motion for Preliminary Injunction. On March 17, 2005, based on those representations, the Court scheduled the hearing on both Motions for March 30, 2005.

II. STANDARD OF REVIEW

In considering Petitioner's request for a preliminary injunction, the Court must consider four factors: (1) whether Petitioner would suffer irreparable injury if an injunction were not granted; (2) whether Petitioner has a substantial likelihood of success on the merits; (3) whether an injunction would substantially injure other interested parties; and (4) whether the grant of an injunction would further the public interest. Al-Fayed v. CIA, 254 F.3d 300, 303 (D.C. Cir. 2001).[7] "These factors interrelate on a sliding scale and must be balanced against each other." Serono Labs, Inc. v. Shalala, 158 F.3d 1313, 1318 (D.C. Cir. 1998). "If the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak." CityFed Fin. Corp. v. Office of Thrift Supervision, 58 F.3d 738, 746 (D.C. Cir. 1995).

When the balance of hardships tips decidedly toward the movant, it will "ordinarily be enough that the [movant] has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation.'" Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 844 (D.C. Cir. 1977) (quoting Hamilton Watch Co. v. Benrus Watch Co., 206 F.2d

[7] The same factors apply when considering a request for a temporary restraining order. Al-Fayed, 254 F.3d at 303, n.2. However, since the Court has granted the Motion for Preliminary Injunction, it is not necessary to apply these factors to his Motion for Temporary Restraining Order.

738, 740 (2d Cir. 1953)). "An order maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant." Id. at 844.

III. ANALYSIS

A. Harm to Petitioner

Petitioner argues that he will suffer irreparable harm if transferred to the custody of another country that practices torture or other inhumane treatment of prisoners. Respondents argue that there is no potential harm to Petitioner, because there is no credible evidence that detainees are being transferred to countries that practice torture; instead, any transfers will be largely for purposes of release.[8]

Irreparable harm to the moving party is "the basis of injunctive relief in the federal courts." CityFed Fin. Corp., 58 F.3d at 747 (quoting Sampson v. Murray, 415 U.S. 61, 88 (1974)). To obtain preliminary injunctive relief, Petitioner must show that

[8] The Government also argues that transferring Petitioner from United States custody provides him with the very relief he seeks. Tr. at 40. That argument is overly simplistic, however. Petitioner ultimately seeks total freedom from all custody, not just United States custody. He can only obtain such relief in this litigation if the Court determines that his underlying detention was unconstitutional or illegal. Furthermore, a determination by a United States court that Petitioner is not an enemy combatant might carry significant weight in his home country, thereby facilitating release from custody if he was transferred for continued detention. Finally, on the most human level, proud people have a strong interest in clearing their names from association with acts of violence and terrorism.

the threatened injury is not merely "remote and speculative." Milk Indus. Found. v. Glickman, 949 F. Supp. 882, 897 (D.D.C. 1996).

In this case, there are two obvious and substantial threats to Petitioner. First, he faces the possibility of transfer to a country where he might be tortured or indefinitely confined, which undeniably would constitute irreparable harm. While the Government presents declarations that attempt to mitigate these concerns, they neither refute Petitioner's claims nor render them frivolous.[9] Indeed, the Government admits that 65 of the 211 detainees transferred to date have been transferred for detention, not release. Several of the 65 have been transferred to countries that our own State Department has acknowledged torture prisoners, including Pakistan, Saudi Arabia, and Morocco. See Country Reports on Human Rights Practices -- 2004, available at http://www.state.gov/g/drl/rls/hrrpt/2004. Finally, the Government was unable to provide any details about the type or form of "assurances" given, the scope of the monitoring that takes place after transfer, or the consequences of noncompliance.[10] Tr. at 32-33. In short, the threatened injury is not merely remote and speculative; it is a serious potential threat.

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[9] The Court notes that the Government's affidavits do not address the Central Intelligence Agency's involvement in any transfer or "rendition" programs.

[10] Notably, the Government was also unaware of several other important facts, such as the availability of extradition treaties with Qatar or Saudi Arabia, or the consequences if a detainee's home country refuses to accept him.

Second, Petitioner faces the threat of irreparable harm based on the potential elimination of his habeas claims. It is unclear at this point whether transferring Petitioner would strip this Court of jurisdiction. See Abdah v. Bush, No. 04-CV-1254, Slip op. at 7 (D.D.C. March 29, 2005) (transfer to another country "would effectively extinguish [Petitioner's] habeas claim[] by fiat"); but see Abu Ali v. Ashcroft, 350 F. Supp. 2d 28, 54 (D.D.C. 2004) (holding that an individual detained in Saudi Arabia could survive a motion to dismiss his habeas claim based on the theory of constructive custody). However, given the danger that, upon transfer, the Court could lose jurisdiction to adjudicate Petitioner's claims, it follows that such a transfer could obviate Petitioner's right to "test the legitimacy of [his] executive detention." Lee v. Reno, 15 F. Supp. 2d 26, 32 (D.D.C. 1998). Since such a turn of events would certainly constitute a threat of irreparable harm, an order preserving the status quo in this case is appropriate.[11]

Both threats are imminent. While the Court certainly has relied upon the Government's representations that Petitioner will

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[11] The Court has the authority to issue such an injunction pursuant to the All Writs Act, 28 U.S.C. § 1651(a), which "empowers a district court to issue injunctions to protect its jurisdiction." SEC v. Vison Communications, Inc., 74 F.3d 287, 291 (D.C. Cir. 1996); see also Abdah v. Bush, No. 04-CV-1254, slip op. at 7 (March 12, 2004); Abu Ali, 350 F. Supp. 2d at 54 (quoting Alabama Great S. R. Co. v. Thompson, 200 U.S. 206, 218 (1906)) ("It is well-established that 'the federal courts may and should take such action as will defeat attempts to wrongfully deprive parties entitled to sue in the Federal courts for the protection of their rights in those tribunals.'").

not be transferred in the next several weeks, the Government is clearly maintaining its right to transfer him at any time after the Court rules upon the instant Motion. Thus, the threats are not distant or speculative, and transfer could occur in the near future.

B. Likelihood of Success on the Merits

Petitioner contends that, given Judge Green's Opinion in In re Guantanamo Cases, he has a substantial likelihood of success on the merits of his habeas claim. The Government responds that Petitioner's claim would be barred because the treaties under which he seeks review are non-self-executing, and because the review sought would encroach upon the foreign policy authority of the executive.

To justify granting a preliminary injunction, Petitioner need not show "a mathematical probability of success." Washington Metro. Area Transit Comm'n, 559 F.2d at 844. Rather, "it will ordinarily be enough" that the questions raised are so "serious, substantial, difficult and doubtful, as to make them a fair ground for litigation." Id. (quoting Hamilton Watch Co., 206 F.2d at 740).

The exact chances of success in this case are extremely difficult to assess. It is clear, however, that, at a minimum, Petitioner has raised "fair ground[s] for litigation." Washington Metro. Area Transit Comm'n, 559 F.2d at 844. The issues raised in these motions are sensitive and involve complex constitutional questions. Indeed, there are areas of disagreement even among the

judges on this Bench about the legal issues raised in these Petitions. Like the issues in Hamdi v. Rumsfeld, Padilla v. Rumsfeld, and Rasul, there is a strong probability that they ultimately will be resolved by the Supreme Court.

For example, there is disagreement about whether the detainees have any constitutional rights at all. See Khalid, 355 F. Supp. 2d 311 (holding that Guantanamo detainees have no constitutional rights); but see In re Guantanamo Cases, 355 F. Supp. 2d 311 (holding that Guantanamo detainees have some constitutional rights). There is also disagreement over whether the Court will lose jurisdiction over the cases if Petitioner is transferred to another country.[12] See Abdah v. Bush, No. 04-CV-1254, slip op. at 7 (D.D.C. March 29, 2005); but see Abu Ali v. Ashcroft, 350 F. Supp. 2d at 54. And, there is disagreement about whether the Geneva Conventions are self-executing. See Hamdan v. Rumsfeld, 344 F. Supp. 2d 152, 164 (D.D.C. 2004).

In short, even though the mathematical probability of success is impossible to assess, there can be no doubt that the questions raised here are so "serious, substantial, difficult, and doubtful,"

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[12] The Government also argues that the Supreme Court in Rasul failed to protect its jurisdiction over detainees that were transferred. Rasul, 124 S.Ct. at 2690 n.1 (noting that two petitioners had been "released from custody" to the United Kingdom). However, the issue of transfer was not before the Court, and the Rasul petitioners were released to the United Kingdom, not a country known to torture its prisoners. See Country Reports on Human Rights Practices: United Kingdom, available at http://www.state.gov/g/drl/rls/hrrpt/2004/41716.htm ("[t]he [British] Government generally respected the human rights of its citizens").

as to make them a "fair ground for litigation." Washington Metro. Area Transit Comm'n, 559 F.2d at 844.

C. Harm to Government

Petitioner argues that there is absolutely no harm to the Government if it is required to provide the Court and Petitioner's counsel with 30 days' notice before transferring him to another country. The Government contends, however, that there is great potential harm to its ability to conduct negotiations with foreign governments regarding the transfer and subsequent release of GTMO detainees, because such negotiations are often conducted in secret and divulging their details could seriously impair their success.

The Court fails to see any injury whatsoever that the Government would suffer from granting the requested preliminary injunction. Petitioner requests only 30 days' notice of transfer -- a narrow and discrete request that would impose no burden on the Government. Beyond "vague premonitions" that such relief would harm the executive's ability to conduct foreign policy, there is no concrete evidence that such notice actually will intrude upon executive authority. Abdah, slip op. at 10 (D.D.C. March 29, 2005). For example, granting Petitioner's request for 30 days' notice of transfer would not require the Court to second-guess foreign policy decisions of the executive, would not require the Government to divulge information relating to its negotiations with

foreign governments, and would not prevent the Government from speaking with one voice.[13]

In weighing the respective hardships imposed upon the parties, the balance clearly tilts in favor of Petitioner. The requested relief does not constitute even a minimal burden on the Government; at most, it would require the Government to file a few pieces of paper. Such a minimal consequence does not outweigh the imminent threats of indefinite detention, potential torture, and the elimination of Petitioner's claims before this Court.

D. Public Interest

Petitioner argues that the public has a strong interest in protecting the constitutional rights of detainees. The Government responds that the requested relief would be contrary to the public interest, because it could frustrate the Government's ability to conduct foreign policy, which ultimately could harm the nation by impairing the effectiveness of the war on terrorism.

The Government's argument is unpersuasive, however, for it "simply conflate[s] the public interest with [the Government's] own position," Abdah, 04-CV-1254, slip op. at 11 (March 29, 2005), and asks the Court to accept its predictions of harm without challenge. This the Court is not prepared to do. It is obvious beyond words that there is a strong public interest in the zealous pursuit of those who wish to commit acts of terrorism against the United

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[13] Such issues could arise if Petitioner ultimately is scheduled for transfer and actually requests additional relief. However, speculation about future requests is no justification for denying the narrow relief requested at this point.

States and its citizens. However, the narrow relief sought in this case will not compromise that effort in any way.

In contrast, the public interest undeniably is served by ensuring that Petitioner's constitutional rights can be adjudicated in an appropriate manner. G & V Lounge, Inc. v. Mich. Liquor Control Comm'n, 23 F.3d 1071, 1079 (6th Cir. 1994) ("[i]t is always in the public interest to protect the violation of a party's constitutional rights"). Retaining jurisdiction over this case is essential to protecting that public interest. Thus, the public interest clearly favors entering the preliminary injunction sought by Petitioner.

V. CONCLUSION

Petitioner has requested 30 days' notice of any transfer from GTMO, a concrete, narrow, and minimally burdensome remedy. Based on the Court's analysis of the four relevant factors set forth in the applicable caselaw, it is clear that Petitioner has satisfied his burden. He is faced with an imminent threat of serious harm, which far outweighs any conceivable burden that the Government might face. Furthermore, while it is not possible to demonstrate a "mathematical probability of success," the questions are "serious, substantial, difficult and doubtful." Washington Metro. Area Transit Comm'n, 559 F.2d at 844. Certainly, the Government cannot argue that its success on the merits is a foregone conclusion. Finally, the public interest in granting Petitioner the requested relief is strong. Therefore, for the foregoing

reasons, Petitioner's Motion for Preliminary Injunction is **granted,** and his Motion for Temporary Restraining Order is **denied as moot.**

An Order will issue with this Opinion.

April 4, 2005

/s/
Gladys Kessler
United States District Judge

Copies to: Attorneys of Record via ECF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF COLUMBIA

AMER MOHAMMON, et al. Detainee, SHARAF AL SANANI, Petitioner, and Sami Muhyideen, as Next Friend of Mr. Sharaf Al Sanani; FAHD ABU HAFSA, Petitioner, and Jamal Kiyemba, as Next Friend of Mr. Fahd Abu Hafsa; OMAR RAMAH, Petitioner, and Omar Deghayes, as Next Friend of Mr. Omar Ramah, Petitioners. v. GEORGE W. BUSH, et al., Respondents.	Civil Action No. 05-2386 (RBW)

MEMORANDUM OF UNDERSTANDING REGARDING ACCESS TO CLASSIFIED NATIONAL SECURITY INFORMATION

Having familiarized myself with the applicable statutes, regulations, and orders related to, but not limited to, unauthorized disclosure of classified information, espionage and related offenses; The Intelligence Identities Protection Act, 50 U.S.C. § 421; 18 U.S.C. § 641; 50 U.S.C. § 783; 28 C.F.R. § 17 *et seq.* and Executive Order 12958; I understand that I

may be the recipient of information and documents that belong to the United States and concern the present and future security of the United States, and that such documents and information together with the methods and sources of collecting it are classified by the United States government. In consideration for the disclosure of classified information and documents:

(1) I agree that I shall never divulge, publish, or reveal either by word, conduct or any other means, such classified documents and information unless specifically authorized in writing to do so by an authorized representative of the United States government, or as expressly authorized by the Protective Order entered in the United States District Court for the District of Columbia in the case captioned *Mohammon, et al., v. Bush et al.*, Civ Action No. 05-2386 (RBW).

(2) I agree that this Memorandum of Understanding and any other non-disclosure agreement signed by me will remain forever binding on me.

(3) I have received, read, and understand the Protective Order entered by the United States District Court for the District of Columbia in the case *Mohammon, et al., v. Bush et al.*, Civ Action No. 05-2386 (RBW), and I agree to comply with the provisions thereof.

/s/ Leslie J. Abrams
Leslie J. Abrams

January 5, 2007
Date

ACKNOWLEDGMENT

The undersigned hereby acknowledges that she has read the Protective Order entered in the United States District Court for the District of Columbia in the case captioned *Mohammon, et al., v. Bush et al.*, Civ Action No. 05-2386 (RBW), understands its terms, and agrees to be bound by each of those terms. Specifically, and without limitation, the undersigned agrees not to use or disclose any protected information or documents made available to her other than as provided by the Protective Order. The undersigned acknowledges that her duties under the Protective Order shall survive the termination of this case and are permanently binding, and that failure to comply with the terms of the Protective Order may result in the imposition of sanction by the Court.

DATED: January 5, 2007

BY: Leslie J. Abrams
(type or print name)

SIGNED: /s/ Leslie J. Abrams

CERTIFICATE OF SERVICE

I, Leslie J. Abrams, state that on January 5, 2007, I electronically filed the foregoing MEMORANDUM OF UNDERSTANDING REGARDING ACCESS TO CLASSIFIED NATIONAL SECURITY INFORMATION with the Clerk of the Court using the ECF system, which will send notification of such filings to counsel of record who are registered ECF users.

DATED: January 5, 2007

BY: Leslie J. Abrams
(type or print name)

SIGNED: /s/ Leslie J. Abrams

Approved for Public Filing by the CSO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHARAF AL SANANI, *et al.*, Detainee, Guantánamo Bay Naval Station, Guantánamo Bay, Cuba, Sami Muhyedin al Hajj, as Next Friend of Mr. Sharaf Al Sanani, Petitioners, v. GEORGE W. BUSH, *et al.*, Respondents.	No. 05-CV-2386 (RBW) (AK)

EMERGENCY MOTION OF PETITIONER SHARAF AL SANANI FOR FACTUAL RETURN

Petitioner Sharaf Al Sanani a/k/a Sharaf Ahmad Muhammad Masud (ISN 170) ("Petitioner"), a citizen of Yemen, has been incarcerated by the United States military for five years. Yet, according to the limited, publicly-available information about his incarceration, Petitioner's only "crime" was having been in Afghanistan during the months before and after September 11, 2001; having barely escaped the fighting by traveling to Pakistan; and then being handed over to the Americans by the Pakistani officials whom he had asked to help him get to the Yemeni Embassy. *See* Exhibit A (unclassified CSRT Statement of Evidence); Exhibit B (unclassified "Summarized Detainee Statement" of ISN 170). Indeed, Petitioner is not charged with a ***single act*** of hostility against the United States and its allies. *See id.* To the contrary, Petitioner – who was born in 1978 – appears to have spent the better part of his adult life in Guantánamo Bay simply because he was in the wrong place at the wrong time.

The need for counsel to have some understanding of the basis of Petitioner's detention is particularly acute because, according to an e-mail recently received from the Office for the Administrative Review of the Detention of Enemy Combatants ("OARDEC"), information pertinent to Petitioner's 2007 Administrative Review Board ("ARB") proceeding must be received no later than February 23, 2007. *See* Exhibit C. Accordingly, Respondents should be ordered to produce immediately, but in any event no later than February 9, 2007, all information pertaining to Petitioner, including all records of Petitioner's proceeding(s) before the Combat Status Review Tribunal ("CSRT "), all records of Petitioner's proceedings before any prior ARB, and all decisions or recommendations made by the CSRT or the ARB about him.[1]

Such a production would not prejudice, influence, or bear upon the jurisdictional questions pending before the Court of Appeals. To the contrary, as found by numerous judges of this Court, the information requested is essential to the representation of Petitioner in any forum. The burden on Respondents is minimal at best.

Accordingly, Petitioner requests that the Court enter an Order requiring Respondents to produce a factual return to his habeas petition, including his CSRT and ARB information, as quickly as possible but in no event later than February 9, 2007 (two weeks prior to the February

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[1] In response to the Supreme Court's decisions in *Rasul v. Bush,* 542 U.S. 466 (2004), and *Hamdi v. Rumsfeld,* 542 U.S. 507 (2004), the Department of Defense created the CSRT to review the classification of Guantanamo detainees as so-called "enemy combatants." *See* Denbeaux, et al., *No-Hearing Hearings, CSRT: The Modern Habeas Corpus? An Analysis of the Proceedings of the Government's Combatant Status Review Tribunals at Guantanamo* ("Seton Hall Report on CSRTs"), at 4, *available at* http://law.shu.edu/news/final_no_hearing_hearings_report.pdf. CSRT procedures provide that each detainee found to be an enemy combatant must be reviewed annually by the ARB. *Id.* at 35 n.30. The purpose of the ARB is to make a recommendation as to whether an enemy combatant should continue to be detained, either because he is a threat to the United States or its allies or because his continued detention is needed for intelligence or other law enforcement purposes. *See* Revised Implementation of Administrative Review Board Procedures for Enemy Combatants at U.S. Naval Base at Guantanamo Bay, Cuba, at 2, *available at* http://www.defenselink.mil/news/Sep2004/d20040914adminreview.pdf.

23 deadline for Petitioner's 2007 ARB submission). Petitioner further requests that the Court enter an Order granting this emergency motion by February 2, thereby providing Respondents with seven calendar days to produce the return. For the Court's review and consideration, a proposed Order is attached.

STATEMENT OF FACTS

I. THE PAUCITY OF PUBLICLY-AVAILABLE INFORMATION JUSTIFYING PETITIONER'S FIVE-YEAR DETENTION

Even though these and other detainee cases have been pending for years, virtually no information has been disclosed to justify the detention of the hundreds of men who remain at Guantánamo. The limited information that the government has been ordered to produce so far confirms that most of the detainees – a full ***55%*** of them, according to a recent comprehensive study – are not even alleged to have taken up arms or engaged in a single hostile act against the United States or its allies. *See* Denbeaux, et al., *Report on Guantanamo Detainees: A Profile of 517 Detainees through Analysis of Department of Defense Data* ("Seton Hall Report on Detainees"), at 6-7, *available at* http://law.shu.edu/news/guantanamo_report_final_2_08_06.pdf.

Petitioner is no exception. As with the summaries of evidence against most of his fellow detainees, the Combat Status Review Tribunal summary of the evidence against Petitioner ***omits entirely*** any entry under paragraph 3(b), the paragraph in which a detainee's purported "hostile acts" against the United States or its coalition partners should be specified. *See* Exhibit A (*available at* page 265 of http://www.dod.mil/pubs/foi/detainees/index.html); Seton Hall Report on Detainees, at 6. Petitioner is not even alleged to have been a "Fighter for" or "Member of" al Qaeda, the Taliban, or any other terrorist organization. *See* Seton Hall Report on Detainees, at 9 (noting that only 38% of the detainees are alleged to have been "Fighters for" or "Members of" a terrorist group, whereas a full 60% of the detainees are alleged merely to have been "associated

with" a terrorist organization). Instead, as with a full 60% of the detainees, Petitioner is alleged merely to have been "associated with" a terrorist organization (al Qaeda), an incredibly broad designation capable of reaching the most attenuated of relationships. *See id.*

Regarding Petitioner's alleged "association with" al Qaeda, the only specific allegations about that are that he

(a) "left Sana'a, Yemem [sic], and traveled to Kandahar, Afghanistan" in June of 2001;

(b) spent two months in Afghanistan for "religious training";

(c) traveled to Kabul, Afghanistan and Jalalabad, Afghanistan in September of 2001; and

(d) "fled Jalalabad" in December of 2001, where he allegedly "surrendered to the Pakastani [sic] Army."

See Exhibit A (page 265 of http://www.dod.mil/pubs/foi/detainees/index.html). In other words, Petitioner is alleged to have been in Afghanistan for several months in 2001;[2] to have "fled" the country in December of 2001; and to have "surrendered" to Pakistani authorities then. Not a single criminal act is alleged, much less any hostile act directed at the United States or its allies.

The "Summarized Detainee Statement" for ISN 170 (copy attached as Exhibit B), which purportedly reflects the statements made on Petitioner's behalf at the CSRT proceeding (counsel has not been able to confirm the validity of the Summarized Detainee Statement), also is publicly available, at pages 14-15 of http://www.dod.mil/pubs/foi/detainees/csrt/Set_39_2629-2646.pdf. According to this document, Petitioner expressly asserted that he is "not associated with" al Qaeda and responded to every one of the "allegations" against him, acknowledging that he

[2] As the United States Supreme Court recognized in *Hamdi v. Rumsfeld*, a party's mere presence in a country in which combat operations are taking place is an insufficient basis for concluding that a party was "part of or supporting forces hostile to the United States or coalition partners" and "engaged in an armed conflict against the United States," as required under the judicially-reviewed definition of "enemy combatant." 542 U.S. 507, 526-527 (2004).

(a) went to Kandahar for "religious purposes to visit";

(b) spent two months in Kandahar "in one place";

(c) went to "Kabul" for the purpose of observing "how they did Islamic practices in different places in Afghanistan," only to leave and go to Jalalabad because "the Afghans were trying to kill Arabs at the market" in Kabul; and

(d) traveled with a group to Pakistan, where he "surrendered to the Pakistani forces so they would take me to the Yemeni Embassy in Pakistan."

See Exhibit B, at 1.

Rather than assisting him in getting to the Yemeni Embassy, however, the Pakistani authorities "put me in jail, then transferred me to the Americans." *See id.* The Seton Hall Report on Detainees confirms that capture in Pakistan – where the government disseminated numerous flyers promising significant bounties in exchange for delivering purported al Qaeda and Taliban members – is another recurring Guantánamo theme. *See* Seton Hall Report, at 14-15 (in those instances in which the detainee captor was identified, 66% of detainees were delivered by Pakistani authorities or captured in Pakistan). Petitioner, who is epileptic, would have been a particularly vulnerable target for an opportunistic bounty hunter, because he lost his passport in the course of crossing the mountains into Pakistan. *See* Exhibit B, at 1 (explaining that he had left his passport and the rest of his belonging behind during the difficult trip across the mountains because "I was weak and could no longer carry my bag because it was really heavy").

The Statement ended with the following two sentences:

> All the rules in the United States and in the world, the person is innocent until you prove his is guilty not innocent. But, here with Americans, the Detainees are guilty until proven innocent.

Id. Given the absence of any allegations even arguably justifying his detention, Petitioner's claim of "guilty until proven innocent" appears a deplorable but apt characterization of his five-

year detention at Guantánamo, a detention apparently predicated on nothing more than the unexplained conclusion that Petitioner was somehow "associated with" al Qaeda.

II. THE NEED FOR INFORMATION IN CONNECTION WITH PETITIONER'S UPCOMING 2007 ADMINISTRATIVE REVIEW BOARD PROCEEDING

On December 22, 2006 (the Friday before the Christmas holiday), counsel for Petitioner received an e-mail from LTC David N. Cooper of OARDEC, notifying detainees' counsel of the "opportunity to provide input regarding [Petitioner] for review and consideration by the 2007 Administrative Review Boards." *See* Exhibit C. The message further stated that any submission must be made "no later than February 23, 2007." *Id.* The message also included a "Fact Sheet for Habeas Counsel Regarding Administrative Review Boards (ARBs)" (copy attached as Exhibit D), which described the purpose of the ARB procedure:

> The ARBs are an administrative review process to annually assess whether there is reason to believe that an enemy combatant might pose a continuing threat to the United States or its allies in the ongoing conflict against al Qaeda and its affiliates and supporters, and whether there are other factors warranting the enemy combatant's continued detention.

See Exhibit D, at 1. This official guidelines for the ARBs similarly describe their purpose as determining whether to recommend that an enemy combatant continue to be detained, either because he is a threat to the United States or its allies or because his continued detention is needed for intelligence or other law enforcement purposes. *See* Revised Implementation of ARB Procedures for Enemy Combatants at U.S. Naval Base at Guantanamo Bay, Cuba, at 2, *available at* http://www.defenselink.mil/news/Sep2004/d20040914adminreview.pdf.

The Fact Sheet confirms that Respondents will not allow counsel to appear at the ARB hearings, that the February 23 submission is counsel's only opportunity to submit information for consideration this year, and that any information received after Petitioner's ARB occurs "will be retained for consideration at your client's next annual review." Exhibit D, at 1. Thus, unless

counsel is able to review the factual return for Petitioner in advance of the February 23 deadline, then counsel's ability to respond to the purported evidence against Petition and "provide input regarding [Petitioner] for review and consideration by the 2007 Administrative Review Boards" (borrowing the words of LTC David N. Cooper) will be lost. At a minimum, counsel needs the factual return by February 9, two weeks before the February 23 deadline.

Despite the pressing need for this basic information, counsel for Respondents has refused Petitioner's counsel's request for production of a factual return and for prior ARB documents. *See* E-Mail from Andrew Warden to Vinay Jolly (January 8, 2007), attached hereto as Exhibit E. Accordingly, Petitioner has no choice but to seek emergency relief from this Court.

ARGUMENT

Pursuant to 28 U.S.C. § 2243 (2006), "[a] court ... entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." The order to show cause "***shall be returned within three days*** unless for good cause additional time, not exceeding twenty days, is allowed. The person to whom the . . . order is directed shall make a return certifying the true cause of the detention." *Id.* (emphasis added).

More than one year has passed since the habeas petition was filed. During this time, Respondents have failed to provide any information regarding the purported basis for holding Petitioner at Guantanamo. Accordingly, the Court should order Respondents to satisfy their legal obligation to produce a factual return detailing the basis of Petitioner's confinement on or before February 9, 2007, so that the information can be reviewed by counsel in advance of the government-imposed February 23, 2007 ARB submission deadline.

I. RESPONDENTS SHOULD BE ORDERED TO PRODUCE PETITIONER'S FACTUAL RETURN DESPITE RESPONDENTS' JURISDICTIONAL OBJECTIONS

Numerous judges of this Court have ordered Respondents to produce factual returns, notwithstanding the enactment of the Detainee Treatment Act of 2005 ("DTA"), Pub. L. No. 109-148, § 1005(e), 119 Stat. 2680, 2742, which Respondents have wrongly argued elsewhere prevents the courts from so doing.[3] In *Al-Ghizzawi,* No. 05-CV-2378 (JDB), for example, Judge Bates concluded that the DTA could not justify the government's refusal to produce factual returns. In doing so, Judge Bates reasoned that "even if respondents' interpretation of the DTA's exclusive jurisdiction provision is correct ... completion of any ... judicial review [in the D.C. Circuit under the provisions of the DTA] would necessitate that petitioner's counsel have access to the CSRT records." *Al-Ghizzawi* slip op., at 3-4. In that case, Respondents conceded that they "do not anticipate objecting to production of [the] petitioners' CSRT records for review in Court of Appeals' proceedings pursuant to [the DTA]." *Al-Ghizzawi* (dkt no. 22), at 2. Similarly, in *Kahn,* No. 05-CV-1001 (ESH), Judge Huvelle rejected Respondents' jurisdictional objection as "an inadequate justification to further delay the relief sought by petitioner." *See Kahn* slip op., at 2 ("[Factual returns] will obviously be needed regardless of the resolution of the jurisdictional question"); *see also Said,* No. 05-CV-2384 (RWR), slip op. at 4 ("Whatever forum is ultimately held to be the proper one to rule on a pre-DTA habeas petition, it is hardly sensible to withhold

[3] *See, e.g., Feghoul v. Bush,* No. 06-CV-618 (RWR), 2006 WL 3096856 (D.D.C. Oct. 31, 2006); *Al-Asadi v. Bush,* No. 05-CV-2197 (HHK) (D.D.C. Oct. 10, 2006); *Amin v. Bush,* No. 05-CV-2336 (PLF) (order requiring factual returns entered by Robertson, J.) (D.D.C. Sept. 18, 2006); *Thabid v. Bush,* No. 05-CV-2398 (ESH) (D.D.C. Aug. 18, 2006); *Alsaaei v. Bush,* No. 05-CV-2369 (RWR) (D.D.C. Aug. 14, 2006); *Amin Ullah v. Bush,* No. 05-CV-1237 (ESH) (D.D.C. Aug. 10, 2006); *Kahn v. Bush,* No. 05-CV-1001 (ESH) (D.D.C. Aug. 10, 2006); *Al-Ghizzawi v. Bush,* No. 05-CV-2378 (JDB) (D.D.C. Aug. 9, 2006); *Zadran v. Bush,* No. 05-CV-2367 (RWR) (D.D.C. July 19, 2006); *Rabbani v. Bush,* No. 05-CV-1607 (RMU) (D.D.C. June 16, 2006); *Said v. Bush,* No. 05-CV-2384 (RWR) (D.D.C. May 23, 2006); *Almerfedi v. Bush,* No. 05-CV-1645 (PLF) (D.D.C. Mar. 6, 2006)

what no one disputes petitioners will ultimately be likely to receive."); *Feghoul,* No. 06-CV-618 (RWR), slip op. at 2-3 ("Despite the lack of finality regarding the issues on appeal ... it is hardly sensible to withhold or frustrate something that no one doubts is petitioner's right – a meaningful communication with counsel regarding the factual basis of petitioner's detention.").

In accordance with these other decisions, this Court should grant Petitioner's motion. Even under the review process prescribed by the DTA (which Respondent contends applies here), Petitioner would be entitled to the information contained in the requested factual returns. *See Al-Ghizzawi,* slip op. at 3 ("[T]he outcome sought by petitioners through the present motion would ultimately be achieved regardless of the disposition of the jurisdictional question").[4]

II. RESPONDENTS' REFUSAL TO PROVIDE FACTUAL RETURNS DENIES PETITIONER MEANINGFUL ACCESS TO AND REPRESENTATION BY COUNSEL, PARTICULARLY AS TO THE UPCOMING ARB PROCEEDINGS

Respondents' refusal to produce factual returns severely prejudices Petitioner's ability to meaningfully communicate with counsel. *See Al-Ghizzawi,* slip op. at *3; Al-Anazi v. Bush, 370* F. Supp. 2d 188, 200 (D.D.C. 2005) ("[T]he factual returns appear necessary for petitioners' counsel effectively to represent petitioners. ... even initial conversations by counsel with their clients may be very difficult without access to that basic factual information"); *Kahn,* slip op. at

[4] Similarly, the Military Commissions Act of 2006 ("MCA"), Pub. L. No. 109-366, 120 Stat. 2600, does not preclude the limited form of relief sought in the instant motion. Indeed, two weeks after the MCA was enacted, Judges Roberts and Kollar-Kotelly entered orders directing Respondents to produce factual returns. *See Feghoul v. Bush,* No. 06-CV-618, 2006 WL 3096856 (RWR) (D.D.C. Oct. 31, 2006); *Lal v. Bush,* No. 06-CV-1763 (CKK) (D.D.C. Oct. 29, 2006) *(sua sponte* ordering returns post-MCA); *see also Al-Asadi v. Bush,* No. 05-CV-2197, slip op. (HHK) (D.D.C. Oct. 10, 2006) (ordering factual return over Respondents' objection, *see* dkt. no. 39, at 3 n.l, that the MCA, which had been passed by Congress but not yet signed by the President, divested the court of jurisdiction). In addition, Respondents have produced factual returns post-MCA in compliance with a pre-MCA order directing the submission of such returns. *See Thabid v. Bush,* No. 05-CV-2398 (ESH) (D.D.C.) (dkt. nos. 27, 28), at I n.1 (noting their objection that the MCA divests the district court of jurisdiction over the habeas petition but simultaneously submitting factual returns on October 17, 2006); *see also Amin v. Bush,* No. 05-CV-2336 (PLP) (D.D.C.) (dkt. no. 29) (submitting returns on October 18, 2006).

2 ("Without access to the information contained within a factual return, petitioner's counsel cannot offer anything approaching effective representation in these proceedings."); *Rabbani,* slip op. at 2-3 ("[P]etitioners' counsel should be able to review the returns now so that they can develop their case and prepare for any consultation with their clients."). This prejudice is particularly grave in the present circumstances given the already-stringent limitations associated with attorney-client communications at Guantanamo. *See Al-Ghizzawi,* slip op. at 3.

Petitioner's counsel seek basic information regarding the legal justification for his detention. Without this information, counsel cannot intelligently interview family members, investigate the facts of this case, or effectively interview, consult with, advise, or otherwise assist Petitioner in connection with any future proceedings (under the DTA or otherwise). In short, and as recognized on numerous other occasions by this Court, the information is vital to the effective representation of Petitioner.

Respondent's non-production of information, if not remedied, will soon have a very tangible and direct impact on Petitioner, because submissions for the 2007 ARB proceeding must be received by the government by February 23, 2007. As noted above, the ARB is a review process conducted annually to determine whether a detainee should be released, transferred, or further detained. It is stating the obvious to say that preparation of a meaningful submission requires an understanding of the evidence presented at Petitioner's CSRT proceeding (to justify his initial detention) as well as the evidence (if any) presented at Petitioner's prior ARB proceedings (to justify his continued detention). Without reviewing this evidence, Petitioner's counsel cannot possibly be expected to develop and prepare responsive materials for submission in connection with Petitioner's 2007 ARB proceeding. Accordingly, Respondents should be ordered to provide a factual return no later than February 9, two weeks before the deadline.

III. RESPONDENTS SHOULD NOT BE ALLOWED TO RESIST PRODUCTION OF FACTUAL RETURNS ON GROUNDS OF BURDENSOMENESS OR BECAUSE THE RETURNS MAY CONTAIN CLASSIFIED INFORMATION

In other detainee cases, Respondents have objected to the production of factual returns on the grounds that the submission of these returns burdens the government's resources and risks the inadvertent disclosure of classified information. Courts have appropriately rejected these objections. *See, e.g., Rabbani v. Bush,* No. 05-CV-1607 (RMU), at 3 (D.D.C. June 16, 2006).

Respondents have provided factual returns in many other detainee cases, and they have produced thousands of pages of tribunal transcripts to the media as a result of FOIA litigation. If Respondents can make factual returns readily available to the press – and allow members of the press to attend those hearings – they can certainly provide returns to habeas counsel. *See, e.g.,* Kathleen T. Rhem, *Reporters Offered Look Inside Combatant Status Review Tribunals,* Aug. 29, 2004, *available at* http://www.defenselink.mil/news/Aug2004/n08292004_2004082902.html (describing opportunities for media to observe a CSRT first-hand). In fact, audio recordings of certain detainee hearings were recently broadcast on National Public Radio. *See* Jackie Northam *Listening in on Detainee Hearings,* National Public Radio, Dec. 2, 2006, *available at* http://www.npr.org/templates/story/story.php?storyid=6520816; Jackie Northam, *Tapes Provide First Glimpse of Secret Gitmo Panels,* Dec. 2, 2006, National Public Radio, *available at* http://www.npr.org/templates/story/story.php?storyId=6514923.

The information sought is already in Respondents' possession, the CSRT hearings have all been completed, and all Respondents need to do is disclose copies of the returns. *See Said v. Bush,* No. 05-CV-2384 (RWR) (D.D.C.) (dkt. no 10, Ex. A) (Second Declaration of Frank Sweigart, Deputy Director of the Office for the Administrative Review of the Detention of Enemy Combatants at Guantanamo) ¶ 3 ("CSRT proceedings concluded in March 2005."); Update to Annex One of the Second Periodic Report of the United States of America to the

Committee Against Torture § II.C (Oct. 21, 2005) ("As of March 29, 2005, the CSRT Director had taken final action in all 558 cases."), *available at* http://www.state.gov/g/drl/rls/55712.htm. Respondents are well aware of the basis of Petitioner's confinement and can easily and expeditiously produce the information, as evidenced by their prompt release of tribunal transcripts to the media.

Respondents have had almost five years to interrogate Petitioner, to review the evidence relating to his continued detention, and to evaluate his status as an alleged "enemy combatant." Respondents merely have to photocopy the previously-prepared documents and put them through the routine classification process. This marginal effort does not remotely offset Petitioner's compelling interest in knowing the legal and factual basis of his indefinite detention.

Any purported concern by Respondents about the inadvertent disclosure of classified material is without merit. As recently explained by another judge of this Court, classified materials will only be provided to counsel who have obtained the required security clearances and who are subject to a comprehensive protective order, which "will guard against any inadvertent disclosures." *Rabbani v. Bush,* No. 05-CV-1607, Order, at 3 (RMU) (D.D.C. June 16, 2006). As stated in a related case, "the Government's decision to grant an individual attorney a security clearance amounts to a determination that the attorney can be trusted with information at that level of clearance." *Al Odah v. United States,* 346 F. Supp. 2d 1, 14 (D.D.C. 2004).

Accordingly, Respondents have no meaningful basis for objecting to the production of a complete set of factual returns, including but not limited to the full evidentiary record explaining the basis for Petitioner's initial confinement (such as the CSRT record) and the basis for his continued detention at Guantánamo (such as the records from prior ARB proceedings), as well as any information tending to show that Petitioner is ***not*** an enemy combatant.

IV. RESPONDENTS SHOULD BE ORDERED TO PROVIDE THE FACTUAL RETURN IMMEDIATELY, BUT IN ANY EVENT NO LATER THAN FEBRUARY 9, 2007 (TEN BUSINESS DAYS BEFORE THE GOVERNMENT'S FEBRUARY 23, 2007 DEADLINE FOR SUBMISSIONS IN CONNECTION WITH PETITIONER'S 2007 ARB PROCEEDING)

Respondents repeatedly have pointed to the military-run CSRT and ARB procedures as providing a Constitutionally-viable *habeas* alternative. Although Petitioner vigorously disagrees with this contention (because of, *inter alia*, the infirmities discussed in the Seton Hall Report on CSRTs, *see supra* n.1), basic due process mandates that Respondents provide a copy of the evidence against Petitioner so that his counsel can prepare a responsive ARB submission.

The essential requirement of due process is "the right to notice and an opportunity to be heard." *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). Here, as shown by the CSRT Summary of Evidence and the Summarized Detainee Statement, Petitioner has never been given notice of ***any*** evidence supporting ***any*** incarceration, much less a five-year detention in Guantánamo. Indeed, and even assuming the truth of the statements in the Summary of Evidence, Respondents have failed to state a claim that Petitioner constitutes an "enemy combatant." Given the Kafkaesque predicament of being detained based on allegations of perfectly legal activities, it is not surprising that Petitioner acknowledged many of the facts alleged but then implored the tribunal for an explanation as to how such acts possibly justified detention. Respondents should be ordered to explain Petitioner's detention to Petitioner, to counsel, and to the Court immediately.

Accordingly, Petitioner requests that the factual return be provided no later than February 9, ten working days before the government's deadline for submissions in connection with Petitioner's 2007 ARB proceeding. Judges in this district routinely have set short deadlines for the production of factual returns. *See, e.g., Hatim v. Bush,* No. 05-CV-1429 (RMU) (D.D.C. Aug. 22, 2005) (ordering production of returns within seven days); *Errachidi v. Bush,* No. 05-

CV-640 (EGS) (D.D.C. Apr. 21, 2005) (five days); *Abdullah v. Bush,* No. 05-CV-23 (RWR) (D.D.C. Apr. 8, 2005) (eight days); *Said v. Bush,* No. 05-CV-2384 (RWR) (D.D.C. May 26, 2006) (ordering submission of four classified returns within one week); *Errachidi v. Bush,* 05-CV-0640 (D.D.C. Apr. 21, 2005) (factual returns produced five days after docket entry requiring Respondents to show cause); *Abdullah v. Bush,* 05-CV-0023 (D.D.C. Apr. 8, 2005) (requiring factual returns within six days of order). Given Respondents' failure to provide any explanation for Petitioner's five-year detention, and given the extremely abbreviated period for counsel to prepare submissions in connection with the 2007 ARB proceedings, requiring immediate production of a factual return is both reasonable and appropriate.

Consistent with the normal one-week period for Respondents to provide a factual return, Petitioner respectfully requests that this Court enter an Order granting this motion for factual return no later than February 2, 2007, five business days (seven calendar days) before February 9, 2007.

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CONCLUSION

For the foregoing reasons, Petitioner's Motion for Factual Returns should be granted, and Respondents should be ordered to produce a complete factual return no later than February 9, 2007, to be supplemented should the information therein change.

Dated: Atlanta, Georgia
January 19, 2007

Respectfully submitted,

Counsel for Petitioner:

/s/ Vinay J. Jolly

A. Stephens Clay IV (Pursuant to LCvR 83.2(g))
James F. Bogan III (Pursuant to LCvR 83.2(g))
C. Allen Garrett Jr. (Pursuant to LCvR 83.2(g))
Vinay J. Jolly (Pursuant to LCvR 83.2(g))
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Approved for Public Filing by the CSO

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing **EMERGENCY MOTION OF PETITIONER SHARAF AL SANANI FOR FACTUAL RETURN** by serving electronically all attorneys of record for each party via the Court's Electronic Case Filing system.

Respectfully submitted,

Counsel for Petitioner:

/s/ Vinay J. Jolly

A. Stephens Clay IV (Pursuant to LCvR 83.2(g))
James F. Bogan III (Pursuant to LCvR 83.2(g))
C. Allen Garrett Jr. (Pursuant to LCvR 83.2(g))
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Approved for Public Filing by the CSO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHARAF AL SANANI, *et al.*, Detainee, Guantánamo Bay Naval Station, Guantánamo Bay, Cuba, Sami Muhyedin al Hajj, as Next Friend of Mr. Sharaf Al Sanani, Petitioners, v. GEORGE W. BUSH, *et al.*, Respondents.	No. 05-CV-2386 (RBW) (AK)

[PROPOSED] ORDER

This matter is before the Court on the Emergency Motion of Petitioner Sharaf Al Sanani for Factual Return. Upon consideration of the arguments of the parties, it is hereby

ORDERED that Petitioners' motion is **GRANTED.** On or before February 9, 2007, Respondents shall provide counsel for Petitioner Sharaf Al Sanini with redacted and unredacted complete factual returns that include but are not limited to (a) any audio recordings, verbatim transcripts, and any interim or final decisions in Petitioner's proceedings before a Combat Status Review Tribunal or an Administrative Review Board; (b) any other information pertaining to Petitioner's initial and continued classification as an enemy combatant; and (c) all evidence in the possession, custody, or control of Respondents tending to show that Petitioner is not an enemy combatant or does not present a threat to the United States or its allies.

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IT IS FURTHER ORDERED that Respondents shall promptly supplement their factual return should any of the information above be supplemented or otherwise change.

Dated: _____, 2007

_____
UNITED STATES DISTRICT JUDGE
REGGIE B. WALTON

170

UNCLASSIFIED

Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (06 October 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal [(b)(6)]
[(b)(6)]

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.

2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."

3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that the detainee is associated with al Qaida and supported forces engaged in hostilities against the United States or its coalition partners.

a. The detainee is associated with al Qaida.

1. In June 2001, detainee left Sana'a,Yemem, and traveled to Kandahar, Afghanistan with the help of an Arabic speaking guide.

2. Detainee spent two months in various Arab houses in Afghanistan for religious training.

3. Detainee in September 2001 went to Kabul, Afghanistan for two weeks and then traveled to Jalalabad, Afghanistan.

4. In late December 2001, detainee and a group of Arabs fled Jalalabad with the help of an Afghan guide, reaching a small Pakastani village where he surrendered to the Pakastani Army.

4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

464

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Exhibit R1

181

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Summarized Detainee Statement

The Detainee elected not to attend the Tribunal proceeding, but requested the Personal Representative make a statement on his behalf. The Personal Representative made the following statement:

- Regarding 3.a, I am not associated with al Qaida.
- Paragraph 3.a.1, I went there for religious purposes to visit because it was an Islamic country. I went before 11 September 2001. I was new so I went to two to three places where there were Arab people.
- Paragraph 3.a.2, true. In Kandahar, I spent two months in one place. I did not go there for religious training; I went there for a visit.
- Paragraph 3.a.3, yes, I went to Kabul but I don't remember the month. I spent two weeks in Kabul. I wanted to visit different places while I was in Afghanistan. I wanted to see how they did Islamic practices in different places in Afghanistan. I left Kabul because the Afghans were trying to kill Arabs at the market. I got scared and left to go to Jalalabad. Then, I wanted to go to Yemen. There was an Afghani person who spoke some Arabic and he had a taxi. He took me from Kabul to Jalalabad.
- Paragraph 3.a.4, there was a group of people who told me I couldn't travel by myself. I went with those people and we walked for days. We reached the Pakistani village and I surrendered to the Pakistani forces so they would take me to the Yemen Embassy in Pakistan. But, they put me in jail, then transferred me to the Americans. I did have a passport, but I had to leave it behind during my travels in the snow and the mountains. I thought I was dying. I was weak and could no longer carry my bag because it was really heavy. All of my belongings, including my passport, were in the bag.
- All the rules in the United States and in the world, the person is innocent until you prove he is guilty not innocent. But, here with Americans, the Detainees are guilty until proven innocent.

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AUTHENTICATION

I certify the material contained in this transcript is a true and accurate summary of the testimony given during the proceedings.

[redacted]

Colonel, U.S. Marine Corps
Tribunal President

UNCLASSIFIED//FOUO

From: Cooper, David N LtCol OARDEC, CYTW [mailto:david.n.cooper@navy.mil]
Sent: Friday, December 22, 2006 10:11 AM
To: [redacted]

Cc: Cooper, David N LtCol OARDEC, CYTW
Subject: COUNSEL SUBMISSION FOR ARB 3
Importance: High

Ladies and Gentlemen,

The Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC) informs you at this time of your opportunity to provide input regarding your client for review and consideration by the 2007 Administrative Review Boards (ARBs).

If you submitted matters to the ARB process last year on behalf of your client, those matters are already part of your client's records and will be considered by the 2007 ARB. There is no need for you to resubmit the same or similar documents.

If you have new information that will aid the ARBs in assessing the threat your client may continue to pose to the United States or its allies, you can submit that information through the process described in the attached fact sheet.

Please note, The Privilege Review Team must receive your submission no later than **Friday, February 23, 2007.** OARDEC cannot guarantee that materials received after that date will be included in the ARB hearings.

Please note also that the OARDEC Legal Advisor will acknowledge receipt of your submission, but will not be able to answer any substantive or procedural questions about your client's ARB of prior years or this year.

Sincerely,

DAVID N. COOPER, Lt Col, USAFR
Staff Judge Advocate
Legal Advisor
DoD, HQ OARDEC
Washington, DC

<<ARB3factsheet.doc>>

Fact Sheet for Habeas Counsel Regarding Administrative Review Boards (ARBs)

THE ADMINISTRATIVE REVIEW BOARD PROCESS

The ARBs are an administrative review process to annually assess whether there is reason to believe that an enemy combatant might pose a continuing threat to the United States or its allies in the ongoing conflict against al Qaeda and its affiliates and supporters, and whether there are other factors warranting the enemy combatant's continued detention. The ARBs began in December 2004. Information on the ARB procedures can be obtained through the Department of Defense website at:

http://www.defenselink.mil/releases/2004/nr20040915-1253.html.

TIMING OF ARBS

The Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC) schedules and conducts all annual ARB hearings. OARDEC will not be providing information to counsel on the scheduling or outcomes of the ARBs.

COUNSEL INVOLVEMENT

Counsel are not permitted to represent the detainee in the ARB hearing. However, as discussed below, counsel are provided the opportunity to submit information to the ARBs if counsel believes that information is relevant to the assessment that his/her client is no longer a threat to the United States or its allies.

TIMING FOR SUBMISSION OF COUNSEL MATERIALS

- **Friday, February 23, 2007**, is the deadline for counsel submissions for the 2007 ARB hearings. All submissions received by the Privilege Review Team by that deadline will be provided to the ARBs. Submissions received after that deadline will be provided to the ARB if it has not occurred prior to receipt. If your client's ARB occurs before the Privilege Review Team receives your submission, the information will be retained for consideration at your client's next annual review if he remains in detention.

- Any materials submitted last year will be provided to the 2007 ARBs so there is no need for you to resubmit the same or similar documents.

CLASSIFICATION REVIEW AND MARKING

In order for OARDEC to conduct a proper classification review of your submissions, information submitted by counsel for consideration in an ARB hearing must clearly annotate the sources for any portions that include references to classified, protected, or "For Official Use Only" (FOUO) information. Without the source information, we cannot properly label the documents with the appropriate classification markings; without proper markings, the documents will not be used in the ARB process.

Therefore, you should annotate your submission by indicating what information is derived from classified, protected, or FOUO sources, and indicate what document(s) that information came from (e.g., "classified exhibit R-17 to the CSRT"). This will enable us to go to the source document and then determine the proper classification level of that portion of your submission.

It is the responsibility of counsel to follow all applicable information security regulations with respect to the handling of classified, protected, or FOUO information. Counsel should work closely with the designated Court Security Officers to ensure compliance with security regulations.

HOW TO SUBMIT INFORMATION FOR ARB CONSIDERATION

It you have information to submit that does not refer to classified or protected information, you must mail it to the Privilege Review Team. The Team will ensure that your submission is delivered to the OARDEC Legal Advisor. If your submission includes references to classified or protected information, you must provide that document to the Privilege Review Team at the secure facility. A member of the Team will ensure it is properly marked and transmit it to the OARDEC Legal Advisor. The Legal Advisor will contact you to confirm receipt of your classified and unclassified submissions but will not provide any further details regarding the processing of your submission.

Unclassified material should be mailed to:

Privilege Review Team - REF - ARB Submissions
U.S. Department of Justice
Litigation Security Section
20 Massachusetts Avenue, NW
Suite 5300
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From: Warden, Andrew (CIV) [mailto:Andrew.Warden@usdoj.gov]
Sent: Monday, January 08, 2007 11:24 AM
To: Jolly, Vinay
Subject: GTMO -- Factual Returns

Vinay,

I received your voicemail on Friday. The government will oppose your motion for a factual return and ARB documents.

Best regards,

Andrew

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Approved for Public Filing by the CSO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHARAF AL SANANI, *et al.*, Detainee, Guantánamo Bay Naval Station, Guantánamo Bay, Cuba, Sami Muhyedin al Hajj, as Next Friend of Mr. Sharaf Al Sanani, Petitioners, v. GEORGE W. BUSH, *et al.*, Respondents.	No. 05-CV-2386 (RBW) (AK)

REPLY MEMORANDUM IN SUPPORT OF EMERGENCY MOTION OF PETITIONER SHARAF AL SANANI FOR FACTUAL RETURN

Petitioner Sharaf Al Sanani a/k/a Sharaf Ahmad Muhammad Masud (ISN 170) ("Petitioner") respectfully submits this reply memorandum in response to Respondent's Opposition (Dkt. no. 297) ("Opposition" or "Opp.") to Petitioner's Emergency Motion for Factual Return (Dkt. no. 296) ("Motion" or "Mot.").

INTRODUCTION

Within hours of Petitioner's CSO-approved filing of his Motion on January 23, 2007, Respondents filed a boilerplate opposition brief, advancing the same arguments previously rejected in numerous other detainee cases in this district. In the face of these cases – which, as Petitioner noted in his opening brief, ordered the production of factual returns notwithstanding the jurisdictional provisions of the Detainee Treatment Act ("DTA") and Military Commissions

Act ("MCA") – Respondents continue to assert that this Court lacks the power to grant the requested relief. The Court should reject Respondents' arguments and order the production of a factual return on or before February 9, 2007, because, among other reasons, a factual return is required no matter how the pending jurisdictional questions are resolved (including to enable Petitioner to prepare a meaningful submission for his 2007 Administrative Review Board ("ARB") proceedings by the deadline of February 23, 2007).

ARGUMENT

I. RESPONDENTS' OPPOSITION IGNORES THE MANY DECISIONS IN THIS DISTRICT GRANTING THE REQUESTED RELIEF OVER RESPONDENTS' JURISDICTIONAL OBJECTIONS

Respondents contend that by granting Petitioner's motion, the Court would be asserting "jurisdiction and authority in this case inconsistent with the DTA's investment of exclusive jurisdiction in the Court of Appeals and the MCA's withdrawal of other forms of jurisdiction." Opp., at 3-4. Respondents ignore the many cases cited by Petitioner (*see* Mot., at 8-9 & nn.3-4) ordering Respondents to produce factual information notwithstanding the DTA and the MCA.[1] Indeed, on the very date on which the Motion and Opposition were filed, Judge Sullivan entered yet another order granting the relief requested by Petitioner, rejecting Respondents' reliance on the DTA and MCA because "a factual return 'will obviously be needed regardless of the resolution of the jurisdictional question.'" *Razakah v. Bush*, Civ. A. No. 05-2370 (EGS), Mem. Op. and Order, at 2 (D.D.C. Jan. 23, 2007) (copy attached as Exhibit A) (quoting *Kahn v. Bush*, Civ. A. No. 05-1001 (ESH), Mem. Op. and Order (D.D.C. Aug. 10, 2006)).

[1] *See also, e.g., Abdessalam v. Bush*, No. 06-CV-1761 (ESH), Order (Dkt. No. 11) (D.D.C. Dec. 12, 2006) (entering protective order in case filed *after* enactment of the DTA, over Respondents' DTA and MCA jurisdictional arguments).

Respondents fail to cite a single detainee case where the relief requested by Petitioner has been denied. Instead, they argue that the Motion should be denied because the DTA and MCA authorize Petitioner to challenge the "validity of [his] detention" before the D.C. Circuit. Opp., at 2-3. Obviously, for Petitioner to challenge the validity of his detention in ***any*** forum, he must have notice of Respondents' purported basis for detaining him. That the DTA and MCA may authorize a challenge before the D.C. Circuit is a reason to grant the Motion, not deny it.

II. A FACTUAL RETURN IS NECESSARY TO CONTEST RESPONDENTS' ASSERTION THAT PETITIONER IS AN "ENEMY COMBATANT"

In his Motion, Petitioner demonstrated that the none of the publicly-available information about him remotely justified any detention at Guantánamo, much less the five years he has spent there. *See* Mot., at 3-6. In response, Respondents simply assert that Petitioner has been deemed an "enemy combatant."[2]

Under the definition of "enemy combatant" accepted by the Supreme Court in *Hamdi v. Rumsfeld*, Petitioner must be both "'part of or supporting forces hostile to the United States or coalition partners' ***and*** 'engaged in an armed conflict against the United States.'" 542 U.S. 507, 526 (2004) (emphasis added). Here, the allegations against Petitioner set forth in the CSRT summary of evidence fail to satisfy ***either*** prong. In support of the incredibly broad general allegation in paragraph 3(a) that Petitioner is "associated with" al Qaeda, Respondents offer no facts remotely establishing that he was "part of or supporting forces hostile to" the United States (and they do not explain how he was "associated with" al Qaeda, either). Petitioner is alleged

[2] In support of this assertion, Respondents rely on the Declaration of Karen Heckler, which states without further explanation that all but thirty-eight detainees went through the Combat Status Review Tribunal (CSRT) process and were deemed enemy combatants. Opp., at 2 n.1 & Ex. A; *see also id.* Ex. A, at page 3 of Ex. 1 (listing Petitioner as a detainee "who went through complete CSRT process"). This does not establish hat Petitioner has been charged with the commission of (let alone committed) any crime against the United States.

merely to have been in Afghanistan in the months prior to and following September 11. *Cf. id.* at 527 (rejecting the argument that mere residence in a country in which combat operations were taking place satisfies the definition of "enemy combatant"). Moreover, as with some 55% of the detainees for which information is available, Petitioner is not even alleged to have been "engaged in armed conflict against the United States." To the contrary, the paragraph in which the evidence supporting such an allegation would have been set forth (paragraph 3(b)) is ***omitted entirely*** from Petitioner's CSRT summary of evidence. *See* Mot., at 3.

Thus, Petitioner's counsel is at a complete and total loss to formulate any defense to Respondents' "enemy combatant" designation, because the "evidence" allegedly offered to support the designation does not state an "enemy combatant" claim. Indeed, the most basic requirement of due process – "notice and an opportunity to be heard," *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985) – has not been satisfied, because Petitioner has received no "notice" of any charges or evidence against him. It is not surprising that the "Summarized Detainee Statement" attributed to Petitioner's ISN (170) ends with the plea that the CSRT provide some facts, rather than simply presuming that Petitioner is "guilty until proven innocent." Mot., at 5.

In these circumstances, a full factual return, including materials relating to all prior ARB proceedings,[3] is necessary for Petitioner to have meaningful access to counsel, to prepare a

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[3] Respondents assert (without any citation to relevant authority) that the ARB proceedings are "not properly before this Court." *See* Opp., at 8. As Respondents concede, however, the ARB proceedings were purportedly set up to determine whether Respondents will "continue to detain an enemy combatant whose detention has already been determined by the Department of Defense to be proper." *Id.* Particularly where, as here, Respondents have offered absolutely no justification for Petitioner's initial "enemy combatant" designation, Petitioner is entitled to full production of any information purportedly justifying his continued detention in Guantánamo for over five years, whether from the ARB proceedings or otherwise.

In at least one case, moreover, an ARB panel has apparently charged a detainee with acts

defense to Respondents' "enemy combatant" designation in any forum, and to prepare an appropriate submission for Petitioner's upcoming ARB proceeding. Accordingly, Respondents should be ordered to provide a full factual return no later than February 9, 2007, two weeks prior to the February 23, 2007 deadline for ARB submissions.

III. PETITIONER'S MOTION DOES NOT IMPLICATE THE STAY ORDER

Respondents argue that Petitioners' motion should be denied because the Court has stayed this case, "especially with respect to merits-related matters." Opp., at 6. Petitioner's Motion, however, is not "merits-related" but rather seeks the most basic information to which Petitioner is entitled even if his petition ultimately is deemed meritless. 28 U.S.C. § 2243 (2006); *see also Al-Ghizzawi v. Bush*, No. 05-CV-2378 (JDB), slip op. at 3 (D.D.C. Aug. 9, 2006) (finding that petitioner's motion for a factual return "does not approach the merits [of his habeas petition]").

Moreover, as this Court itself previously has recognized, matters related to access to counsel are not subject to the stay. *See* Order (dkt. no. 66), at 2-4. In entering the protective order as to all Petitioners not subject to identification or duplication disputes,[4] this Court ruled that denying detainees access to counsel during the pendency of the stay could "undermine the efficacy of the Great Writ of habeas corpus ... this Court is unwilling to take action that might

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purportedly justifying his detention that were not presented at his CSRT review. *See* Petitioner El Falesteny's Motion for Order Requiring Respondents to Provide Counsel for Petitioner with Factual Returns, at 2 (dkt. no. 204) ("Mr. El Falesteny wrote his counsel a letter in which he indicated that an ARB had been held that had charges with significant differences from those leveled during his CSRT.") Petitioner thus will not be assured that he has a complete and accurate record of why he is being detained unless Respondents are ordered to produce documents relating to both their CSRT and ARB proceedings. Respondents do not claim that any prejudice will arise from disclosing these records.

[4] There is no such dispute regarding Petitioner, because Respondents have agreed that Petitioner Sharaf Al Sanani is Sharaf Ahman Muhammad Masud (ISN 170). *See* Mot. for Order Requiring Resp. to Provide Counsel for Pet. Sharaf Al Sanani and the Court with 30 Days' Advance Notice of Removal, etc. (dkt. no. 220), at 1 n.1.

conceivably dilute the Great Writ itself or impair its exercise." *Id.* at 3-4. Refusing to require Respondents to provide a factual return similarly would undermine the efficacy of the Great Writ, because meaningful access to counsel requires an awareness of the factual basis for Petitioner's detention. Thus, notwithstanding the continued pendency of the D.C. Circuit proceedings (which proceedings provide the basis for the stay of this and other detainee cases), other judges of this Court have ordered Respondents to provide factual returns. *See, e.g., Feghoul v. Bush*, No. 06-CV-618 (RWR), slip op. at 2-3 (D.D.C. Oct. 31, 2006) ("Despite the lack of finality regarding the issues on appeal . . . it is hardly sensible to withhold or frustrate something that no one doubts is petitioner's right – a meaningful communication with counsel regarding the factual basis of petitioner's detention.").

Numerous other judges similarly have required factual returns to be produced despite the stay.[5] Staying legal proceedings does not mean that investigative measures should be curtailed. To the contrary, in order to avoid being prejudiced by the stay, counsel must "begin preparing their defense well in advance of any ruling by the Court of Appeals." *Al-Adahi v. Bush,* 05 CV-0280 (GK), Order (dkt no. 35), at 2 n.1 (D.D.C. Apr. 29, 2005); *see also Al-Subaiy et at v. Bush,* No. 05-1453 (RMU), Order (dkt. no. 14), at 3 (D.D.C. Sept. 9, 2005). Timely production of factual returns, moreover, is critical "to ensure that the proceedings can continue in an orderly fashion in the event that the detainees prevail on appeal." *Kurnaz v. Bush,* 04-CV-1135 (ESN), (D.D.C. Apr. 12, 2005) (dkt. no. 96) at 2.

Accordingly, the pendency of the stay is no basis for denying Petitioner's Motion.

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[5] *See, e.g., Kahn v. Bush,* No. 05-CV-1001 (ESH) (D.D.C. Aug. 10, 2006) (dkt no. 20); *Zadran v. Bush*, No. 05-CV-2367 (RWR) (D.D.C. July 19, 2006) (dkt no. 36); *Said v. Bush*, No. 05-CV-2384 (RWR) (D.D.C. May 23, 2006) (dkt. no. 24); *Almerfedi v. Bush*, No. 05-CV-1645 (PLF) (D.D.C. Mar. 6, 2006) (dkt. no. 15).

IV. RESPONDENTS' REMAINING ARGUMENTS FOR REFUSING TO PRODUCE A FACTUAL RETURN ARE MERITLESS

As they have tried, unsuccessfully, in numerous other cases, Respondents seek here to avoid providing counsel with basic information regarding the five-year detention of Petitioner on the ground that "the preparation of returns is not an inconsequential task," and would impose "logistical burdens." Opp., at 7. This assertion – as well as Respondents' request for a full 90-day response period – borders on the frivolous, given Respondents' established ability to assemble the requested information in other habeas cases in mere days. *See* Mot., at 13-14.

Similarly meritless is Respondents' reliance on the fact that the returns may contain classified information. Opp., at 7. Counsel endured a rigorous security clearance process for the very purpose of obtaining the kind of information sought by this motion.

CONCLUSION

For the foregoing reasons and the reasons stated in the Motion, Petitioner respectfully requests that the Court order Respondents to produce a complete factual return, including all records relating to his CSRT and ARB proceedings, on or before February 9, 2007.

Dated: Atlanta, Georgia
January 25, 2007

Respectfully submitted,

Counsel for Petitioner:

/s/ Vinay Jolly

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James F. Bogan III (Pursuant to LCvR 83.2(g))
C. Allen Garrett Jr. (Pursuant to LCvR 83.2(g))
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CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing REPLY MEMORANDUM IN SUPPORT OF EMERGENCY MOTION OF PETITIONER SHARAF AL SANANI FOR FACTUAL RETURN by serving electronically all attorneys of record for each party via the Court's Electronic Case Filing system.

Respectfully submitted,

Counsel for Petitioner:

/s/ Vinay J. Jolly

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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ABDUR RAZAKAH, *et al.*,	)	
Petitioners,	)	
v.	)	Civil Action No. 05-2370 (EGS)
GEORGE W. BUSH, *et al.*	)	
Respondents.	)	

MEMORANDUM OPINION AND ORDER

On December 19, 2006, Petitioners Abdur Razakah and Ahmad Doe [Tourson] -- citizens of the Xinjiang Autonomous Region of China -- requested that the Court issue an order requiring respondents to provide a factual return setting forth the basis for their detention. Petitioners have been detained at the United States Naval Station in Guantanamo Bay ("Guantanamo") since 2002. In December 2005, petitioners filed a petition for habeas corpus challenging the legality of their confinement. Petitioners claim that respondents have refused to produce a factual return or any other information justifying their detention since petitioners filed their habeas petition. For the reasons stated by the Court in *Al-Ghizzawi v. Bush*, Civil No. 05-2378 (D.D.C. Aug. 9, 2006) (Mem. Op. and Order) and *Kahn v. Bush*, Civil No. 05-1001 (D.D.C. Aug. 10, 2006) (Mem. Op. and Order), the Court grants the Motion for Production of Factual Return.

Respondents do not dispute petitioners' right to notice of the factual basis for their detention or to be represented by

counsel to challenge the legality of their detention. Rather, respondents argue that this Court should deny the request for an order requiring a factual return because the Court lacks jurisdiction over the habeas petition under the Military Commissions Act of 2006 ("MCA"), Pub. L. No. 109-366, 120 Stat. 2600, and the Detainee Treatment Act of 2005 ("DTA"), Pub. L. No. 109-148, 119 Stat. 2680. The D.C. Circuit is currently considering challenges to the MCA and DTA and has not yet determined whether this Court has in fact been stripped of jurisdiction over the habeas claims of Guantanamo detainees. This is not an adequate reason to deny petitioners' motion because a factual return "will obviously be needed regardless of the resolution of the jurisdictional question." *Kahn*, Civil No. 05-1001 (D.D.C. Aug. 10, 2006) (Mem. Op. and Order) ("Without access to the information contained within a factual return, petitioner's counsel cannot offer anything approaching effective representation in these proceedings."); *see also Feghoul v. Bush*, Civil No. 06-618 (D.D.C. Oct. 31, 2006) (Mem. Order) ("Despite the lack of finality regarding the issues on appeal, . . . it is hardly sensible to withhold or frustrate something that no one doubts is petitioner's right -- a meaningful communication with counsel regarding the factual basis of petitioner's detention.").

Accordingly, it is hereby **ORDERED** that petitioners' Motion for Production of Factual Return is **GRANTED**; and it is

FURTHER ORDERED that respondents shall provide factual returns to the Court and petitioners' counsel by **March 30, 2007.** The factual returns shall provide all information necessary for a determination of whether Abdur Razakah and Ahmad Doe [Tourson] are properly subject to detention by the United States.

IT IS SO ORDERED.

Signed: Emmet G. Sullivan
United States District Judge
January 23, 2007

Senator Grassley
Questions for the Record

Michael Boggs,
Nominee: U.S. District Judge for the Northern District of Georgia

1. **During your hearing, I asked a few questions that you had already touched on in your earlier answers. I'd like to give you the opportunity to answer a few of them now, in writing.**

   a. **There may be some concern that your personal views on abortion may influence your ability to follow precedent as a judge. First, what is your commitment to following precedent, if confirmed?**

      Response: As a trial and appellate court judge for the last ten years, I have faithfully followed precedent in all cases that have come before me. If confirmed, I would remain steadfast in my commitment to follow the precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals in all cases, including the decisions in *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

   b. **Please describe what you see to be the differences in responsibility of a policy maker and a judge regarding the topic of abortion.**

      Response: My duty as a judge and the principle that has guided me during my judicial career has been faithfulness to the rule of law and the doctrine of *stare decisis*, being ever mindful of the limited role of the judiciary and of the fact that judges should not be policy makers. I have been committed to faithfully applying precedent during the entirety of my ten-year judicial career as both a state trial court and appellate court judge, during which time I have disposed of over 14,000 matters. If confirmed, I remain committed to this guiding principle with respect to matters involving women's reproductive rights as well as other matters that may come before me. On the other hand, policy makers are not bound by precedent, and by virtue of their office, they are likely to express the will of their constituency on matters of public policy including, where they deem appropriate, on matters regarding the topic of abortion.

   c. **Do you hold any views regarding abortion, religious or otherwise, that would make you unable to discharge your duties faithfully as a United States District Judge?**

      Response: No.

2. **Could you foresee a scenario in which a case dealing with abortion came before you where you ruled to uphold an abortion law?**

Response: Regardless of whether I was presented a case that involved a constitutional challenge to an abortion restriction or a case that involved a constitutional challenge to a law protecting abortion, I would faithfully apply the law to the facts of the case in a fair and impartial manner, giving complete deference to the binding precedent of the United States Supreme Court decisions in *Roe* and *Casey*, as well as any other subsequent decisions of the United States Supreme Court or the Eleventh Circuit Court of Appeals on that issue.

3. **In February 2013, you gave an interview to the Atlanta Constitution Journal where you talked about imposing a 10-year mandatory sentence on a 17 year old that you thought was unjust, but you did it because the law required you to. Please describe how you came to your decision in weighing what you believed was fair with what the law required you to do.**

Response: The specific case about which I was speaking was *State v. Wesley*, a 2006 criminal case over which I presided as a trial judge. Mr. Wesley was a 17-year-old African-American high school student with no prior criminal record when he was indicted along with two older acquaintances for his role as the getaway driver in the armed robbery of a convenience store owner at his home. Mr. Wesley did not possess a weapon, did not enter the victim's home, received no money, and called the police and reported the crime within hours after it happened. He cooperated with the police and gave statements against his co-defendants. The other defendants had substantial criminal histories and possessed weapons during the armed robbery of the victim. Mr. Wesley refused to accept a plea to robbery as a lesser-included offense, which would have avoided the imposition of a minimum mandatory sentence, instead proceeded to trial, and was convicted. In accordance with Georgia law, and consistent with the range of sentencing available, I imposed a minimum mandatory period of incarceration of ten years. Thereafter, one of the co-defendants pled guilty to robbery and was sentenced to five years in prison pursuant to a plea agreement. The third defendant, the other party with a weapon, was subsequently tried before a jury and acquitted. I granted Mr. Wesley's motion for a new trial on the general grounds of manifest injustice, and he subsequently pled guilty to robbery. Pursuant to the plea agreement, he was immediately eligible for parole. I also permitted Mr. Wesley to enter the plea as a first offender which permitted him to avoid the collateral consequences of a felony conviction. Judges must decide cases based on a faithful obligation to follow the law, wherever it leads, and that is what I did in this case.

4. **Without going into specific views you might personally hold, as a state court judge, have you ever made a ruling that follows the law or precedent that you have personally disagreed with? If so, will you briefly describe how you were able to put aside your own views and rule according to the law?**

Response: As I discussed in response to question 3, I have been obligated to impose some mandatory sentences in felony criminal cases that I may have personally disagreed with, however, my job as a judge and the principle that has guided me during my career has been to be faithful to the rule of law and the doctrine of *stare decisis*, being ever mindful of the limited role of the judiciary and that judges should not be policy makers. I think that a

review of my ten-year judicial record is the best evidence of my commitment to separating any personal views I may have from my role as an impartial decision maker. Since first offering myself for judicial office in 2004, I have fully understood, respected, and appreciated that as a judge, my duty is to follow the law regardless of any personal opinions I may have, and I believe my record demonstrates that I have done this.

5. **During your hearing, Senator Blumenthal asked a question where he said that you had indicated that the right of privacy was not in the Constitution. You answered that you did not recall ever having said that. For the record, what is your understanding of the Constitutional right to privacy?**

Response: The Supreme Court has stated that "[w]hile there is no 'right of privacy' found in any specific guarantee of the Constitution, the Court has recognized that 'zones of privacy' may be created by more specific constitutional guarantees and thereby impose limits upon government power. See *Roe v. Wade*, 410 U.S. 113, 152-153 (1973)." *Paul v. Davis*, 424 U.S. 693, 712-713 (1976). And, "[i]n *Roe* the Court pointed out that the personal rights found in this guarantee of personal privacy must be limited to those which are 'fundamental' or 'implicit in the concept of ordered liberty' as described in *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)." *Id.* Activities that fall within this definition include "matters relating to marriage, procreation, contraception, family relationships, and child rearing and education. In these areas it has been held that there are limitations on the States' power to substantively regulate conduct." *Id.* Privacy interests have also been found to exist in connection with the First Amendment's protection for freedom of assembly, *Bates v. City of Little Rock*, 361 U.S. 516, 522-523 (1960), and in connection with the Fourth Amendment's guarantee against unreasonable searches and seizures. *United States v. Jones*, 132 S. Ct. 945, 950-951 (2012). If confirmed, I would apply these precedents and all other binding precedent of all cases of the United States Supreme Court and the Eleventh Circuit Court of Appeals on the issue of the constitutional right to privacy.

6. **During your hearing, several Senators asked you about a vote on an amendment that you took regarding abortion doctors' privacy. You said that you were not aware of violence against doctors at the time of the vote. To clarify, did you mean that you were not aware of violence against abortion doctors at all when you took the vote, or that issue did not occur to you at the time when you were voting because you were considering other factors, such as a woman's right to know information about her doctor?**

Response: Thank you for the opportunity to clarify my testimony. What I meant in my testimony to the Committee was that at the time the amendment was passed by a voice vote on February 8, 2001, to the time I later cast the recorded vote for the amendment, during the busiest day of the legislative session, I did not consider the issue of violence against abortion doctors. Although I understand from recent press reports that the issue of violence against abortion doctors was debated on the House floor that day, I do not recall that debate. I was considering the bill as a whole, the purpose of which was to educate and make available to the public information concerning a physician's disciplinary histories and malpractice final judgments. As I think back on this bill, the only thing I recall being

discussed, and the issue that garnered all of the attention, of which I was aware, was the question of whether and how malpractice judgments and settlements would be disclosed.

By my statement to the Committee, I did not intend to convey categorically that I was generally unaware of claims of violence against physicians that perform abortions. I would have been aware of some of the cases of violence at that time, although I do not recall specifically hearing any of these concerns raised relative to this amendment. I should have considered this at the time the amendment was presented and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

7. **Please describe the work you've done with the adult felony drug court program.**

Response: In 2008, while serving as a trial court judge in the Waycross Judicial District, I became interested in developing a drug court program after observing that a large proportion of criminal defendants with whom I was dealing were in the criminal justice system by virtue of their substance abuse and/or mental health issues. Georgia's felony recidivism rate was roughly 30%, and my personal experience with sentencing felony offenders was that, absent addressing their substance abuse issue, they were less likely to successfully reintegrate in the community and become productive members of society. My research likewise demonstrated that many of these offenders were non-violent offenders. National evidence demonstrated that drug courts were successful in greatly diminishing the recidivism rates of these offenders and doing so at a lower cost to taxpayers. The program required the participants to complete their GED, obtain a job, regularly attend substance abuse counseling, attend frequent court sessions, and remain drug free. Upon successful completion of the program, the offender's felony case would be dismissed and the offender would have no felony criminal record.

I felt compelled to do something based on the revolving criminal justice door that I had seen in my few years on the bench, and felt particularly concerned by the disproportionate numbers of African-Americans who were caught in the criminal justice cycle due to their addiction to drugs. Soon after starting the program, I was appointed by Chief Justice Leah Ward Sears to serve as a member of the Accountability Courts Committee of the Judicial Council of Georgia where I assisted in the effort to expand drug courts throughout the state, and where I advocated for the adoption of standardized drug court rules and best practices. In 2011, I was appointed by Chief Justice Carol W. Hunstein to serve on the Governor's Special Council on Criminal Justice Reform for Georgians where we made recommendations to the General Assembly to further improve Drug Courts in Georgia.

I served as the presiding drug court judge in the Waycross Judicial Circuit until 2012. During this time I was responsible for all matters pertaining to the program, including the writing of the Participant Handbook and the Operations and Policy Manual. I recruited the local Community Service Board to fill administrative and counseling staff positions, negotiated drug screening equipment contracts and office leases, and developed all necessary court forms. I built the collaborative team framework with the public defender, district attorney, state probation, and local law enforcement agencies including the drafting

of memoranda of understanding required by the Department of Justice. I was also involved in all community outreach including building relationships with prospective employers, instituting a private drug screening program for local governments, and coordinating GED program providers. I wrote all state and federal grant applications and was responsible for the implementation of and compliance with these grants. My duties included managing the program budget and the completing of all necessary matters pertaining to the court's successful application for nonprofit tax status with the Internal Revenue Service. I found that drug courts can be an effective tool for certain offenders in reducing recidivism, putting families back together, and giving offenders an opportunity to regain their lives.

8. **In your questionnaire you gave some examples of legislation that you sponsored. Will you please elaborate on your efforts in these areas:**

   a. **Strengthening laws combating sexual exploitation of children and internet child pornography?**

      Response: Protecting children from those who would abuse or exploit them was an overarching goal of mine when I was in the Georgia General Assembly. To this end, I authored House Bill 462, the "Child Protection Act" in 2003. I consider this to be the most significant legislation that I authored or co-authored during the entirety of my legislative service and am very proud to have helped to improve the safety of Georgia's children through this Act. The Act broadened the definition of pimping to target those who were pimping minors and criminalized the act of transporting a person for the purpose of prostitution. The Act changed the description of the offense of sexual exploitation of children and made substantial changes to the definitions and penalties for computer pornography involving a child. The Act also removed a possible loophole in existing Georgia law that had been recognized in similar federal statutes when distributors of child pornography may have been able to escape prosecution by altering child pornography through "morphing" technology. The Act also brought Georgia in line with federal law by upgrading the crime of possession of child pornography from a misdemeanor offense to a felony. The Act also strengthened Georgia law regarding the use of the internet to solicit a child to commit an illegal sexual act.

   b. **Expanding and improving the law on criminal offenses against minor victims?**

      Response: While House Bill 462, the "Child Protection Act," dealt with strengthening criminal statutes regarding the sexual exploitation of children and computer pornography involving a child, I also included within that legislation language to improve the law on criminal offenses against minor victims. Through House Bill 462, I sought to strengthen Georgia's statute on sexual battery by proposing that "a person convicted of the offense of sexual battery against any child under the age of 16 years shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years." In addition, I authored House Bill 463 which concerned the state sexual offender registry. This legislation specified that creating, publishing, selling or possessing any material depicting a minor or a portion of a minor's body engaged in sexually explicit conduct was a criminal

offense and mandated reporting under the state sex offender registry. I am pleased that this legislation was passed and am hopeful that it has made Georgia's children safer.

c. Updating the State Sexual Offender Registry requirements?

Response: I authored House Bill 463 in 2003 which included several changes to Georgia's sex offender registry. Specifically, the bill mandated more timely reporting of offenders to county sheriffs, mandated reporting of changes in residence and employment addresses, required offenders to notify sheriffs in the event of a move to a new state, and required that the offender registration notification form be read and signed at the time of registration. Offenders were also required to report in person to the sheriff of their county of residence within ten days of the anniversary date of the original registration to be photographed. Protecting children from sex offenders was an important cause for me as a state legislator. I worked to improve the State Sexual Offender Registry, and offender's obligations thereto, in order to provide the general public with more timely and accurate information about the offenders living in their area so that they could more adequately protect their children.

9. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?

Response: Prior to becoming a state judge, I had the occasion to appear before many state and federal judges during my career and gleaned much from watching these jurists. The characteristics that I have seen in other judges that I have endeavored to avoid throughout my judicial career, and those that I would hope to avoid if confirmed, include judges who display a poor, intolerant, and impatient temperament, judges who display a poor work ethic and are unprepared for matters that appear before them, judges who interject bias or personal feelings into judicial decisions, judges who do not treat everyone before them equally and with respect and dignity, and judges who unreasonably delay decisions in cases. During the entirety of my ten-year judicial career as a trial and appellate court judge, I have endeavored to avoid these characteristics and believe that I have done so successfully.

10. What is the most important attribute of a judge, and do you possess it?

Response: Most importantly, judges should respect the limited role of the judiciary in our democracy and respect the rule of law by deciding each case through a fair, impartial, and unbiased application of the binding precedent to the relevant facts. Judges should not prejudge cases and be diligent in their duties, be fair, impartial, unbiased, patient, and open-minded, and should treat all parties equally and with respect, civility, and dignity. Judges should be disciplined to decide only those issues properly presented for consideration. These self-imposed disciplines are paramount to the maintenance of the balanced system of government envisioned by the Founding Fathers as they ensure public confidence in a justice system grounded in fairness and equity. I feel that I possess these attributes and that my work as a trial and appellate court judge for the last ten years demonstrate my personal commitment to these attributes.

11. 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 exist to do justice. In many instances, a litigant's only experience with the judicial system may be one case – his or her own. Everything they think or know of the judicial system may well be based upon that one case. As such, it is important that judges exercise the appropriate temperament in dealing with litigants, lawyers, and the general public. Public confidence in a fair, impartial and unbiased judicial system is paramount to our system of democracy and can be strengthened through the exercise of appropriate judicial temperament. The appropriate temperament of a judge includes that a trial judge should be patient, impartial, and fair, giving each litigant a full and fair opportunity to be heard. Judges should be civil and treat each litigant equally and with dignity and respect. I believe that I possess these attributes and that I have consistently applied them during my judicial career over the last ten years.

12. 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 being faithful to my oath and to following the binding precedents of higher courts giving them full force and effect regardless of whether I agree or disagree with the precedent. I believe that my judicial career as a trial and appellate judge demonstrates my faithfulness to following the precedent of higher courts.

13. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

Response: Yes.

ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

Response: It is my understanding that he is referring to same-sex marriages that a State has recognized as lawful.

iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes. As I understand the holding in *Windsor*, it applies to Section 3 of the Defense of Marriage Act's prohibition against federal recognition of same-sex marriages that a State has recognized as lawful.

iv. **Are you committed to upholding this precedent?**

Response: If confirmed, I would faithfully follow *Windsor*, and any other relevant precedent from the United States Supreme Court and Eleventh Circuit Court of Appeals, on this issue as with any issue.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The entirety of all majority opinions of the Supreme Court are binding precedent and should be faithfully followed by lower court judges unless specifically overruled by later Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I would faithfully follow the entirety of the majority opinion in *Windsor*, and any other relevant precedent from the United States Supreme Court and Eleventh Circuit Court of Appeals on this, or any other issue.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.

Response: Yes. The entirety of all majority opinions of the United States Supreme Court are binding precedent and should be faithfully followed by lower court judges unless specifically overruled by later United States Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I would faithfully follow the entirety of the majority opinion in *Windsor*, and any other relevant precedent from the Supreme Court and Eleventh Circuit Court of Appeals on this, or any other issue.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The entirety of all majority opinions of the Supreme Court are binding precedent and should be faithfully followed by lower court judges unless specifically overruled by later Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I would faithfully follow the entirety of the majority opinion in *Windsor*, and any other relevant precedent from the Supreme Court and Eleventh Circuit Court of Appeals on this, or any other issue.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The entirety of all majority opinions of the Supreme Court are binding precedent and should be faithfully followed by lower court judges unless specifically overruled by later Supreme Court decisions.

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I would faithfully follow the entirety of the majority opinion in *Windsor*, and any other relevant precedent from the United States Supreme Court and Eleventh Circuit Court of Appeals on this, or any other issue.

14. **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 confronted with a case of first impression, I would apply the same analysis that I have used throughout my judicial career. First, I would study and apply the text of the applicable statute, regulation, or constitutional provision at issue and apply the canons of statutory construction to determine whether the provision's meaning is clear and unambiguous. If the meaning is clear and unambiguous, I would apply the provision as written. If the plain meaning is not clear, then I would apply the same canons of construction and look to analogous precedents from the United States Supreme Court and the Eleventh Circuit Court of Appeals for guidance. If additional assistance were needed, I would look to persuasive authority of the other jurisdictions within the United States for guidance.

15. **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: It is a judge's job to render decisions consistent with controlling precedent regardless of personal beliefs they may have, and I do abide by this. I would apply the binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals without regard to whether I believed the court erred in the decision. I have faithfully followed binding precedent throughout my judicial career as a trial and appellate judge, and I would continue to do so if confirmed as a district judge.

16. **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 federal courts should find them to be unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000). In the rare circumstance when I would be called upon to consider the constitutionality of a statute, I would apply the standards established by the United States Supreme Court and the Eleventh Circuit Court of Appeals in my analysis.

17. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No. It is not appropriate for judges to rely on foreign law or the views of the "world community" in determining the meaning of the United States Constitution.

18. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I have served as a state legislator and have great respect for the distinct and markedly different roles of the legislative and judicial branches of government. Judges should not be policy makers. I have been a judge for ten years on both the trial and appellate courts in Georgia. My judicial career, and the decisions I have rendered, demonstrates that my decisions will be grounded in precedent and the text of the law and equally evinces my respect for the rule of law and the limited role of judges in our democracy. I have never allowed my personal views, political ideology or other motivation to guide the disposition of any case with which I have been involved. I understand that if confirmed as a district court judge, my duty will be to decide cases fairly and impartially, without political ideology and without bias, by faithfully and uniformly applying binding precedent to the properly presented facts before me. If confirmed as a district judge, I would continue this strict adherence to the rule of law and continue to remain grounded in precedent and the text of the law alone in reaching my judicial decisions.

19. 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 job as a judge, and the principle that has guided me during my ten-year judicial career, is to be faithful to the rule of law and the doctrine of *stare decisis*, being ever mindful of the limited role of the judiciary and that judges have no role in making public policy. The best evidence of the type of judge I will be is the type of judge that my ten-year judicial record reflects that I am. I think that a review of my judicial record demonstrates that I am committed to separating my personal opinions from my job as an impartial decision maker and is the best evidence of my commitment to treating all who come before me equally, respectfully, impartially and without bias. A review of my opinions demonstrates that I have been faithful to the rule of law and that I have decided cases objectively, impartially and without bias. If confirmed, I would continue to abide by the principle of treating everyone equally and fairly under the law and deciding cases without any regard to any personal views I may have.

20. If confirmed, how do you intend to manage your caseload?

Response: I currently serve on one of the busiest intermediate state appellate courts in the United States and previously served as a state trial court judge in a very large and busy judicial circuit. I have experience managing a busy caseload. If confirmed, I would take an active role in managing my caseload by setting reasonable but firm scheduling orders, and utilizing court personnel and magistrate judges to facilitate the efficient resolution of

pretrial matters. My experience as a former trial judge has taught me that judges should work hard, be prepared, and actively engage the lawyers in their cases. This means being available to handle discovery disputes or for unplanned conferences as necessary. I would continually monitor my cases in an effort to ensure that the public's access to the court is not affected by caseload issues and that matters are resolved as efficiently as possible.

21. 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: As a former trial court judge with jury trial dockets in four counties, I have experience in managing a litigation caseload. Judges have a role in controlling the pace and conduct of litigation and in ensuring cases move through the system in a manner that is fair to the litigants and reasonable for the lawyers. Efficient case management by the judge is imperative in ensuring the public's reasonable access to the courts while building public confidence in our judicial system as an efficient means of resolving disputes. As I have in the past, I would use my strong work ethic to personally engage in the cases assigned to me, and I would set firm yet reasonable scheduling orders and make myself available to counsel as necessary to ensure the pace of litigation fulfills the courts obligation to provide an efficient means for dispute resolution.

22. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: As an appellate court judge, I decide cases beginning with a thorough review of the record submissions of the parties. I review pertinent and applicable decisions from the Georgia Supreme Court and the Court of Appeals of Georgia, and I review the jurisdictional posture of the case and the applicable standard of appellate review. When available, I also consider the oral arguments of the parties. Thereafter, I apply the facts of the case in a fair, unbiased, and impartial manner to the applicable law in reaching a decision that is consistent with binding precedent. Ultimately, all of my decisions are based on a faithful adherence to the rule of law and the doctrine of *stare decisis* coupled with a faithful application of our appellate standard of review in each case.

23. 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.

24. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on May 20, 2014 and prepared my responses on May 20-27, 2014. I submitted my responses to the Department of Justice Office of Legal Policy for review. I then finalized my responses and authorized their transmittal to the Committee.

25. **Do these answers reflect your true and personal views?**

Response: Yes.

Questions for the Record
Senator Ted Cruz
Michael P. Boggs
Nominee, United States District Judge for the Northern District of Georgia
U.S. Senate Committee on the Judiciary

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 faithful to the doctrine of *stare decisis* and the rule of law, being mindful and respectful of the proper and limited role of the judiciary within our democracy. Throughout my entire judicial career, I have committed to working hard, being prepared and diligent in managing my cases, and being mindful of the importance of each case to the litigants. I strive to decide cases fairly, impartially and without bias, and to apply binding precedent to the facts in a fair and impartial manner. Judges should be fair, open-minded, and not predisposed to any particular personal or public policy position and should treat all parties equally and with civility and respect. I am not familiar with the personal judicial philosophies of the Supreme Court Justices of the Warren, Burger, or Rehnquist courts sufficiently well to state which 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 used originalism to interpret the Constitution and recently used the original public meaning approach in *District of Columbia v. Heller*, 554 U.S. 570 (2008). I would apply this and all other relevant precedent if confirmed.

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 circumstance would I overrule precedent. I have served as a state trial court judge and an appellate judge. I have adhered to the doctrine of *stare decisis* during the entirety of my judicial career. This ensures consistency and predictability to the rule of law. If confirmed, I am committed to continuing to honor the doctrine of *stare decisis* and to strictly following the controlling precedents established by the United States Supreme Court and the Eleventh Circuit Court of Appeals.

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: During my judicial career, I have followed binding precedent fairly and impartially without regard to personal views or opinions. The *Garcia* case is binding precedent, and if

confirmed as United States District Court Judge, I would apply that precedent and the binding precedent of all cases of the United States Supreme Court and the Eleventh Circuit Court of Appeals fairly, impartially and without regard to personal views or opinions.

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 broad categories. 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 Eleventh Circuit precedent in analyzing the scope of Congress' 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 President's ability to issue executive orders or executive 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); *see also Medellin v. Texas*, 552 U.S. 491, 524 (2008). These cases are binding precedent. If confirmed, I would apply these and other applicable Supreme Court precedent and Eleventh Circuit precedent defining the 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?

Response: The United States Supreme Court has held that rights are "fundamental" for purposes of substantive due process when they are freedoms protected by the Constitution 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) (citations omitted) (internal quotation marks omitted). If confirmed, I would apply this and all other applicable United States Supreme Court and Eleventh Circuit precedent to guide the disposition of matters involving questions of "fundamental" rights for purposes of the substantive due process doctrine.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The United States Supreme Court has held that a classification is subject to the heightened scrutiny analysis under the Equal Protection Clause when it "classifies by race, alienage, or national origin" or classifies "based on gender." *See City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Classifications that "impinge on personal rights protected by the Constitution," are also appropriate for the application of heightened

scrutiny. *Id.* If confirmed, I would follow United States Supreme Court and Eleventh 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 an appellate judge or if confirmed as a district judge, it would be inappropriate for me to express any opinion as to the anticipated use of racial preferences in public higher education. If confirmed as a United States District Court Judge, I would apply the precedent established in *Grutter* and in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), as well as binding precedent from the Eleventh Circuit, when addressing matters involving racial preferences in public higher education regardless of any personal views I may have.

Chairman Patrick Leahy
Questions for the Record
Nomination of Michael Boggs
To Be U.S. District Judge for the Northern District of Georgia
May 20, 2014

1. **As a United States Senator, I believe that there is no greater responsibility than the one I make when I take the oath of office and affirm that I will "support and defend the Constitution of the United States." At your hearing, in an exchange with Senator Franken, you testified that one of the differences between your role as a judge and your previous role as a legislator was that, "When I was a legislator, I did not have an obligation to be faithful to the rule of law." Why do you believe legislators are not obligated to be faithful to the rule of law?**

   Response: All government officers take oaths acknowledging an obligation to uphold the Constitution thereby representing that the rule of law is superior to the rule of persons. I did not mean to imply that legislators are above the law or not bound to the laws of our society. I simply used the term "rule of law" to differentiate the role of a judge from that of a legislator and to emphasize that members of the judiciary are particularly obligated to follow precedent and not decide cases based on popular will, unless that will is enacted through the legislative process and is consistent with the Constitution. While it is true that legislators themselves are subject to the rule of law as a constraint on their behavior, as are all citizens, I simply meant that legislators do not have the same obligations of faithfulness to precedent as judges. Legislators have discretion to make any law deemed appropriate within its powers, whereas the judiciary has a more specific and constrained duty of adherence to precedent.

2. **You testified at your hearing that your legislative votes related to the Confederate symbol on the Georgia state flag represented the will of your constituents. Given that your house district had a sizable African American constituency, did you consider their views when you voted against changing the Georgia flag? If so, what steps did you take to become aware of their views?**

   Response: I considered the views of all of my constituents when I cast that vote thirteen years ago. The vote on the flag occurred with very little notice. Most of my colleagues and I were only given notice that a vote would occur just hours prior thereto and only then did we see for the first time the flag we were voting to adopt. While the issue of changing the flag was generally a topic of discussion within my legislative district at the time, I was quoted very shortly before that vote as saying that I did not think the vote would occur. As a result, there was virtually no time to speak with those within my legislative district about this issue. I did however have the occasion prior to the vote to speak with several African-American constituents, including both elected officials and members of the general public. While they generally made known their support for changing the flag, those with whom I spoke always stated that they supported me regardless of how I voted, and indeed, when I faced a challenger in my 2002 Democratic primary election, roughly one year after the flag vote, I was re-elected with 90% of the vote in my district.

3. **During your hearing, in response to Senator Hirono's question asking whether you had ever voted your conscience against the will of your constituents while you were a state legislator, you testified that you had voted for reapportionment maps supported by Democrats but not supported by the majority of your constituents.**

    a. **Why do you believe this was a "vote of conscience" for you, as opposed to one of alignment with your political party's interest?**

    Response: For me, voting my conscience as a legislator sometimes meant casting votes contrary to what I considered to be the will of the majority of my constituents, and on other occasions voting my conscience meant casting votes contrary to what party leadership desired. I did not mean to suggest that my particular "votes of conscience" were necessarily cast only when presented with a moral choice on a public policy matter. During the majority of my legislative service, my district was rapidly changing from a majority Democratic district to a majority Republican district. Votes for the Democratic Party reapportionment maps, while very well in alignment with my party at the time, were viewed by many of my constituents as not in their best interest. However, I believed that the maps presented a reasonable compromise and were favorable to my district. For these reasons, I voted my personal conscience on that issue.

    b. **Please describe any other examples of votes you believed were based on your conscience against the will of the majority of your constituents.**

    Response: While a member of the Georgia legislature I had the occasion to cast thousands of votes, some of which I am sure were based on my personal beliefs which differed from that of the majority of my constituents or were not in alignment with my political party's interest. After ten years, I do not recall every vote I cast and do not recall any other specific examples of votes I believed were based on my conscience against the will of the majority of my constituents, although I'm sure it happened.

4. **In 2004, while a member of the Georgia legislature, you spoke on the floor in support of a resolution calling for a state constitutional amendment banning same-sex marriages. During your speech, you stated that lawmakers should be able to come together because such a ban was "commonsensical [and] premised on good conservative Christian values." You also suggested that the significant step of amending the state constitution was warranted to protect against "the dangers we face with respect to activist judges."**

    a. **Who do you consider to be an "activist judge"?**

    Response: It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for a federal district court judgeship, to express my personal opinion about whether any particular judge is "activist." Respectfully, when I talked about activist judges in that floor speech ten years ago as a state legislator, I was referring generally to the possibility of a judge ruling that same-sex marriage

was constitutional. This issue looked different to me ten years ago when I was serving in a very different role as a state legislator than it looks now, especially after having been a judge for the last ten years. Federal judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully apply precedent whether it be *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decision of the United States Supreme Court or the Eleventh Circuit Court of Appeals. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly.

b. Was the Supreme Court "activist" when it decided *Roe v. Wade (1973)*?

Response: This case is binding precedent, and if confirmed as United States District Court Judge, I would apply this precedent and any other precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals fairly and impartially. During the entirety of my ten-year judicial career I have faithfully followed binding precedent.

c. Was Justice Kennedy an "activist" when he wrote the majority opinions in *Lawrence v. Texas*, 539 U.S. 558 (2003) or *United States v. Windsor*, 570 US 12 (2013)?

Response: These cases are binding precedent, and if confirmed as United States District Court Judge, I would apply these precedents and the binding precedent of all cases of the United States Supreme Court and the Eleventh Circuit Court of Appeals fairly and impartially. During the entirety of my ten-year judicial career I have faithfully followed binding precedent.

5. **Please describe your understanding of the scope of the constitutional right to privacy. What do you believe to be the key elements of that right?**

Response: The Supreme Court has stated that "[w]hile there is no 'right of privacy' found in any specific guarantee of the Constitution, the Court has recognized that 'zones of privacy' may be created by more specific constitutional guarantees and thereby impose limits upon government power. See *Roe v. Wade*, 410 U.S. 113, 152-153 (1973)." *Paul v. Davis*, 424 U.S. 693, 712-713 (1976). And, "[i]n *Roe* the Court pointed out that the personal rights found in this guarantee of personal privacy must be limited to those which are 'fundamental' or 'implicit in the concept of ordered liberty' as described in *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)." *Id.* Activities that fall within this definition include "matters relating to marriage, procreation, contraception, family relationships, and child rearing and education. In these areas it has been held that there are limitations on the States' power to substantively regulate conduct." *Id.* Privacy interests have also been found to exist in connection with the First Amendment's protection for freedom of assembly, *Bates v. City of Little Rock*, 361 U.S. 516, 522-523 (1960), and in connection with the Fourth Amendment's guarantee against unreasonable searches and seizures. *United States v. Jones*, 132 S. Ct. 945, 950-951 (2012). If confirmed, I would apply these precedents and all other

binding precedent of all cases of the United States Supreme Court and the Eleventh Circuit Court of Appeals on the issue of the constitutional right to privacy.

6. **At your nomination hearing, you testified about a case when you were a trial court judge, wherein the lawyer on the case told you that he had presented the case to your circuit's chief judge who refused to hear it. The case involved a woman who identified herself as a lesbian in chambers on the question of approving her adoption of a child from foster care. You testified that you heard the case and approved the adoption. Understanding that an adoption case may be sealed, I do not expect you to provide any identifying details on this case. However, can you provide me with the name and contact information of any person who can personally verify the facts of the matter as you testified to the Committee?**

   Response: Due to privacy concerns, this answer was provided confidentially to the chair and ranking member.

7. **In the past several years, the Supreme Court struck down a number of federal statutes most notably several designed to protect the civil rights of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, *Flores v. City of Boerne*, 521 U.S. 507 (1997), *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000), *Board of Trustees v. Garrett*, 531 U.S. 356 (1999), and *Coleman v. Court of Appeals of Maryland*, 132 S. Ct. 1327 (2012). The Supreme Court also struck down statutes as falling outside the authority granted to Congress by the Commerce Clause in the case of *U.S. v. Lopez*, 514 U.S. 549 (1995), and *U.S. v. Morrison*, 529 U.S. 598 (2000). Similarly, a majority of the justices of the Court determined that core provisions of the Affordable Care Act were beyond the scope of the Commerce and Spending Clauses in *Nat'l Federation of Independent Business v. Sebelius*, 567 U.S. 1 (2012), and upheld the individual mandate under the taxing power. The Court struck down other federal statutes as violations of the 10th Amendment or the 11th Amendment, and part of a landmark Voting Rights Act, without articulating any clear basis for its unconstitutionality in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). These cases rely upon an expansive view of state's rights, and have been described as shifting powers to state governments as Congressional authority is diminished.**

   (a) What is your view of these decisions? In your opinion, do they constitute "judicial activism"?

   Response: These cases are binding precedent, and if confirmed as United States District Court Judge, I would apply these precedents and the binding precedent of all cases of the United State Supreme Court and the Eleventh Circuit Court of Appeals fairly and impartially. During the entirety of my ten-year judicial career I have faithfully followed binding precedent.

   (b) What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, the Commerce Clause, under Section 5 of the Fourteenth Amendment, and Section 2 of the Fifteenth Amendment?

Response: United States Supreme Court precedent dictates that the Commerce Clause allows congressional regulation of commerce in three broad categories. 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, 558-559 (1995); *see also United States v. Morrison*, 529 U.S. 598, 609 (2000).

"Section 5 of the Fourteenth Amendment grants Congress the power to enforce the substantive guarantees contained in Section 1 by enacting appropriate legislation. Congress is not limited to mere legislative repetition of th[e Supreme] Court's constitutional jurisprudence. Rather, Congress' power to enforce the Amendment includes the authority both to remedy and to deter violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." *Board of Trustees v. Garrett*, 531 U.S. 356 (2001) (internal citations and quotation marks omitted.)

"[Section] 2 of the Fifteenth Amendment expressly declares that Congress shall have power to enforce this article by appropriate legislation. By adding this authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in Section 1. It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. *South Carolina v. Katzenbach*, 383 U.S. 301, 325-326 (1966) (internal quotations omitted.) *See also Shelby County v. Holder*, 133 S. Ct. 2612 (2013). Therefore, "in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting." *Katzenbach, supra.*

If confirmed, I am committed to follow binding precedent from the United States Supreme Court and the Eleventh Circuit in analyzing the scope of congressional power under Article I of the Constitution.

8. **Canon 7 in the Georgia Code of Judicial Conduct states that Judges shall refrain from political activity inappropriate to their judicial office, specifically that a judge or a candidate for public election to judicial office shall not publicly endorse a candidate for public office or make a contribution to a political organization. At your nomination hearing you confirmed in your testimony that you made a contribution to Georgia Conservatives in Action in September of 2012. Did you also make an earlier contribution in April 2012 to the same group for $1,000?**

Response: Yes. I am very respectful and mindful of the obligations of judges pursuant to the Georgia Code of Judicial Conduct and throughout my ten-year judicial career have endeavored to be faithful to and exceed my legal obligations pursuant thereto. During my entire judicial career, I have never publicly endorsed any candidate for public office nor made a contribution to a "political organization" as that term is defined by the Georgia Code of Judicial Conduct.

9. **You testified that at the time you made your contribution to Georgia Conservatives in Action in 2012 you had no knowledge that this organization sponsored or endorsed candidates for public office. A quick Google search reveals that in December of 2011, Georgia Conservatives in Action publicly endorsed Chris Vaughn for U.S. Congress and issued a corresponding press release and in 2010, Georgia Conservatives in Action publicly endorsed Nathan Deal in the Georgia GOP Gubernatorial Runoff.**

   a. **What due diligence did you exercise in advance of contributing $2500 to Georgia Conservatives in Action?**

      Response: In exercising due diligence prior to my former campaign committee's donations, I reviewed the pertinent section of the Code of Judicial Conduct defining "political organization" and reviewed Georgia statutory authority regarding the disposition of campaign contributions, paying particular attention to O.C.G.A. § 21-5-33 (b)(1)(a), which expressly permitted contributions to a nonprofit organization. I also spoke personally with the representative of the organization who solicited the contributions and verified that the organization was duly incorporated as a nonprofit "social welfare" organization under Section 501(c)(4) of the Internal Revenue Code. As such, I was aware that the organization was an entity that was "primarily engaged in promoting in some way the common good and general welfare of the people of the community," *see* 26 C.F.R. Section 1.501(c)(4)-1(a)(2), and that they did not meet the definition of a "political organization" under the Code of Judicial Conduct. I was also aware that 501(c)(4) organizations were permitted to endorse candidates under the tax code. That I was familiar with the organization's tax exempt status at the time, is evidenced by my notation of "501 C4 Donation" on the April 6, 2012 check and my notation of "nonprofit contribution per: O.C.G.A. § 21-5-33(b)(1)(A)" on the September 27, 2012 check.

   b. **How did you come to be associated with this organization?**

      Response: I have personally known the co-founders of this organization for nearly fifteen years – well before the existence of GCIA, which was incorporated as a Georgia nonprofit corporation in 2009. I have known them to be active in local and state government public policy matters, educating the public on matters of public policy and encouraging others to help them in advocating for issues of importance to them and to South Georgia. The Mission Statement of GCIA is to "educate, motivate and activate grass roots conservatives to have an effective voice in government," and that is what I understood the group to do.

   c. **What Georgia Conservatives in Action events or fundraisers did you attend as a sitting judge or candidate for judge?**

      Response: To the best of my recollection, I attended the organization's Economic Development Summit in Waycross, Georgia in April of 2012 and the organization's meeting in Waycross, Georgia in October of 2010 where Wayne LaPierre spoke on "Defending America's Future." The organization's co-founders have personally

informed me that these events were not fundraisers. There may have been other events that I attended that I do not recall, although I have checked with the organization and they have no records of my attendance at any other GCIA events.

d. Why did you decide to financially support Georgia Conservatives in Action?

Response: One of the organization's co-founders asked if I could make two corporate donations to this organization to help with the costs associated with two specific events.

10. **According to Canon 2 of the Code of Conduct for United States Judges, "A judge should avoid impropriety and the appearance of impropriety in all activities."**

a. In 2012, as a sitting state appellate court judge, did you attend a fundraiser in support of Tyler Harper, then-candidate for State Senate from Georgia's 7th District?

Response: Yes.

b. Do you think your attendance may have given the appearance of an endorsement for then candidate Tyler Harper?

Response: In January of 2012, I attended a fundraiser for State Senator-elect Tyler Harper. At the time I attended, I fully intended to run for re-election to the Court of Appeals. Therefore, I was authorized to attend this event or any fundraiser for any other political candidate and did so with a full understanding that the attendance was authorized by the Code of Judicial Conduct and the Advisory Opinions stated therein.

Specifically, Canon 7(A)(2) of the Georgia Code of Judicial Conduct provides that "[j]udges holding an office filled by public election between competing candidates, or candidates for such office, may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election." Relying in part on this provision, the Judicial Qualifications Commission has ruled in a number of Advisory Opinions that elected judges and judicial candidates may attend fundraisers for partisan candidates. *See, e.g.,* Opinion No. 90 (October 24, 1986) (judicial candidate may attend fundraisers for partisan candidates); Opinion No. 124 (July 29, 1988) (if a judge has made the decision to run for election or re-election to office, he is a candidate and thus may attend a fundraising event for a partisan, non-judicial candidate if he is acting on his own behalf and the purpose of his attendance is to encourage individuals to vote for him in a future election); Opinion No. 203 (Dec. 15, 1995) (in attending a fundraising event for another candidate, a judge is not making a prohibited public endorsement) adding that "[t]he Commission makes this determination in recognition of the fact that most judges in this state must themselves periodically seek election to public office, and any other conclusion might be viewed as an unreasonable and unnecessary burden on the political process."

I am confident that my participation in attending fundraisers for any partisan or nonpartisan candidate while I have been a judge does not constitute a public endorsement of a candidate for public office in violation of Canon 7A. This conclusion is expressly supported by the provisions of Canon 7A(2) of the Georgia Code of Judicial Conduct and Advisory Opinion No. 203 (Dec. 15, 1995).

c. **Do you believe your attendance at a candidate fundraising event would avoid "the appearance of impropriety in all activities" under the Federal Code of Conduct?**

Response: It would not. It would also violate Canon 5 of the Code of Conduct for United States Judges, which prohibits attendance at a dinner or other event sponsored by a political organization or candidate. While I currently abide strictly by the Georgia Code of Judicial Conduct, which expressly permits attendance at fundraisers in recognition of the fact that judges in Georgia are elected, if confirmed, I would abide strictly by the Code of Conduct for United States Judges.

d. **Do you believe your attendance at a candidate's political fundraiser would comply with the spirit of the Code of Conduct?**

Response: As noted above, it would not comply with the spirit or with the letter of Canon 5 of the Code of Conduct for United States Judges, while it does comply with the Georgia Code of Judicial Conduct. If confirmed, I would abide strictly with the letter and spirit of the Code of Conduct for United States Judges.

e. **Have you attended any other fundraisers while serving as a judge, running for election as a judge or since you have been nominated to be a federal judge?**

Response: As expressly permitted by the Georgia Code of Judicial Conduct, I have periodically attended various partisan and nonpartisan candidate fundraisers throughout my ten-year judicial career. I have not done this regularly. Since I was nominated to be a federal judge, I attended one fundraiser for a candidate running in a nonpartisan election for Superior Court Judge in Atlanta. In each instance, I fully and strictly complied with the Georgia Code of Judicial Conduct and the Judicial Qualifications Commission Advisory Opinions which authorize judges to attend fundraisers.

Questions for the Record from Senator Dianne Feinstein for Judge Michael P. Boggs

May 20, 2014

(1) An article you submitted to the Committee from the *Blackshear Times* and dated Wednesday, January 7, 2004 states that you "told the Blackshear Rotary Club Tuesday" that you would "run for Superior Court Judge." When did you first become a candidate for Superior Court Judge? Did you become a judicial candidate on or before Tuesday, January 6, 2004?

Response: Yes. Pursuant to the Georgia Code of Judicial Conduct I became a judicial candidate when I received my first campaign contributions during the first few days of January 2004.

(2) When a state constitutional amendment to ban same-sex marriage came before the Georgia House in February 2004, you were the first to rise and speak in support.

a. **Why did you vote for this amendment?**

Response: When I voted in favor of this amendment over ten years ago as a Democratic state legislator, I was personally opposed to same-sex marriages. The overwhelming majority of my constituents agreed with this position at that time as evidenced by the fact that when the Constitutional Amendment was presented to the public for a vote in November of 2004, 90% of the constituents from my legislative district who voted, voted in favor of the proposed Amendment. This issue looked different to me ten years ago when I was serving in a very different role as a state legislator than it looks now, especially after having been a judge for the last ten years.

b. **Why did you choose to speak on it and to be the first speaker to rise in support of the measure, given that, as reflected in your questionnaire responses, you rarely spoke on the House floor?**

Response: I spoke on this resolution because the Democratic Speaker of the House asked me to speak on it, just prior to the call of the resolution for debate. Absent this request, I would not have spoken on the resolution. The Speaker indicated to me that he decided to ask me to speak and to call me as the first speaker to demonstrate that there was support for this resolution within the state from among rural Democrats. Forty-eight House Democrats supported the resolution. It passed by three votes.

c. **In your remarks, you said: "I want to stand before you today and tell you that it's my opinion, both as a Christian, as a lawyer, and as a member of this House that it's our opportunity to stand up in support of this resolution. I think it's important to recognize the dangers that we face with respect to activist judges, with respect to mayors who are operating in derogation of current state law."**

i. **The Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), found Section 3 of the federal Defense of Marriage Act unconstitutional. Do you believe the Supreme Court majority in *Windsor* was "activist"?**

Response: Judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully applying precedent whether it be *United States v. Windsor*, 570 U.S. 12 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decisions of the United States Supreme Court or the Eleventh Circuit Court of Appeals. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally, and with respect and dignity.

ii. **Numerous courts have applied *Windsor* to conclude that states' bans on same-sex marriage or on recognition of same-sex marriages from other states are unconstitutional. Do you believe that any judge who decides, under the Constitution of a state or the United States, that gay and lesbian Americans have a right to marry or to have a marriage recognized is an "activist judge"?**

Response: I would define "judicial activism" as the act of judges who decide cases based on their own personal public policy preferences or who decide cases without regard to strict compliance with the law and precedent. I have no reason to believe that any judge who decides, under the Constitution of a state or the United States, that gay and lesbian Americans have a right to marry or to have a marriage recognized is "activist." Judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully applying precedent whether it be *United States v. Windsor*, 570 U.S. 12 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decisions of the United States Supreme Court or the Eleventh Circuit Court of Appeals. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally and with respect and dignity.

d. **In your remarks, you said: "[I]n 1998, the Georgia Supreme Court [in *Powell v. State*, 510 S.E.2d 18 (1998)] struck down Georgia's sodomy laws and I found it interesting that the lone dissent in that case by Justice Carley speaking with respect to the state regulating the private sexual conduct of consenting adults, that Justice Carley indicated quote that 'just because, that, because this right is not in the context of, or in the text of the Constitution, its boundaries are necessarily unclear.'"**

i. **Did you believe in 2004 that the six Georgia Supreme Court Justices in the majority in *Powell* were "activist judges"? Do you believe that today?**

Response: When I made these statements as a state legislator in 2004, I disagreed with the opinion. The *Powell* decision is binding precedent. As a Judge of the Court of Appeals, I would faithfully apply the *Powell* majority decision. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally, and with respect and dignity.

ii. **In 2004, did you agree with Justice Carley's dissent in *Powell*? Do you still agree with it today?**

Response: The *Powell* decision is binding precedent. As a Judge of the Court of Appeals, I would faithfully apply the *Powell* majority decision. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally and with respect and dignity.

iii. **In your statement, you reference Justice Carley's dissent, stating: "because this right is not in the context or, or in the text of the Constitution, its boundaries are necessarily unclear."**

1. **I could not find the quote you reference in Justice Carley's dissent. What specific part of Justice Carley's dissent did you intend to quote from or otherwise rely on?**

   Response: I do not recall where that quote would have come from. I have re-read Justice Carley's dissent to answer these questions and am not sure what I might have been alluding to back then. I had not been prepared to speak on the amendment and I likely misspoke or misremembered the dissent or I may have used materials that others provided to me that were inaccurate.

2. **What is your approach to applying a constitutional right or doctrine that is well-established in judicial precedent but that does not appear in the text of the Constitution?**

   Response: If confirmed, and if a case came before me presenting a constitutional question, I would first review cases from the United States Supreme Court and the Eleventh Circuit Court of Appeals and faithfully apply this precedent to the facts of the case. I would conduct additional research of persuasive appellate and trial court decisions from other jurisdictions within the United States and the Eleventh Circuit if necessary.

iv. **Justice Carley's dissent quoted from and repeatedly cited *Bowers v. Hardwick*, 478 U.S. 186 (1986). Prior to your remarks, Supreme Court**

decided *Lawrence v. Texas*, 539 U.S. 558 (2003), which found: "*Bowers* was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. *Bowers v. Hardwick* should be and now is overruled."

1. **In 2004, did you believe that *Bowers* was rightly decided? Do you believe that today?**

   Response: Regardless of my views then or now, I would be bound by the majority opinion in *Lawrence*. It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for district court judge, to express my personal opinion about whether *Bowers* was rightly decided in 2004 or whether I believe that today. Judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully applying precedent. *Lawrence v. Texas*, 539 U.S. 558 (2003) is binding precedent and if confirmed, I would faithfully follow this decision of the United States Supreme Court and any decision of the Eleventh Circuit Court of Appeals on this, or any other issue. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally and with respect and dignity.

2. **Why did you rely on a dissent that itself repeatedly relied on a decision that since had been overruled?**

   Response: Respectfully, when I made this floor speech ten years ago in my capacity as a state legislator, the issue of same-sex marriage looked different to me than it does today in my capacity as a judge who is and would continue to be bound by precedent when deciding cases. If confirmed, I am committed to faithfully applying precedent whether it be *United States v. Windsor*, 570 U.S. 12 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decisions of the United States Supreme Court or the Eleventh Circuit Court of Appeals. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally, and with respect and dignity.

3. **Have you ever believed, and do you believe today, that Justice Scalia's dissent in *Lawrence* was correct?**

   Response: Judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully applying precedent. The majority opinion in *Lawrence v. Texas*, 539 U.S. 558 (2003) is binding precedent and if confirmed, I would

faithfully follow this decision. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally, and with respect and dignity.

4. **Do you believe the Justices in the majority in *Lawrence* were "activist judges"? Do you believe *Lawrence* is an "activist" opinion?**

   Response: The majority opinion in *Lawrence v. Texas*, 539 U.S. 558 (2003) is binding precedent, and if confirmed, I would faithfully follow this decision.

e. **Your questionnaire supplemental documents include an article in the *Waycross Journal-Herald* dated July 8, 2004. This article recounts a forum in which you spoke as a judicial candidate. According to the article, you stated: "I was born in Ware County and have tried in my career to improve the community. I ask you to reflect on my career. I have worked for the community because I care about it. I believe you should elect judges who are active in the community. I am proud of my record. You don't have to guess where I stand – I oppose same-sex marriages . . . . I have a record that tells you exactly what I stand for. I believe in separation of powers and believe making laws should be left to the legislature."**

   i. **Was conveying your position on an issue in this sort of manner during a judicial campaign a frequent practice for you in 2004? What about during your later judicial campaigns?**

      Response: No. Making statements such as this was not a frequent practice for me in 2004 and was not a practice at all in my later judicial campaigns and I regret these comments. These comments were made when I was still a state legislator, but running for judicial office, and I believe that I could and should have done a better job separating the roles of each as the job of a judge is wholly different than the job of a legislator.

   ii. **For what reason did you convey your position on the issue of same-sex marriage to voters when you were campaigning for judicial office?**

      Response: I have no idea why I would have said that other than, like any other candidate for public office, I was running based on my record of community and legislative service. Given the jurisdiction of the court for which I was seeking office, this issue was not likely to come before me. Looking back, I regret that I was not more articulate and wish that I had better explained myself and the role of the office which I was seeking more artfully. This comment was made while I was running for judge, but also while I was still a

state legislator, and I should have done a better job of separating the roles of each as the job of a judge is wholly different than the job of a legislator.

iii. **Did you ever convey a personal, legislative, or legal position on the issues of abortion, reproductive rights, the Second Amendment, or the Georgia state flag when you were campaigning for elective judicial office?**

Response: Not to the best of my recollection.

iv. **Can you assure me that this article reflects the only time during any race for elective judicial office in which you conveyed your personal or legislative position, or legal opinion, on a controversial legal or constitutional issue?**

Response: To the best of my recollection, this is the only time I have ever mentioned any opinion whatsoever on any legal or constitutional issue controversial or otherwise during any race for elective judicial office. I am steadfast in recognizing my obligations to refrain from doing so as a judge pursuant to the Georgia Code of Judicial Conduct and have always endeavored to exceed the obligations imposed on me in this regard.

(3) You sponsored bills related to parental notification and abortion in the 2003-2004 regular session of the Georgia Legislature. H.B. 466 would have eliminated a "person standing in loco parentis" from the statutory scheme, limiting notification only to actual parents or legal guardians. It also would have required that the minor "be accompanied by a parent or guardian who shall show" government-issued identification. None of these provisions contains an exception for a pregnancy resulting from rape or incest.

a. **Why did you sponsor these measures? What did you intend them to accomplish?**

Response: I co-sponsored these measures both because I considered myself to be a pro-life legislator and I believed that it was important to the very pro-life constituency I was elected to represent. H.B. 466 was authored by a Democrat and the first six co-signors were rural Democratic members of the Georgia House of Representatives. This bill sought to amend Georgia's Parental Notification Statute, which was originally enacted in 1987. Since the time of this enactment, the law had not contained an exception for an unemancipated minor's pregnancy resulting from rape or incest.

The bill would have required the parent or guardian to accompany the unemancipated minor and listed the acceptable forms of identification. These forms of identification included "any document issued by a governmental agency containing a description of the person, the person's photograph or both, including, but not limited to, a driver's license, an identification card authorized under Code §§ 40-5-100 through 40-5-104

(identification cards for persons without driver's licenses) or similar identification card issued by another state, a military identification card, a passport, or an appropriate work authorization issued by the United States Immigration and Naturalization Service."

The bill left fully intact the judicial bypass procedure available for the unemancipated minor to receive the abortion without notice and consent from her parent or guardian. The other bill that I co-sponsored, H.B. 1597 was nearly identical to H.B. 466 but did not contain the "proper identification" provisions. Neither bill passed during my tenure. The substantive language was subsequently included nearly verbatim in H.B. 197, which passed in 2005, after my service in the legislature. This is the current law in Georgia now.

b. **Do you recall any instance in which you spoke or issued a statement in support of these measures, either on the floor of the House, in a legislative committee, in a political campaign, or in a campaign for judicial office?**

Response: To the best of my recollection, I never spoke publically or privately in support of these measures and did not speak on the floor of the House or in any Committee of the Georgia House or Senate in support of these bills. To the best of my recollection, I have likewise never spoken in support of these measures in any political campaign nor in any of my various campaigns for judicial office and have never issued a statement in support of these measures.

c. **Here is what I said on the Senate floor in 2006 about parental notification:**

"As a mother and a grandmother, I would argue that, in a perfect world, young women and their parents should communicate openly about all major decisions, including whether to terminate a pregnancy. And, in fact, many young women do involve a parent in these decisions. However, the reality is that not all young women live in a household where they can turn to their parents. Some young women face physical, sexual or emotional abuse from their parents; some families do not have open, supporting relationships. For these young women, they may be more comfortable confiding in an older sister, aunt, or a grandparent. Yet this bill would turn these trusted relatives into criminals if they helped her seek an abortion."

i. **Prior to sponsoring H.B. 466, did you consider its likely impact of on the young women and families I described in 2006?**

Response: I am very respectful of your position on the issue of parental notification and appreciate the concerns you raised regarding the potential impact of these laws on young women and families. At the time I co-sponsored the bill, I did so both because I considered myself to be a pro-life legislator and I believed that it was important to the very pro-life constituency I was elected to represent. Inasmuch as this bill was introduced over ten years

ago, I have no independent recollection of considering the concerns you raise although it is possible that I did and believed that such concerns were addressed by the judicial bypass procedure in the 1987 Parental Notification Statute that was not affected by the legislation.

ii. **Please characterize how you view the likely impact of this measure on those young women and their families, had it been enacted.**

Response: The provisions of H.B. 466 and H.B. 1597 were largely included within H.B. 197 which was passed by the Georgia General Assembly on March 4, 2005, and signed by the Governor on May 10, 2005. Consequently, the provisions of these measures are the current law in Georgia today. It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for a federal district court judgeship, to express my personal opinion about the likely impact of these measures on young women and their families or to otherwise state any personal opinion regarding current laws in Georgia.

iii. **Did you intend to criminalize the act of a grandmother, aunt, older sibling, or clergy member helping a minor through a very difficult, personal decision? What if the young woman had been abused by her parent or guardian?**

Response: The provisions of H.B. 466 and H.B. 1597 were largely included within H.B. 197 which was passed by the Georgia General Assembly on March 4, 2005, and signed by the Governor on May 10, 2005. Consequently, the provisions of these measures are the current law in Georgia today. It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for a federal district judgeship, to express my personal opinion about these measures or to otherwise state any opinion regarding current laws in Georgia. The bill left fully intact the judicial bypass procedure available for the unemancipated minor to receive the abortion without notice and consent from her parent or guardian.

d. **The reality is that large numbers of adults in our country lack government-issued identification. Some may be undocumented immigrants with American-born citizen children; others may be low-income or minority individuals; others may be grandparents who are the legal guardians of their grandchildren.**

i. **Prior to sponsoring H.B. 466, did you consider its impact on a young woman whose parent or legal guardian lacks government-issued ID? Please characterize how you view the likely impact of this measure on such young women, had the measure been enacted.**

Response: I am very respectful of your position on the issue of parental notification and appreciate the concerns you raised concerning the potential

impact on young women. Inasmuch as these bills were introduced over ten years ago, I have no independent recollection of considering the concerns you raise.

The provisions of H.B. 466 and H.B. 1597 were largely included within H.B. 197 which was passed by the Georgia General Assembly on March 4, 2005, and signed by the Governor on May 10, 2005. Consequently, the provisions of these measures are the current law in Georgia today. It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for a federal district judgeship, to express my personal opinion about these measures or to otherwise state any personal opinion regarding current laws in Georgia.

e. **Georgia provides a so-called "judicial bypass," under which a minor may "petition . . . any juvenile court in the state for a waiver of [the law's parental notification requirements]." Ga. Code Ann. § 15-11-112.**

   i. **Without divulging any person's private information, identity, or otherwise impacting any person's privacy or anonymity, please tell me whether you have heard or decided any case brought under this statute as a superior court judge and provide pertinent details of any such case.**

   Response: I have not. The judicial bypass provisions of Georgia's Parental Notification Statute provide for waiver petitions to be filed in the juvenile court, not the Superior Court, having jurisdiction over the minor.

   ii. **You stated during your hearing that you could recall one case arising under the parental notification law in which you sat on the panel as an appellate judge. In a manner that protects individual privacy, I would like a copy of the decision and to know what the situation was, how you handled the case, what factored into your thinking, and what the outcome was.**

   Response: The question presented in that case was whether the juvenile court erred in denying the petition of a seventeen-year-old to waive the statutory requirement that her parents or legal guardian be notified before she underwent a procedure to terminate her pregnancy. Our court has a very limited and constrained role in the review of these cases on appeal. The standard of appellate review by which we are bound demands that findings of fact made by a trial judge are reviewed by our court under the "any evidence" rule, under which a finding by the trial court supported by *any* evidence must be upheld. Additionally, the appeals court will not set aside the trial court's factual findings unless they are clearly erroneous and must give due deference to the opportunity of the trial court to judge the credibility of the witnesses.

The juvenile court concluded that the unemancipated minor was not mature enough nor well enough informed to make the decision to have an abortion in consultation with only her physician without notifying her parents. The evidence in the record showed that the minor and her son lived with her mother, she had never made a major decision without her parents' input, she did not demonstrate that she was informed about the abortion procedure beyond the most cursory information, and that the reason she did not want to tell her parents did not stem from any fear that they would abuse or harm her if they found out about the pregnancy. Under our appellate standard of review, we affirmed the judgment of the trial court because we could not say that the juvenile court judge erred in her decision to deny the petition as there was evidence in the record to support her conclusion. (A copy of the opinion is supplied.)

Please also describe any related decision or vote you took on whether to hear or rehear a case by the full Court of Appeals. *See* Ga. Code Ann. § 15-3-1.

Response: No motion for reconsideration was filed in this particular case. The case was decided by the three-judge panel without a dissent, and accordingly, this case was not submitted to the whole court pursuant to O.C.G.A. § 15-3-1 (c) (2).

(4) I would like to ask you about the amendment you supported to put the number of abortions performed by a doctor in the doctor's online physician profile.

This amendment was first offered on the House floor on February 8, 2001, when it was adopted without a recorded vote. An *Atlanta Journal Constitution* editorial from February 13, 2001 recounts that this occurred after a "lengthy debate" in which "opponents of a woman's right to choose --- state Reps. Brian Joyce (R-Lookout Mountain) and Bobby Franklin (R-Marietta) --- tried to add numerous anti-abortion amendments to the bill." You then voted for the bill.

On March 21, 2001, the bill returned to the floor of the House from the Senate. The Senate substitute version did not contain the controversial abortion language. Representative Franklin moved to re-insert it and then agree to the Senate substitute as amended. On this motion, you voted aye. The motion failed 69-86, and the Senate substitute was adopted without the abortion-related language 158-0.

a. **Why did you support this amendment?**

Response: At the time I voted for the amendment I did so both because I considered myself to be a pro-life legislator and I believed that it was important to the very pro-life constituency I was elected to represent. The amendment came up first in February of 2001 on the floor of the House and was passed without a recorded vote. I do not

recall this amendment nor any debate or discussion of it at that time. The matter was reintroduced again on the last day of the 2001 legislative session as an amendment to H.B. 156. The last day of the session is generally considered to be the busiest legislative day of the year. We convened at 10:00 a.m. and adjourned at midnight. The House journal for that day alone consists of 489 pages. Although I understand from recent press reports that the issue of violence against abortion doctors was debated on the House floor that day, I do not recall that debate. I do not remember having even heard of the amendment prior to the author presenting it on the floor of the House just prior to the final vote. To the best of my recollection, this amendment was never discussed in any Democratic caucus meeting I ever attended, I recall no correspondence from House Democratic leadership regarding the anticipated amendment at any time, and I do not recall discussing it on the floor of the House with any Democratic or Republican member. I am also certain that I did not speak to Democratic Party leadership about the safety concerns for doctors posed by this amendment nor did I even hear of such at the time. I did not co-sponsor this amendment and I never spoke to the author about this amendment.

This amendment was made to H.B.156, a bill sponsored by the House Democratic Majority Leader. This bill concerned the adoption of a "Patient Right to Know Act of 2001." The bill proposed to repeal certain confidentiality provisions regarding reports of disciplinary actions against persons authorized to practice medicine. The bill required the Composite State Board of Medical Examiners to create physician profiles on each physician licensed in Georgia including 20 identified disclosures relating to the physician's academic background, hospital privileges, geographic location of their practice, participation in the Medicaid program, criminal background, descriptions of disciplinary actions by regulatory boards, statements of resignation from or nonrenewal of medical staff membership, and final medical malpractice court judgments, etc. The underlying bill had absolutely nothing to do with women's reproductive rights and I was not focused on that issue.

What I meant in my testimony to the Committee was that in considering the amendment, and particularly when considering it during the busiest day of the legislative session, I did not consider the issue of violence against abortion doctors. I should have. I was considering the bill as a whole, the purpose of which was predominately to educate and make available to the public information concerning a physician's disciplinary history and malpractice judgments. As I think back on this bill, the only thing I recall being discussed, and the issue that garnered all of the attention of which I was aware, was the question of whether and how malpractice judgments and settlements would be disclosed.

By my testimony to the Committee, I did not intend to convey categorically that I was generally unaware of claims of violence against physicians that perform abortions. I would have been aware of some of the cases of violence at that time, although I do not recall specifically hearing any of these concerns raised relative to this amendment. However, I should have considered these concerns at the time the

amendment was presented and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

b. **On February 13, 2001, the *Atlanta Journal-Constitution*'s editorial about this bill included numerous examples of violence and said that "[a] pretty good bill was ruined in the Georgia House of Representatives last week with a terrible amendment that would make targets out of doctors who perform legal abortions."**

   i. **Did you regularly read the *Atlanta Journal-Constitution* during your tenure in the legislature?**

   Response: During my service in the Georgia General Assembly from 2001 to 2004, I did not personally subscribe to the *Atlanta Journal-Constitution*, but I did occasionally read it. I tended to read newspapers published in or near my legislative district which was 240 miles southeast of Atlanta.

   ii. **Did you read this editorial while H.B. 156 was pending in the legislature in 2001? Prior to voting on this amendment in March 2001, were you otherwise aware of the violence or threats of violence referenced in the editorial?**

   Response: Respectfully, I have no memory of reading this editorial in the February 13, 2001 edition of the *Atlanta Journal-Constitution*. My legislative district was 240 miles southeast of Atlanta. I would have been aware of some of the cases of violence at that time, although I do not recall specifically hearing any of these concerns raised relative to this amendment. However, I should have considered these concerns at the time the amendment was presented and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

   iii. **Were you present on the House floor during the "lengthy debate" in February 2001 described in this editorial?**

   Response: I was present that day. I do not know if I was on the floor during the debate over this particular amendment or any other anti-abortion amendments and have no independent recollection of this debate whatsoever.

   iv. **During the "lengthy debate," did any member of the House raise the issue of the serious violence that could occur as a result of this amendment being enacted in a floor speech or with you directly?**

   Response: Not to my knowledge. I do not know if I was even on the floor during the debate in February 2001 over this particular amendment or any other anti-abortion amendments, and I have no independent recollection of this debate whatsoever nor of any member of the House raising the issue of

the serious violence that could occur as a result of this amendment being enacted.

c. **Following the initial adoption of this amendment in the House on February 8, 2001, approximately six weeks elapsed before you cast a roll call vote on the amendment on March 21, 2001.**

   i. **During that six-week intervening period, did you learn about, or did anyone otherwise bring to your attention, the serious violence that could occur as a result of this amendment being enacted?**

   Response: No.

   ii. **Senator Franken and other members asked whether, at the time you voted for this amendment, you were aware of the public safety risk. While you said your position was "ill-conceived," you also said you were unaware of the public safety risk at the time.**

   Senator Franken asked: "[Y]ou were a State legislator at the time but were not aware of any of the public safety issues that were involved around this whole issue?" You responded: "I was not, and I think that is probably attributable to the fact that this came as a floor amendment, not a bill, not something I had an opportunity to study, not something I had the opportunity to even speak to other legislators about. It happened on the floor . . . ."

   Given the six-week intervening period between February 8, 2001 and March 21, 2001, I do not understand your assertion that this issue was "not something [you] had an opportunity to study, not something [you]had the opportunity to even speak to other legislators about . . . ." Can you please explain further?

   Response: I was a pro-life legislator representing a pro-life constituency and was therefore more inclined to support legislation that was described as pro-life. In retrospect, I wish I had given greater consideration to the possibility that abortion providers might have encountered violence as a result of this amendment because under no circumstances do I favor such heinous acts. When I spoke of my lack of knowledge on the issue of the serious violence that could occur as a result of this amendment, what I meant to convey was that I did not consider the issue of violence against abortion doctors at the time of my vote. I should have. I was considering the bill as a whole, as a matter dealing largely with educating the public on physicians' disciplinary history and any malpractice final judgments. As I think back on this bill, the only issue I recall being discussed, and the issue that I recall garnering attention, was the question of whether and how malpractice judgments and settlements would be disclosed. Because the amendment regarding publication

of the number of abortions performed by a doctor was agreed to without a recorded vote in February, I did not realize that I should have studied the issue before the overall legislation was considered again on the last day of the legislative session. I did not co-sponsor the amendment and did not follow it through the legislative process. In my statement before the Committee, I did not intend to convey categorically that I was generally unaware of claims of violence against physicians that perform abortions. As stated, I should have considered this at the time the floor amendment was considered and regret my vote for this amendment as it was ill-conceived.

iii. **Was there any debate on the House floor about the amendment in March 2001, prior to the roll call vote on the amendment? Were you present during such debate? Did such debate include any mention of the potential violence?**

Response: I was present that day. Although I understand from recent press reports that the issue of violence against abortion doctors was debated on the House floor that day, I do not recall that debate. I do not know if I was on the floor during any debate on this measure. It is possible that I was not. The day this amendment was finally considered was March 21, 2001, the last day of the session and the day generally considered to be the busiest legislative day of the year. We convened at 10:00 a.m. and adjourned at midnight. The House Journal for that day alone consists of 489 pages. Because of the volume of bills and amendments that day, it would not have been uncommon to have only a few minutes of debate before a particular vote. I have no recollection of any debate from that day including any debate on this particular amendment. I should have considered these concerns at the time the amendment was considered and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

iv. **Before your March 21 vote on this amendment, were you aware of the widely-reported example of Eric Rudolph, who was charged in October 1998 with the 1996 Atlanta Olympics bombing as well as with the bombings of two women's health clinics, one of which was the Sandy Springs clinic in Georgia referenced in the above editorial?**

Response: I am sure that in 2001, I would have been aware of the Eric Rudolph case and the 1996 Atlanta Olympics bombing. I do not know whether I would have been aware of the bombings of two women's health clinics which were referenced in the editorial. By my testimony to the Committee, I did not intend to convey categorically that I was generally unaware of claims of violence against physicians that perform abortions. As stated, I should have considered this at the time the floor amendment was considered and regret my vote for this amendment as it was ill-conceived and dangerous, and I should not have supported it.

v. **Before your March 21 vote on this amendment, were you aware of any other violence or threats directed toward legal abortion providers or patients?**

Response: I was only aware of the issue generally.

d. **You repeatedly sponsored bills to create a "Choose Life" license plate program in the State of Georgia. Under H.B. 254 (2003), the money collected would be distributed to "not for profit agencies . . . whose services are limited to counseling and meeting the needs of pregnancy women who are committed to placing their children for adoption." The bill also states: "Funds may not be distributed to any agency that is involved or associated with abortion activities . . . ."**

i. **Whom did you intend or expect these measures to fund? Please state whether you expected funding recipients to include organizations known as crisis pregnancy centers.**

Response: In accordance with the language of the proposed bill, I expected the funds would be distributed "to nongovernmental, not for profit agencies within the county whose services are limited to counseling and meeting the needs of pregnant women who are committed to placing their children for adoption." I supported this legislation because I was aware that a nonprofit organization in my legislative district would be eligible to apply for funding. To the best of my recollection at the time, I had no knowledge whether that agency was a crisis pregnancy center or about any general concerns regarding crisis pregnancy centers.

ii. **Do you recall any instance in which you spoke or issued a statement in support of these measures, either on the floor of the House, in a legislative committee, in a political campaign, or in a campaign for judicial office?**

Response: Other than generally stating my support for the Choose Life adoption support program during a legislative town hall meeting in Waycross while I was a legislator, to the best of my knowledge, I have never spoken of or issued any statement in support of these bills. I did not speak in support of these measures on the floor of the House nor in any legislative committee, and to the best of my recollection, other than as noted herein, I have never spoken of or issued any statement in support of these bills in any political campaign and have not done so in any campaign for judicial office.

iii. **As you may know, organizations known as crisis pregnancy centers have been criticized for deceptive tactics with respect to vulnerable women.**

For example, *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council Baltimore*, 721 F.3d 264 (4th Cir. 2013) (en banc)

concerned the constitutionality of a disclosure law for such entities. The decision references parts of the legislative record that describe situations in which women are given misleading information about options available to them and may not be seen by true medical professionals.

1. **At the time you sponsored the "Choose Life" license plate measures, had anybody brought to your attention, or were you otherwise aware, that this bill might generate funds for crisis pregnancy centers?**

   Response: No, I supported this legislation because I was aware that a nonprofit organization within my legislative district would be eligible to apply for funding.

2. **If so, had anybody brought to your attention, or were you otherwise aware of, any criticisms of crisis pregnancy centers similar to what I described above?**

   Response: No one ever brought this issue or these particular criticisms to my attention.

e. **The Supreme Court reiterated in *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007): "Before viability, a State 'may not prohibit any woman from making the ultimate decision to terminate her pregnancy.' It also may not impose upon this right an undue burden, which exists if a regulation's "purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.'" (quoting *Casey*, 505 U.S. at 879)).**

   Thus, the Ninth Circuit has held that Arizona may not "prohibit abortion beginning at twenty weeks gestation, before the fetus is viable." *Isaacson v. Horne*, 716 F.3d 1213, 1217 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 905 (2014). Concurring, conservative Judge Andrew Kleinfeld wrote: "The question for us is whether the current state of constitutional law prohibits the states from imposing that restriction. It does." *Id.* at 1233 (Kleinfeld, J., concurring).

   i. **Will you have any difficulty applying the Supreme Court's clear precedent on this issue, including the <u>clear line</u> the Supreme Court has placed at fetal viability?**

      Response: Absolutely not. I am committed to faithfully following the precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals on this, and any other issue.

f. **In response to a question from Senator Blumenthal, you stated: "Senator, to my knowledge, I have <u>never</u> given any public comments on my position on reproductive rights. I have cosponsored some bills in the General Assembly, to**

my knowledge I also voted on a couple of amendments on the floor of the House that I did not author and had no authorship in, but to my knowledge I have never given any speeches concerning reproductive rights."

i. **Was there any instance in which, in a legislative committee, on the floor, at a constituent meeting, or otherwise, you made any public remarks about reproductive rights, the issue of abortion, or any other related issue?**

Response: No, to the best of my recollection. I have never made any public remarks in any legislative committee or on the floor of the House about reproductive rights, the issue of abortion, or any other related issue. To my knowledge, the only time the matter was even remotely addressed was at a town hall constituents meeting held in Waycross, where as a state legislator I briefly mentioned that I had co-sponsored the Choose Life Adoption Support Program license plate bill, and stated that the money would be used to support adoption programs.

g. **In response to a question from Senator Blumenthal, you stated, in part: "I think, as a legislator casting thousands of votes for amendments and bills and making decisions in committee, it is not, I think, entirely unexpected that there may be some votes that I cast throughout my [legislative] career that in hindsight looking back on them as a legislator trying my best to represent the people that I represented in a very staunchly pro-life district, I may have made some mistakes."**

You also commented during the hearing that your district was a "very conservative, and a very pro-life constituency," and that you believed it "was the obligation of a legislator to vote – listen to and vote – the will of their constituency. Those issues were very important to my constituents, and that's why I supported that floor amendment."

i. **Given that you knew your district was "very staunchly pro-life" while you were in the legislature, I assume you had some way of communicating your position on reproductive rights issues to your constituents. How did you ensure your constituents were informed about your views and legislative actions on the issue of abortion?**

Response: Respectfully, and to the best of my knowledge, I never directly communicated my personal position on reproductive rights issues to my constituents. I did regularly write legislative updates for publication in our local newspaper (previously submitted to the Committee with my Questionnaire), and held regular town meetings to discuss the work of the General Assembly. However, to the best of my knowledge, I never wrote regarding my position on reproductive rights issues and did not speak at a town hall meeting to legislative actions on the issue of abortion other than the

time I mentioned the Choose Life Adoption Support Program. My constituents may have learned of my positions if they followed the votes I cast, but, this was not an issue I was outspoken on, actively engaged in promoting, nor was it one that I discussed with my constituents. I campaigned on the themes of improving education, improving transportation, lowering the property tax burden on senior citizens and bringing jobs to my district. These were the issues I expected to and did address as a state legislator.

(5) I would like to ask you about a bill (H.B. 1411, 2003-04) that would have prohibited state or local government from "transacting business or otherwise communicating in languages other than" English. The bill also would have stricken existing exceptions, including "[w]hen the public safety, health, or justice requires the use of other languages."

On February 10, 2004, there was a motion on the floor to engross the bill. "If a motion to engross a bill at the second reading is approved . . . [i]n effect, the bill as introduced is engrossed—or certified as the final copy—and it may not thereafter be amended." ***See*** **Edwin L. Jackson, Mary E. Stakes, & Paul Hardy, HANDBOOK FOR GEORGIA LEGISLATORS 182-83 (12th ed. 2001). You voted for the motion to engross, which failed.**

a. **Did you support this measure? Why did you to vote to engross this measure?**

Response: I do not recall what my position was on that bill ten years ago or if I had even formulated an opinion. I do not know specifically why I would have supported the motion to engross, but in reviewing the House journal it appears that the House Democratic leadership, including the House Majority Leader supported the motion and it was not entirely unusual for me to follow the lead of my caucus on procedural votes such as motions to engross.

b. **I am concerned about the serious implications of this bill had it been enacted – essentially barring first responders, police officers, physicians, 911 operators, or a whole host of other state or local government employees from communicating with non-English-speaking individuals. Did you consider these sorts of situations prior to voting to engross this bill, or any other ramifications it might have?**

Response: I do not recall what my position was on that bill ten years ago or even if I had formed an opinion on it. As such, I do not recall whether I considered these sorts of situations or other ramifications prior to voting to engross this bill.

c. **If confronted with a constitutional challenge to such a law as a judge, how would you decide whether it is constitutional? What issues would you consider, assuming the plaintiff had standing to bring the challenge?**

Response: If confirmed, and a case came before me presenting a constitutional question, I would first review cases from the United States Supreme Court and the

Eleventh Circuit and faithfully apply this precedent to the facts of the case. I would conduct additional research of persuasive appellate and trial court decisions from other jurisdictions within the United States if necessary.

d. **In your experience as a state court judge, has it ever been necessary or useful in a case for an interpreter or translator to be present to assist a witness or party in answering questions, obtaining the advice of counsel, or communicating with the court? If so, please provide examples.**

Response: I regularly used interpreters while a trial court judge. This typically occurred in criminal cases and was always conducted consistent with the rules of the Georgia Supreme Court relative to the use of courtroom interpreters. I was always cognizant and respectful of my obligations as a judge to ensure that all litigants, including those with limited English proficiency, were treated fairly and respectfully and were able to understand and participate in all court proceedings held before me.

e. **Do you believe H.B. 1411 is consistent with the role of a judge in ensuring that litigants receive due process of law?**

Response: It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for a federal district court judgeship to express my personal opinion about whether any specific former or current proposed legislation is consistent with the role of a judge in ensuring that litigants receive due process of law. My judicial career reflects that I have been steadfastly committed to ensuring that all litigants, including those with limited English proficiency, are treated fairly and respectfully and are able to understand and participate in court proceedings. Fulfillment of this obligation is a fundamental obligation of a judge.

f. **How do you plan to carry out the statutory and constitutional responsibilities of a District Judge to ensure all litigants, including those with limited English proficiency, are treated fairly and respectfully and are able to understand and participate in court proceedings? *See* 28 U.S.C § 1827.**

Response: If confirmed, I will faithfully follow the precedent of the United States Supreme Court, the Eleventh Circuit Court of Appeals, and the Federal District Court Rules and Procedures regarding the use of interpreters. I would also rely upon and follow the provisions of 28 U.S.C. § 1827 on matters involving the obligations of a district judge to ensure all litigants, including those with limited English proficiency, are treated fairly and respectfully and are able to understand and participate in court proceedings. As a state trial court judge, I routinely used interpreters in court proceedings before me and have demonstrated a commitment to ensuring that all litigants, including those with limited English proficiency, are treated fairly and respectfully and are able to understand and participate in their court proceedings.

(6) I would like to ask you about a number of votes you took about the Georgia state flag.

a. **Do you agree that there was significant resistance to desegregation in Georgia in the 1950s, including after the *Brown* decision?**

Response: I understand from my study of Georgia history that there was significant resistance to desegregation in Georgia, as in many other southern states after the *Brown* decision.

b. **During your tenure in the legislature, and particularly prior to any of your votes on the Georgia state flag, were you aware of that history?**

Response: Yes.

c. **During your tenure in the legislature, and particularly prior to any of your votes on the Georgia state flag, were you aware of any connection between that history and the adoption of the 1956 flag?**

Response: Yes.

d. **At your hearing, you said, at the time of your votes on the flag, you were "offended" by the confederate battle emblem. You also said the following: "I found that one of the most challenging things of being a legislator was deciding when to vote the will of my constituents and when to vote the will of myself and my own conscience. It was something I have known other legislators to struggle with; I struggled with it regularly, on that issue particularly." What did your conscience tell you in 2001 and 2003 about the flag?**

Response: I believed then and still believe that the flag is offensive to many people based on its historical association with the Civil War and the institution of slavery, the connection between the adoption of the flag and the Supreme Court's decision in *Brown*, and the flag's more recent usage by organizations that espoused hate and racism and who overtly oppressed African-Americans. Although I recognized that many of my constituents supported the flag because they viewed it as a symbol of heritage, I thought that the State of Georgia could do better than remain steadfastly committed to such a notable and visible state symbol that represented such a terrible and tragic past that was so hurtful and divisive for so many of Georgia's citizens.

e. **You indicated that this conflict between your conscience and your constituents was something you struggled with "regularly" as a legislator. On what other issues did you have this struggle? Was reproductive rights one of them?**

Response: I do not recall any specific votes of the magnitude of the flag or where my constituent's views and my own were so strongly in opposition. During the course of my legislative career, the views of a majority of my constituents on many particular legislative matters were simply unknown. In those cases, I considered what I thought their views might be, based perhaps on the views on similar issues. I also considered that my constituents had placed their trust in me to represent them and that when in

doubt of their views, I could still faithfully represent them by following my conscience. Because I considered myself to be a pro-life legislator, reproductive rights were not one of the issues that presented a conflict between my conscience and my constituents.

f. **During any campaign to serve as a state court judge, did anybody raise with you your votes on the flag? Please describe such interactions and what you said in that context, if you can recall.**

Response: No. The flag was not raised during any of my judicial campaigns. The flag also was not raised when I was opposed in the Democratic primary in 2002 for re-election to the legislature, and I received 90% of all votes cast within my legislative district.

(7) **In your application to be an appellate judge, you wrote: "At the appellate level, a clerk should be of similar philosophical and judicial leanings as the judge under whom they are employed. The clerk should understand clearly the limited role of the appellate courts in our society and clearly understand the proper delineation in roles between the legislative and judicial branches of government. I would also expect my clerk to share my conservative judicial philosophy."**

a. **Please describe your "conservative judicial philosophy" and state what you intended to convey by that phrase in your judicial application.**

Response: Thank you for the opportunity to clarify this statement. I did not mean that my judicial philosophy is politically conservative. I do not believe that political beliefs should play any role in judging. Rather, I intended to convey to the Judicial Nominating Commission my respect for the limited, or conservative, role of a judge and the obligation of judges to have fidelity to the law and that judges have no role in policy making. And, I intended to convey my general belief that judges should be conservative by being constrained to answer only those questions properly presented to them. My judicial philosophy is that I am faithful to the doctrine of *stare decisis* and the rule of law, being mindful and respectful of the proper and limited role of the judiciary within our democracy. Throughout my entire judicial career, I have committed to working hard, and being prepared and diligent in managing my cases being ever mindful of the importance of each case to the litigants. I strive to decide cases fairly, impartially and without bias and to apply binding precedent to the facts in a fair and impartial manner. Judges should be fair, open-minded, and not predisposed to any particular personal or public policy position and, judges should treat all parties with civility and respect.

b. **What did you mean by the "limited role of the appellate courts in our society" and the "proper delineation in roles between the legislative and judicial branches"?**

Response: By these comments, I intended to highlight the limited role of our appellate courts bound by rules of appellate practice and appellate standards of review. I intended to convey my appreciation for the limited role of the appellate judiciary in that appellate judges do not re-try cases, generally do not re-weigh the evidence, and do not judge the credibility of witnesses. I intended to convey that the role of an appellate judge is markedly different from that of a trial court judge. I also intended to convey that the proper delineation in roles between the legislative and judicial branches includes that judges should be faithful to the rule of law and the doctrine of *stare decisis*, and that judges have no role in policy making.

(8) You also wrote on your appellate judge application: "The judiciary continues to endure criticism, fairly earned in some cases, of abrogating their constitutionally created authority by issuing decisions that venture into policy making. Partisan political campaigns are increasingly politicizing our judiciary in part, because of judicial decisions that have ignored and violated the basic tenets of the judiciary, that policy making is the sole province of a duly elected citizen legislature." You continued that the appellate court should not be "partisan refuges for policy makers."

a. **You state that criticism of the judiciary for "abrogating their constitutionally created authority by issuing decisions that venture into policy making" is "fairly earned in some cases."**

i. **Is this how you define "judicial activism"?**

Response: I would define "judicial activism" as the actions of judges who decide cases based on their own personal public policy preferences or who decide cases without regard to strict compliance with the law and precedent.

ii. **Please name any decisions you believed "abrogate[ed]" the judiciary's "constitutionally created authority." In particular, please state whether you were referring to the following decisions and whether you think any of them is an "activist" decision.**

Response: I do not recall any specific cases to which I may have been referring to when I made that statement in 2011.

1. ***Griswold v. Connecticut*, 381 U.S. 479 (1965).**

Response: *Griswold v. Connecticut* is binding precedent. If confirmed as a United States District Judge, I would faithfully apply this and all other Supreme Court and Eleventh Circuit precedent.

2. ***Eisenstadt v. Baird*, 405 U.S. 438 (1972).**

Response: *Eisenstadt v. Baird* is binding precedent. If confirmed as a United States District Judge, I would faithfully apply this and all other Supreme Court and Eleventh Circuit precedent.

3. ***Roe v. Wade*, 410 U.S. 113 (1973).**

   Response: *Roe v. Wade* is binding precedent. If confirmed as a United States District Judge, I would faithfully apply this and all other Supreme Court and Eleventh Circuit precedent.

4. ***Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (opinion of Justices Kennedy, O'Connor, and Souter).**

   Response: *Planned Parenthood v. Casey* is binding precedent. If confirmed as a United States District Judge, I would faithfully apply this and all other Supreme Court and Eleventh Circuit precedent.

5. ***Lawrence v. Texas*, 539 U.S. 558 (2003).**

   Response: *Lawrence v. Texas* is binding precedent. If confirmed as a United States District Judge, I would faithfully apply this and all other Supreme Court and Eleventh Circuit precedent.

6. **Any decision on the issue of whether same-sex couples have the freedom to marry under the state or federal constitution, such as *Goodridge v. Dep't of Public Health*, 798 N.E.2d 941 (Mass. 2003), *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008), *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009), or *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010).**

   Response: I would define "judicial activism" as the actions of judges who decide cases based on their own personal public policy preferences or who decide cases without regard to strict compliance with the law and precedent. I have no reason to believe that any judge in any of these cases is "activist." Judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully applying precedent whether it be *United States v. Windsor*, 570 U.S. 12 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decisions of the United States Supreme Court or the Eleventh Circuit Court of Appeals. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally, and with respect and dignity.

7. **Any decision on Section 3 of the federal Defense of Marriage Act, such as *Gill v. Office of Personnel Management*, 699 F. Supp. 2d**

374 (D. Mass. 2010), or *Dragovich v. U.S. Department of the Treasury*, 764 F. Supp. 2d 1178 (N.D. Cal. 2011), which had been issued prior to the Supreme Court's decision in *Windsor*.

Response: If confirmed as a United States District Court Judge, I would faithfully apply the precedent of the United States Supreme Court in *United States v. Windsor*, 570 U.S. 12 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decision of the United States Supreme Court or the Eleventh Circuit Court of Appeals on this issue.

iii. **To what "criticism" were you referring, and why did you believe it was "fairly earned"?**

Response: I do not recall any specific cases to which I may have been referring when I made that statement in 2011. I was probably generally referring to judges who decide cases based on their own personal public policy preferences or who decide cases without regard to strict compliance with the law and precedent. As I think back, my comments were intended simply to convey my understanding and appreciation for the limited role of judges to be faithful to the rule of law and the doctrine of *stare decisis* and that judges should not be policy makers.

iv. **Which judicial decisions did you believe were the cause of "partisan political campaigns" that "politiciz[e] our judiciary"? To which campaigns were you referring? How do you believe particular judicial decisions caused such campaigns to "politicize" the Judiciary?**

Response: I was not referring to any particular judicial decision that I believed was the cause of "partisan political campaigns" that "politicize our judiciary." To the best of my recollection, I was referring generally to nonpartisan judicial campaigns where candidates may overtly refer to themselves as a "Democrat" or "Republican" even though the office is nonpartisan. I was also referring generally to judicial campaigns where candidates pick a particular case that a judge may have ruled on and exploit the decision for political purposes without regard to the obligation judges have to the rule of law and the doctrine of *stare decisis*. To me, this would be an overt attempt to politicize the judiciary.

v. **What did you mean by the phrase, "partisan refuges for policy makers"?**

Response: I meant simply that judges should understand the limited role of the judiciary to be faithful to the rule of law and the doctrine of *stare decisis* and that judges should not be policy makers.

Questions for the Record for Judge Michael P. Boggs
Senator Al Franken

1. **At your hearing before the Senate Judiciary Committee, we discussed an amendment that you voted for during your time in the Georgia House of Representatives that would have required all doctors to list the number of abortions they had performed in the last ten years in publicly available profiles. This amendment ultimately failed, but would have put doctors who perform abortions at greater risk of harm. You said that you were not aware, at the time you voted for this amendment, that doctors who provided abortions had been targeted and killed, and that clinics where abortions were provided had been bombed. You said you were not aware of the public safety issues associated with requiring doctors to release the number of abortions they had provided, and that you did not have the opportunity to study this amendment or speak with your colleagues about it because it came up on the floor.**

   The amendment was originally adopted without a recorded vote in the Georgia House of Representatives on February 8, 2001. The full bill, which included the amendment, was then sent to the Senate for consideration. The Senate passed a version of the bill that did not include the amendment. The bill was then sent back to the House, where your chamber voted on whether to put the amendment back into the bill. This second vote on the amendment occurred on March 21, 2001, and although the amendment failed, you voted to include it in the bill.

   (a) Are you aware that this amendment came up for a vote twice in the Georgia House of Representatives, first on February 8, 2001 and second, on March 21, 2001?

Response: Yes. Having reviewed the House Journal, I am now aware of both the unrecorded and recorded votes.

(b) Did you have time to review the amendment or discuss it with your colleagues when it came up for a vote the second time, on March 21, 2001, almost a month and a half after the first time the amendment was proposed and voted on by your chamber, on February 8, 2001?

Response: The amendment came up first in February of 2001 on the floor of the House and was passed without a recorded vote. I do not recall this amendment nor any debate or discussion of it at that time. The matter was reintroduced again on the last day of the 2001 legislative session as an amendment to H.B. 156. The last day of the session is generally considered to be the busiest legislative day of the year. We convened at 10:00 a.m. and adjourned at midnight. The House journal for that day alone consists of 489 pages. Although I understand from recent press reports that the issue of violence against abortion doctors was debated on the House floor that day, I do not recall that debate. Because of the volume of bills and amendments that day, it would not have been uncommon to have only a few minutes of debate before a particular vote. I do not remember having even heard of the amendment prior to the author presenting it on the floor of the House just prior to the final vote. To the best of my recollections, this amendment was never discussed in any Democratic caucus meeting I ever attended, I recall no correspondence from House Democratic leadership regarding the anticipated amendment at any time, and I do not recall discussing it on the floor of the House with any Democratic or Republican member. I am also certain that I did not speak to Democratic Party leadership about the safety concerns for doctors posed by this

amendment, nor did I even hear of such at the time. I did not co-sponsor this amendment, and to my knowledge, I never spoke to the author about this amendment.

On February 13, 2001, The Atlanta Journal-Constitution – the main newspaper in Georgia – published an editorial criticizing the Georgia House of Representatives for adopting this amendment. The editorial noted that in "the past six years, at least five abortion-providing doctors have been murdered, and dozens of others have been harassed with bomb scares and threats to harm patients and medical personnel." The editorial called the amendment "dangerous" and said that it "would make targets out of doctors who perform legal abortions."

(c) Were you aware of this editorial or any other news coverage about this amendment during the almost month and a half when the amendment was being considered, from February 8, 2001 (or earlier) until March 21, 2001?

Response: Respectfully, I have no memory of reading this editorial in the February 13, 2001 edition of the *Atlanta Journal-Constitution*. Atlanta is 240 miles north of my former legislative district. As a result, I only occasionally read this publication during the time this editorial was published.

Questions for the Record to Michael Boggs
Submitted by Senator Chris Coons
May 20, 2014

1. **In your 2011 application to be a Court of Appeals Judge, you stated that, "the judiciary continues to endure criticism, fairly earned in some cases, of abrogating their constitutionally created authority by issuing decisions that venture into policy making."**

    a. **To what cases were you referring when you submitted your application in 2011?**

    Response: I do not recall any specific cases to which I may have been referring when I made that statement in 2011. I was probably generally referring to judges who decide cases based on their own personal public policy preferences or who decide cases without regard to strict compliance with the law and precedent. As I think back, my comments were intended simply to convey my understanding and appreciation for the limited role of judges to be faithful to the rule of law and the doctrine of *stare decisis*, and that judges should not be policy makers.

    b. **For each case or decision, has your opinion changed with respect to whether the judiciary has abrogated its constitutional authority?**

    Response: I do not recall any specific cases to which I may have been referring to when I made that statement in 2011.

2. **Canon 7A of the Georgia Code of Judicial Conduct forbids judges to "make a contribution to a political organization." Georgia Conservatives in Action ("GCIA") endorses candidates for elective office and, therefore, may qualify as a political organization under the Code of Judicial Conduct. In September 2012, your campaign committee contributed $1500 to GCIA. During your May 13, 2014 nomination hearing, you testified that you had been unaware of GCIA's political activities at the time that you made that donation. According to an Atlanta Journal-Constitution blog posting (http://politics.blog.ajc.com/2014/05/19/john-lewis-i-would-vote-against-the-confirmation-of-michael-boggs/ accessed on May 19, 2014), however, you attended an October 2010 GCIA event attended by Nathan Deal (then running for Governor), Gary Black (then running for Agricultural Commissioner), and Lt. Gov. Casey Cagle. Nathan Deal had been endorsed for Governor by GCIA on August 7, 2010. At photos of the event, campaign signs appear prominently.**

    a. **Do you maintain that you were unaware in 2012 that Georgia Conservatives in Action endorsed candidates for elective office?**

Response: Yes. I am very respectful and mindful of the obligations of judges pursuant to the Georgia Code of Judicial Conduct. And, throughout my ten-year judicial career, I have endeavored to be faithful to and exceed my legal obligations pursuant thereto. As a judge, I have never made a contribution to a political organization as that term is defined by the Georgia Code of Judicial Conduct.

b. **Did the presence of campaign signs and multiple candidates for statewide office at the October 2010 Georgia Conservatives in Action event in Waycross, GA give rise to a reasonable inference that Georgia Conservatives in Action endorsed any candidates for elective office?**

Response: To my knowledge, I have attended two GCIA events. Elected state and local officials and candidates – sometimes competing candidates – were present at both events. I did not consider their presence, particularly since competing candidates were present, or their campaign signs at one of the events, to be reflective of any "endorsement" by GCIA.

c. **Do you consider Georgia Conservatives in Action to be a political organization under Canon 7A of the Georgia Code of Judicial Conduct?**

Response: No. The Georgia Code of Judicial Conduct defines a "political organization" to be "a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office." GCIA was organized and incorporated as a social welfare organization under section 501(c)(4) of the Internal Revenue Code. By definition under the regulations of the Internal Revenue Service a social welfare organization is an entity that is "primarily engaged in promoting in some way the common good and general welfare of the people of the community." *See* 26 C.F.R. section 1.501(c)(4)-1(a)(2). Inasmuch as election activity and social welfare are different things, an organization can not have the principal purpose of furthering the election or appointment of candidates to political office (the definition of a "political organization" under the Code) and also have the primary purpose of promoting social welfare (the definition of a 501(c)(4)).

Inasmuch as GCIA is a 501 (c)(4), it cannot be a political organization under the Code. This is true notwithstanding the fact that GCIA has apparently endorsed candidates for political office. Under the tax code, a 501 (c)(4) may endorse candidates. So long as its election-related activities do not become its principal or primary purpose, the entity remains a (c)(4), and it cannot be a "political organization" under the Code.

d. **Do you believe it would be appropriate for a judge to financially support the political activities of an organization like Georgia Conservatives in Action?**

Response: I do not believe it would be appropriate for a judge to financially support any "political organization," as defined by the Georgia Code of Judicial Conduct, and as a judge, I have never done so.

e. **Prior to making any contribution to Georgia Conservatives in Action, what steps did you take to ascertain whether contributions to that organization would be permitted under the Georgia Code of Judicial Conduct?**

Response: In exercising due diligence prior to my former campaign committee's donations, I reviewed the pertinent section of the Code of Judicial Conduct defining "political organization" and reviewed Georgia statutory authority regarding the disposition of campaign contributions, paying particular attention to O.C.G.A. § 21-5-33 (b)(1)(a), which expressly permitted contributions to a nonprofit organization. I also spoke personally with the representative of the organization who solicited the contributions and verified that the organization was duly incorporated as a nonprofit organization. I was also familiar with the organization's tax status at the time, as evidenced by my notation of "501 C 4 Donation" on the April 6, 2012 check and my notation of "nonprofit contribution per: O.C.G.A. § 21-5-33(b)(1)(A)" on the September 27, 2012 check.

3. **Canon 7A of the Georgia Code of Judicial Conduct also provides that a judge shall not "publicly endorse a candidate for public office." According to an Atlanta Journal-Constitution blog posting (http://politics.blog.ajc.com/2014/05/19/john-lewis-i-would-vote-against-the-confirmation-of-michael-boggs/ accessed on May 19, 2014), you attended a 2012 fundraiser for a candidate for Georgia State Senate.**

a. **Please describe your participation in fundraisers, speeches, and other events associated with candidates for public office, since 2004.**

Response: In January of 2012, I attended a fundraiser for State Senator-elect Tyler Harper. At the time I attended, I fully intended to run for re-election to the Court of Appeals. Therefore, I was authorized to attend this event or any fundraiser for any other partisan or nonpartisan political candidate and did so with a full understanding that the attendance was authorized by the Code of Judicial Conduct and the Advisory Opinions stated herein.

Specifically, Canon 7(A)(2) of the Georgia Code of Judicial Conduct provides that "[j]udges holding an office filled by public election between

competing candidates, or candidates for such office, may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election." Relying in part on this provision, the Judicial Qualifications Commission has ruled in a number of Advisory Opinions that elected judges and judicial candidates may attend fundraisers for partisan candidates. See, e.g., Opinion No. 90 (October 24, 1986) (judicial candidate may attend fundraisers for partisan candidates); Opinion No. 124 (July 29, 1988) (if a judge has made the decision to run for election or re-election to office, he is a candidate and thus may attend a fundraising event for a partisan, non-judicial candidate if he is acting on his own behalf and the purpose of his attendance is to encourage individuals to vote for him in a future election); Opinion No. 203 (Dec. 15, 1995) (in attending a fundraising event for another candidate, a judge is not making a prohibited public endorsement) adding that "[t]he Commission makes this determination in recognition of the fact that most judges in this state must themselves periodically seek election to public office, and any other conclusion might be viewed as an unreasonable and unnecessary burden on the political process."

Since my election as a Judge in 2004, I have attended some fundraisers of local and state partisan and nonpartisan candidates for public office. I have done so on a very limited basis and always in strict compliance with the Georgia Code of Judicial Conduct and the Advisory Opinions issued by them relative to such activities.

b. **For each, please state whether you believe your participation to have constituted a public endorsement of a candidate for public office in violation of Canon 7A.**

Response: I am confident that my participation in attending fundraisers for any candidate while I have been a judge does not constitute a public endorsement of a candidate for public office in violation of Canon 7A. This conclusion is expressly supported by the provisions of Canon 7A(2) of the Georgia Code of Judicial Conduct and Advisory Opinion No. 203 (Dec. 15, 1995) which states that "in attending a fundraising event for another candidate, a judge is not making a prohibited public endorsement" adding that "[t]he Commission makes this determination in recognition of the fact that most judges in this state must themselves periodically seek election to public office, and any other conclusion might be viewed as an unreasonable and unnecessary burden on the political process."

c. **For each, please describe the steps you took to ascertain whether your participation would be permitted under the Georgia Code of Judicial Conduct.**

Response: In each and every instance where I may have attended a fundraiser for any candidate, I would have based my decisions on the provisions of Canon 7A(2) of the Georgia Code of Judicial Conduct and the Advisory Opinions of the Georgia Judicial Qualifications Commission related specifically to this issue.

Senator Blumenthal - Question for Judge Boggs

Choice Amendment

You voted for an amendment that would have identified doctors who performed abortions in profiles developed and maintained by the state of Georgia and made public online. Had the amendment passed, it would have put abortion care doctors' and other medical providers' safety at tremendous risk. At your confirmation hearing, you testified that you were unaware of any public safety concerns with respect to that amendment. However, an editorial in the February 13, 2001 edition of the Atlanta Journal-Constitution that appeared just prior to your vote specifically noted that the Amendment "will simply make the doctors, their offices and patients easier targets." These are words from the newspaper with the largest circulation in Georgia; a newspaper you advertised in.

A. **Did you read the February 13 editorial?**

Response: Respectfully, I have no memory of reading this editorial in the February 13, 2001 edition of the *Atlanta Journal-Constitution*. Atlanta is 240 miles north of my former legislative district. As a result, I only occasionally read this publication during the time this editorial was published. To my knowledge, the only advertisement I ever placed in that publication was an advertisement for the sale of an automobile around 2010.

B. **Did you read the Atlanta Journal-Constitution on a regular basis?**

Response: During my service in the Georgia General Assembly from 2001 to 2004, I did not personally subscribe to the *Atlanta Journal-Constitution*, but I did occasionally read it. I tended to read newspapers published in or near my legislative district which was 240 miles southeast of Atlanta.

C. **Would you have noted editorials that related to your legislative duties?**

Response: I have no specific recollection of any reading any editorials related to my legislative duties in any newspaper ten to thirteen years ago, although it is fair to assume that I would have been most likely to pay attention to articles and editorials that were printed in newspapers in or near the district I represented.

D. **What news did you consume while carrying out your duties as a legislator?**

Response: During my four-year legislative career, I recall regularly reading news from my legislative district consisting of two newspapers within my district and two to three newspapers from near my district. I also occasionally read the *Florida Times-Union*, a newspaper published in Jacksonville, Florida, approximately 75 miles from my legislative district and a paper that, unlike the *Atlanta Journal-Constitution*, specifically covered South Georgia news. While it would have occurred on a more limited basis during the legislative session, I occasionally read *The Daily Report* and the *Atlanta Journal-Constitution*.

Which publications did you read on a regular basis from 1993 to 2001? If you read different publications during different time periods, please indicate your reading habits by time period.

Response: I did not read different publications during different time periods from 1993 to 2001. During this time, I resided in Waycross, Georgia, which is 240 miles southeast of Atlanta. I regularly read the *Waycross Journal-Herald* and other local newspapers and legal publications, including the State Bar Journal. I also occasionally read the *Florida Times-Union*, a newspaper published in Jacksonville, Florida, approximately 75 miles from my home and legislative district and a paper that, unlike the *Atlanta Journal-Constitution*, specifically covered South Georgia news. I did not subscribe to nor regularly read the *Atlanta Journal-Constitut*ion, and to the best of my recollection, I did not regularly read or have any subscriptions to any newsmagazines during this time.

You were a member of the Democratic Party; the final vote for the amendment was 69 in favor of adopting the amendment and 86 against. 75 members of your party voted against adoption. While 17 members of your party did not vote, only four members of your party voted in favor of adopting the amendment.

A. **Did Democratic Party leadership in the Georgia House ever suggest to you, directly or indirectly, that the amendment raised safety concerns for doctors?**

Response: No. The amendment came up first in February of 2001 on the floor of the House and was passed without a recorded vote. I do not recall this amendment nor any debate or discussion of it at that time. The matter was reintroduced again on the last day of the 2001 legislative session as an amendment to H.B. 156. The last day of the session is generally considered to be the busiest legislative day of the year. We convened at 10:00 a.m. and adjourned at midnight. The House journal for that day alone consists of 489 pages. Although I understand from recent press reports that the issue of violence against abortion doctors was debated on the House floor that day, I do not recall that debate. Because of the volume of bills and amendments that day, it would not have been uncommon to have only a few minutes of debate before a particular vote. I do not remember having even heard of the amendment prior to the author presenting it on the floor of the House just prior to the final vote. To the best of my recollection, this amendment was never discussed in any Democratic caucus meeting I ever attended, I recall no correspondence from House Democratic leadership regarding the anticipated amendment at any time, and I do not recall discussing it on the floor of the House with any Democratic or Republican member. I am also certain that I did not speak to Democratic Party leadership about the safety concerns for doctors posed by this amendment. I did not co-sponsor this amendment and I never spoke to the author about this amendment.

This amendment was made to H.B. 156, a bill sponsored by the House Democratic Majority Leader. This bill concerned the adoption of a "Patient Right to Know Act of 2001." The bill proposed to repeal certain confidentiality provisions regarding reports of disciplinary actions against persons authorized to practice medicine. The bill required the Composite State Board of Medical Examiners to create physician profiles on each physician licensed in Georgia, including 20 identified disclosures relating to the physicians academic background, hospital privileges, geographic location of their practice, participation in the Medicaid program, criminal background, descriptions of disciplinary actions by regulatory boards, statements of resignation from or nonrenewal of medical staff membership, and final medical malpractice court judgments, etc. The underlying bill had absolutely nothing to do with women's reproductive rights and I was not focused on that issue.

What I meant in my testimony to the Committee was that in considering the amendment, and particularly when considering it during the busiest day of the legislative session, I did not consider the issue of violence against abortion doctors. I was considering the bill as a whole, the purpose of which was predominately to educate and make available to the public information concerning a physician's disciplinary history and malpractice judgments. As I think back on this bill, the only thing I recall being discussed, and the issue that garnered all of the attention of which I was aware, was the question of whether and how malpractice judgments and settlements would be disclosed.

By my testimony to the Committee, I did not intend to convey categorically that I was generally unaware of claims of violence against physicians that perform abortions. I would have been aware of some of the cases of violence at that time, although I do not recall specifically hearing any of these concerns raised relative to this amendment. However, I should have considered these concerns at the time the amendment was presented and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

B. Were you aware that the vast majority of Democrats planned to vote no on the amendment? Did you ever discuss with any of your colleagues why they planned to vote no?

Response: No. I have no specific recollection of ever speaking with any members of my party's leadership about how the Democrats planned to vote. When the matter was presented for a final recorded vote on the last day of the legislative session, I had no recollection of even knowing about the amendment. To the best of my recollection, this amendment was not discussed in any Democratic caucus meetings I attended during the 2001 legislative session, I recall no correspondence from House Democratic leadership regarding the anticipated amendment, I do not recall discussing it on the floor of the House with any member, Democrat or Republican, and I had no idea how other Democrats would vote on the issue.

C. When the roll call vote occurred and the legislature rejected the amendment—after the vast majority of Democrats opposed it—did you ever wonder why so many of your colleagues disagreed with the position you took on the amendment?

Response: No. Respectfully, I recognize it may seem odd that I did not give much consideration to why so many of my colleagues disagreed with the position I took. At the time I voted for the amendment I did so both because I considered myself to be a pro-life legislator and I believed that it was important to the very pro-life constituency I was elected to represent. I was more focused on representing my constituents and presumed that all of my colleagues were doing the same.

D. If you wondered, did you ever ask any of your colleagues why they voted no?

Response: I did not wonder.

E. Did any of your colleagues mention after the vote that they voted no because they were concerned for the safety of doctors?

Response: No, not to me.

F. **Did you see any press coverage indicating why your colleagues opposed the bill?**

Response: No.

G. **If after the vote you learned of the safety concerns that led to the amendment being rejected by the House, did you look into these concerns? Did you change your position on the issue?**

Response: I have changed my position on this issue. What I meant in my testimony to the Committee was that at the time this amendment was considered in 2001, I did not consider the issue of violence against abortion doctors. I was considering the bill as a whole. I should have considered the public safety concerns at the time this amendment was presented and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

H. **Have you, in the thirteen years between that vote and your testimony during your confirmation hearing, ever said publicly that you regret that vote?**

Response: Until just prior to my confirmation hearing, I did not recall that vote and no one has ever mentioned that vote to me. As a result, I had no occasion until the confirmation hearing to reconsider the issue or express any opinion on it or express regret that I voted for it.

Question for Judge Boggs

Judicial Record

In your testimony, you repeatedly asked to be judged by your judicial record and not by your legislative record. However, based on the materials you provided to the Committee and the answers you provided during your hearing, we still have little to no sense on how you would handle issues such as a woman's right to choose and equality for all citizens.

A. **You mentioned that your views "may or may not" have changed regarding marriage equality but noted that you presided over a same-sex adoption hearing.**

a. **What are we supposed to infer from your involvement in this case?**

Response: I would not expect the Committee to infer anything from my involvement in that case other than the fact that I decided the case as any judge should, based on a fair and unbiased application of the law to the facts of the case. While it is true that I have no record of handling a case that involved the constitutionality of a woman's right to choose because the courts on which I have served generally have no jurisdiction on this matter, my record demonstrates a ten-year unequivocal commitment and faithfulness to the rule of law and precedent in every case that has come before me, regardless of the type of case. My judicial record demonstrates that I would handle issues such as a

woman's right to choose by faithfully following the precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals, as I have faithfully followed the precedent of higher courts throughout my career in disposing of nearly 14,000 cases. And, my judicial record demonstrates that in every case I have handled in my ten-year career that I have always treated every person that appeared before me equally and with respect and dignity.

b. **Without revealing confidential information, could you explain the extent of your role and involvement in that adoption?**

Response: While serving as the least senior Superior Court Judge in the Waycross Judicial Circuit, I was contacted by an attorney who indicated that he had a client who identified herself as a lesbian, and who desired to adopt a child out of foster care. This lawyer indicated that the then Chief Judge of the Judicial Circuit refused to set the case for a hearing apparently due to the sexual orientation of the lawyer's client. I considered this a fundamental "access to the courts" issue and discussed this issue with the other judge from our Circuit. The lawyer asked if I would agree to hear the case and I informed him that I would. I scheduled the matter on my next available hearing date calendar and heard the matter in a cleared courtroom as required by law in all adoptions. After hearing the testimony of the petitioner and witnesses, I granted the petition as I would have for any person based upon the same facts.

c. **Did the case require you to preside over any contested hearings or rule on any unsettled questions of law?**

Response: No.

B. **You also testified that you sat on a panel which decided a parental notification case. Unfortunately, that case was not submitted to the Committee, but you agreed to get us the citation for that case.**

a. **What was your involvement in the case?**

Response: The Court of Appeals in Georgia sits in panels of three judges and cases are assigned randomly to each panel. The opinion in question was authored by Presiding Judge Anne E. Barnes. I joined her opinion as I agreed with her analysis of the case and because I independently concluded that her opinion was correct based on the applicable appellate standard of review. I did not author the opinion, and consistent with the general belief of the other judges on our court, I do not consider any opinion which I did not author, or on which I did not write a dissent or concurring opinion, to be my authored opinion.

b. **Can you briefly describe the question, facts, and outcome of the case?**

Response: The question presented in that case was whether the juvenile court erred in denying the petition of a seventeen-year-old to waive the statutory requirement that her parents or legal guardian be notified before she underwent a procedure to terminate her pregnancy. Our court has a very limited and constrained role in the

review of these cases on appeal. The standard of appellate review by which we are bound demands that findings of fact made by a trial judge are reviewed by our court under the "any evidence" rule, under which a finding by the trial court supported by *any* evidence must be upheld. Additionally, the appeals court will not set aside the trial court's factual findings unless they are clearly erroneous and must give due deference to the opportunity of the trial court to judge the credibility of the witnesses.

The juvenile court concluded that the unemancipated minor was not mature enough nor well enough informed to make the decision to have an abortion in consultation with only her physician without notifying her parents. The evidence in the record showed that the minor and her son lived with her mother, she had never made a major decision without her parents' input, she did not demonstrate that she was informed about the abortion procedure beyond the most cursory information, and that the reason she did not want to tell her parents did not stem from any fear that they would abuse or harm her if they found out about the pregnancy. Under our appellate standard of review, we affirmed the judgment of the trial court because we could not say that the juvenile court judge erred in her decision to deny the petition as there was evidence in the record to support her conclusion.

c. **How does this case demonstrate that you will uphold the law as it relates to women's reproductive rights?**

Response: I discussed this case in response to a question of whether I had handled any case that dealt with reproductive rights and I did not mean to suggest that it held a particular significance with respect to my commitment to uphold the law as it relates to women's reproductive rights. That said, I believe it demonstrates that I will follow the law in all cases that come before me. The best evidence to demonstrate that I will uphold all laws, including those that relate to women's reproductive rights, is my ten-year record of disposing of nearly 14,000 matters. In each case, I have demonstrated faithfulness to the rule of law and have an unblemished record of applying the doctrine of *stare decisis* in all cases. If confirmed, I am committed to faithfully following the binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals on all matters, including those related to women's reproductive rights.

d. **Why have you not provided this case to the Committee?**

Response: I was asked to provide copies of all cases, both published and unpublished, which I authored. I did not author this opinion.

e. **During your time as a judge, have you been involved in any way in any other cases that implicate in any way women's reproductive rights, the right to privacy, the rights of same-sex couples and LGBT individuals, or the rights of racial, ethnic or religious minorities?**

Response: No. However, in disposing of nearing 14,000 matters, I have treated all parties without bias and with the utmost respect regardless of their gender, sexual orientation, race, ethnicity or religion.

Question for Judge Boggs

Donation to Georgia Conservatives In Action

In your testimony before the Committee, you repeatedly stated that you should be judged on your record as a judge, not as a legislator, and that you understand the difference between a judge and a legislator. Given the lack of information before the committee on your actions as a judge, I want to ask a question about your actions as a judicial candidate. On September 27, 2012, the Committee to Elect Mike Boggs Judge contributed $1,500 to Georgia Conservatives in Action.

A. **At the hearing, you indicated that you were not aware that GCIA endorses candidates. In a recent google search for that organization, four of the first seven results discussed candidate endorsements. If you did not believe that GCIA endorsed candidates when you donated to them, what did you think they did?**

Response: I am very respectful and mindful of the obligations of judges pursuant to the Georgia Code of Judicial Conduct and throughout my ten-year judicial career I have endeavored to be faithful to and exceed my ethical obligations pursuant thereto. As a judge, I have never made a contribution to a political organization as that term is defined by the Georgia Code of Judicial Conduct and my two corporate donations to Georgia Conservatives in Action, Inc. ("GCIA") in 2012 were clearly and expressly permitted by both the Georgia Code of Judicial Conduct and Georgia law. Moreover, GCIA is lawfully permitted to endorse candidates and my familiarity with any endorsement would have been irrelevant to the analysis of whether the two donations were permissible under the Georgia Code of Judicial Conduct and Georgia law. The donations to GCIA were clearly lawful and expressly not in violation of the Georgia Code of Judicial Conduct.

That said, I was not aware that GCIA had publically endorsed any political candidates. I have personally known the co-founders of this organization for nearly fifteen years, well prior to the existence of GCIA ,which was incorporated as a Georgia nonprofit corporation in 2009. I have known them to be active in local and state government public policy matters, educating the public on matters of public policy and encouraging others to help them in advocating for issues of importance to them and South Georgia. The Mission Statement of GCIA is to "Educate, Motivate and Activate grass roots conservatives to have an effective voice in government," and that is what I understood the group to do.

On the date you donated to GCIA, the only substantive post on the group's website—a Facebook page—consisted entirely of a link to an article urging Christians to rally behind Pastor Jack Hakimian, who was under fire for comparing homosexuality to, in the article's words, "other sinful lifestyles like drug abuse and witchcraft."

A. **At the time you donated to GCIA, were you aware of the group's support for Pastor Hakimian?**

Response: No. I have never heard of Pastor Jack Hakimian nor have I ever visited GCIA's Facebook page.

B. **Did you worry that your support—as a sitting judge—for a group with GCIA's agenda could lead LGBT litigants to question your impartiality in their cases?**

Response: Throughout my judicial career I have endeavored to strictly follow and exceed the Code of Judicial Conduct being ever mindful of questions regarding the appearance of impropriety or matters that could call in to question my impartiality. I am respectful that some might question my impartiality based on the two donations made by my former Superior Court Campaign Committee. However, the donations were made in response to two specific solicitations and were made with the sole specific intent to help with the costs of two events; an "Economic Development Summit" and another event sponsored by the organization in 2012. The contributions were expressly permitted by Georgia law and the Georgia Code of Judicial Conduct. I have never personally adopted, endorsed, or supported any general public policy positions advanced by this organization. The contributions were expressly permitted by Georgia law and the Georgia Code of Judicial Conduct, and I would be hopeful that my ten-year judicial career of being faithful to the rule of law and treating everyone that comes before me equally as both a trial judge and appellate judge would acquit me of any perceived bias generated by these two donations.

C. **Given that you donated from your judicial campaign account to GCIA, do you agree that homosexuality is akin to drug abuse and witchcraft? If not, can you provide the Committee with any evidence of any public statement that you believe LGBT Americans deserve the same rights as everybody else?**

Response: No. My ten-year record of judicial service demonstrates my commitment to ensuring that every litigant who comes before me deserves the same rights and is treated equally before the law with dignity and respect. It is my considered belief that public faith in a fair and impartial judiciary is dependent upon judges who are faithful to treating everyone equally.

Question for Judge Boggs

Flag Vote Disavowal

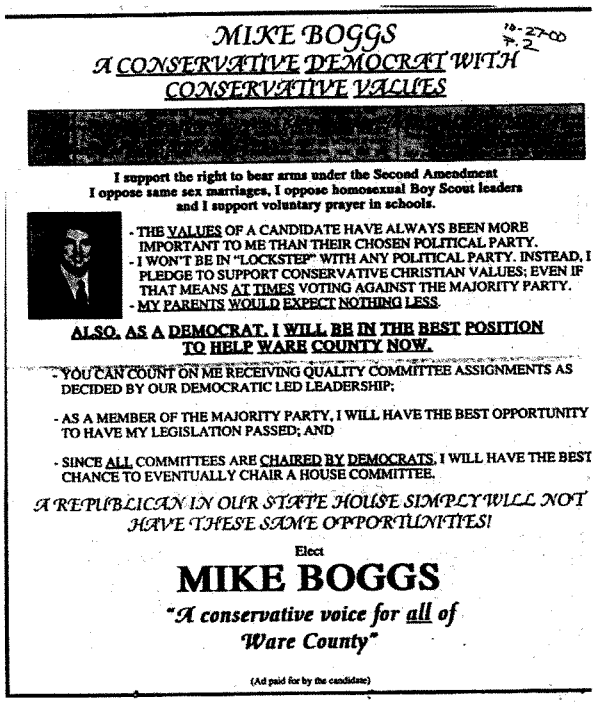
You expressed regrets to the Committee over your vote to keep the Confederate battle cross as a prominent part of the Georgia flag and explained your votes as motivated by the will of your constituents, who wanted a referendum on the issue.

A. **Please provide any public statements you made prior to your confirmation hearing that indicate this regret.**

Response: Respectfully, the vote occurred over thirteen years ago and during the intervening years, no one has ever sought to discuss this vote with me publically or privately, until my consideration for the district court. Until my confirmation hearing, I have never publicly discussed the vote or my personal position on the matter.

Chairman Patrick Leahy
Follow Up Questions for the Record
Nomination of Michael Boggs
To Be U.S. District Judge for the Northern District of Georgia
June 16, 2014

1. **At your May 13, 2014 nomination hearing, you testified under oath that there was no additional material responsive to the questionnaire than what you had already submitted to the Senate Judiciary Committee. The May 16, 2014 online edition of the Atlantic Constitution Journal (available at http://politics.blog.ajc.com/2014/05/16/in-georgia-john-lewis-is-now-the-last-word-in-federal-judgeships/) included an image of the following document, which is reportedly a campaign flyer:**



MIKE BOGGS

A CONSERVATIVE DEMOCRAT WITH CONSERVATIVE VALUES

I support the right to bear arms under the Second Amendment
I oppose same sex marriages, I oppose homosexual Boy Scout leaders
and I support voluntary prayer in schools.

- THE VALUES OF A CANDIDATE HAVE ALWAYS BEEN MORE IMPORTANT TO ME THAN THEIR CHOSEN POLITICAL PARTY.
- I WON'T BE IN "LOCKSTEP" WITH ANY POLITICAL PARTY. INSTEAD, I PLEDGE TO SUPPORT CONSERVATIVE CHRISTIAN VALUES; EVEN IF THAT MEANS AT TIMES VOTING AGAINST THE MAJORITY PARTY.
- MY PARENTS WOULD EXPECT NOTHING LESS.

ALSO, AS A DEMOCRAT, I WILL BE IN THE BEST POSITION TO HELP WARE COUNTY NOW.

- YOU CAN COUNT ON ME RECEIVING QUALITY COMMITTEE ASSIGNMENTS AS DECIDED BY OUR DEMOCRATIC LED LEADERSHIP;
- AS A MEMBER OF THE MAJORITY PARTY, I WILL HAVE THE BEST OPPORTUNITY TO HAVE MY LEGISLATION PASSED; AND
- SINCE ALL COMMITTEES ARE CHAIRED BY DEMOCRATS, I WILL HAVE THE BEST CHANCE TO EVENTUALLY CHAIR A HOUSE COMMITTEE.

A REPUBLICAN IN OUR STATE HOUSE SIMPLY WILL NOT HAVE THESE SAME OPPORTUNITIES!

Elect

MIKE BOGGS

"A conservative voice for all of Ware County"

(Ad paid for by the candidate)

(a) **Was this flyer created in connection with your campaign for the state legislature? Did you write or edit any of the content of the flyer?**

Response: Yes. I wrote this flyer in connection with my campaign for State Representative in 2000.

(b) **At the bottom of the flyer it states that it is an "Ad paid for by the candidate". How was this flyer used? Did you hand it out to the public? Was it printed in any publications?**

Response: To the best of my recollection from fourteen years ago, this flyer was not handed out to the public but was printed in the *Waycross Journal-Herald* in the fall of 2000.

(c) **Can you confirm that you did not have access to a copy of this campaign flyer when you submitted your questionnaire to this Committee on January 14, 2014 or when you submitted an update to your questionnaire on April 10, 2014?**

Response: Yes. Until I read the May 16, 2014 edition of the *Atlanta Journal-Constitution*, I did not remember this flyer from fourteen years ago and I did not retain a copy of it.

(d) **Are there any materials from your campaigns that you have not provided to the Committee? If so, please provide these materials to the Committee.**

Response: Attached are all campaign materials that I possess, including the one referenced above, or that I have recently obtained from my past campaigns.

2. **I asked you how you knew that your vote in support of the Confederate symbol on the Georgia state flag "represented the will of your constituents." You answered under oath that the "issue of changing the flag was generally a topic of discussion within my legislative district at the time."**

(a) **Was this a topic of discussion in your district in the fall of 2000? If so, did voters express their views on the Confederate symbol to you during your campaign?**

Response: Yes. The issue was generally discussed, and the majority of those who expressed their views to me were opposed to changing the state flag.

(b) **Did you express any views on the Confederate symbol during any of your campaigns? If so, how were these views expressed? For example, did you distribute any campaign literature on the Georgia state flag?**

Response: I did not distribute any campaign literature on the issue of the Georgia State flag. To the best of my recollection, I never publically expressed any views on the Confederate symbol during any of my legislative campaigns and most certainly not during any of my judicial campaigns.

3. **You testified at your hearing that you voted in the Georgia legislature for an amendment to the "Patient Right to Know Act of 2001" to require internet-accessible profiles of doctors to include the number of abortion procedures the doctor had provided in the previous 10 years because you were a "pro-life legislator".**

   Why do you think that an amendment publicizing a doctor's name, location, and number of abortion procedures performed is "pro-life"?

   Response: The "Patient Right to Know Act of 2001" was intended to provide online physician profiles to assist the general public in choosing a physician for their personal medical needs. Consistent with that purpose, I consider this amendment as "pro-life" because it would have allowed those seeking personal medical services to know whether a particular physician they were considering performed abortions. To some who consider themselves "pro-life," this may be important information to have when choosing a personal physician.

4. **You answered under oath to a written question asked by Senator Blumenthal that your campaign donations to Georgia Conservatives in Action were made with "the sole specific intent to help with the costs of two events." You described one event as an "Economic Development Summit," but described the second only as "another event sponsored by the organization in 2012".**

   Please describe this second event your campaign made a donation to support and produce any documents relevant to that event.

   Response: I did not recall the details of this second event, which I did not attend, so to respond to this question I inquired with the organization. I have been told that it was a nonpartisan rally to encourage people to get involved in their community, focusing on legislative proposals to reform Georgia's ethics laws, and also centered on Governor Nathan Deal's efforts to expand Georgia's DUI and Drug Court programs. I understand that a young man spoke on becoming more civically involved; a representative of Common Cause Georgia, Georgia State Senator Josh McKoon, and Georgia Attorney General Sam Olens spoke on pending ethics legislation reform proposals; and a veteran spoke about his service to our country. Event organizers estimate that approximately 100 people attended, both Democrats and Republicans. I have been informed that this event was expressly not designed to benefit any candidate. No campaign stump-speeches were permitted by any elected officials or candidates for public office, it was not a fundraiser for any candidate nor for the organization, and no tickets were sold. I have never possessed nor have I seen any documents relevant to this event.

Senator Blumenthal

Second Round QFRs for Boggs:

1. **You have indicated in your testimony before the Committee and in your written responses that on a number of issues your views have or may have evolved. Yet there is no evidence in the record to support this evolution. For each of the following issues, please provide evidence that your views evolved before you were nominated to serve as a federal judge:**

   a. **The inclusion of a confederate symbol on the Georgia state flag.**

      Response: I believed in 2001 and still believe today that the former Georgia state flag was offensive to many people based on its historical association with the Civil War and the institution of slavery, the connection between the adoption of the flag and the Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), and the flag's more recent usage by organizations that espoused hate and racism and overtly oppressed African-Americans. The vote on the flag occurred over thirteen years ago and during the intervening years no one has ever sought to discuss this vote with me publicly or privately, until my consideration for the district court. My personal opinion regarding the former Georgia state flag has not "evolved" but has remained consistent since at least 2001 when this issue was raised in the legislature. As evidence of my views on this matter, I would point to my sworn testimony before the Senate Judiciary Committee that this was my view in 2001 at the time of the flag vote.

   b. **The constitutionality of same-sex marriages.**

      Response: I have said that my position may or may not have changed since the vote on the proposed Constitutional amendment in 2004, but that it would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for district judge, to express my personal opinion now on this issue. I believe that my record as a state court judge for ten years demonstrates that I have been fair and impartial without any regard to any personal views or opinions I might have.

   c. **The wisdom of the amendment to the Patient Right to Know Act of 2001 that would have required abortion providers to disclose their personal information and how many abortions they had performed.**

      Response: Until just prior to my confirmation hearing, I did not recall the vote on this amendment and during the intervening years since that vote, no one sought to discuss it with me publicly or privately. As a result, I had no occasion until the confirmation hearing to reconsider the issue or to express any opinion on it or to express regret that I had voted for it. My opinion, stated under oath at my

confirmation hearing and in response to written questions, is that the amendment was ill-conceived and that I should not have supported it.

2. **In your response to a question I asked about your donations to Georgia Conservatives in Action, you mention you did not check GCIA's Facebook page before donating $1000 in April 2012 and $1500 in September 2012 from your judicial campaign account. Your support for this group raises impartiality concerns; LGBT litigants might question the neutrality of a judge who supported a group that urged Christians to rally behind a pastor who compared homosexuality to "other sinful lifestyles like drug abuse and witchcraft." You have stated that you personally knew the co-founders of Georgia Conservatives in Action and that your donations were personally solicited by these co-founders.**

   a. **What materials, if any, did you consult before deciding to contribute to this organization? What information did these sources convey about the work that GCIA did or the candidates they supported? Please provide copies of these materials to the Committee.**

      Response: I did not consult any materials of this organization prior to making the two referenced donations. When one of the organization's co-founders asked if I could make two corporate donations to help with the costs associated with two specific events, I verified the organization's tax status with the Internal Revenue Service and the organization's nonprofit status with the Georgia Secretary of State. I also consulted the Georgia Code of Judicial Conduct and the Advisory Opinions therein in determining that the donations were permitted by Georgia law and the Georgia Code of Judicial Conduct.

   b. **In their requests for donations, what representations did the co-founders of GCIA make about their positions on issues that might come before the judiciary?**

      Response: They made no such representations.

   c. **In response to a question I asked about your financial support of GCIA, you stated that your contributions were provided solely for the purpose of helping with the costs of two events. One of these events was the Economic Development Summit. You do not name the other event. Please name and describe the second event that you financially supported through your donation to GCIA. In your description, please include what the purpose of the event was and whether the event was designed to benefit any candidate or candidates for office, and which candidate or candidates.**

      Response: I did not recall the details of this second event, which I did not attend, so to respond to this question I inquired with the organization. I have been told that it was a nonpartisan rally to encourage people to get involved in their community, focusing on legislative proposals to reform Georgia's ethics laws, and

also centered on Governor Nathan Deal's efforts to expand Georgia's DUI and Drug Court programs. I understand that a young man spoke on becoming more civically involved, a representative of Common Cause Georgia, Georgia State Senator Josh McKoon, and Georgia Attorney General Sam Olens spoke on pending ethics legislation reform proposals, and a veteran spoke about his service to our country. Event organizers estimate that approximately 100 people attended, both Democrats and Republicans. I have been informed that this event was expressly not designed to benefit any candidate. No campaign stump-speeches were permitted by any elected officials or candidates for public office, it was not a fundraiser for any candidate nor for the organization, and no tickets were sold.

d. **You stated that prior to donating to GCIA, you checked their tax status to ensure that GCIA was a non-profit organization that you were allowed to donate to under the Code of Judicial Ethics. Did you take any steps beyond checking their tax status?**

Response: In exercising due diligence prior to my former campaign committee's donations, I reviewed the pertinent section of the Georgia Code of Judicial Conduct defining "political organization" and reviewed Georgia statutory authority regarding the disposition of campaign contributions, paying particular attention to O.C.G.A. Section 21-5-33 (b)(1)(a), which expressly permitted contributions to a nonprofit organization. I also spoke personally with the representative of the organization who solicited the contributions and verified that the organization was duly incorporated as a nonprofit organization and confirmed their tax status with the Internal Revenue Service as a 501(c)(4) "social welfare" organization, as evidenced by my notation of "501 C 4 Donation" on the April 6, 2012 check, and my notation of "nonprofit contribution per: O.C.G.A. Section 21-5-33 (b)(1)(a)" on the September 27, 2012 check.

3. **Question 12a of the Committee questionnaire calls for you to provide any "published material you have written or edited." The Atlanta Journal Constitution has reported on a campaign flyer that conveys your views on hot button issues likely to be considered by the judiciary and that was not included in the materials you submitted to the Committee.**

a. **Why wasn't this flyer provided to the Committee?**

Response: Question 12a of the Senate Judiciary Questionnaire for Judicial Nominees requested the following: "[l]ist 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 completing my Senate Judiciary Questionnaire for Judicial Nominees and in providing additional information to the Committee on April 10, 2014, I reviewed the questionnaires of many previous judicial nominees, including several with

prior service in elective office, and none had identified or provided copies of published campaign flyers in response to this or any other question.

Specifically, I reviewed the responses to this question from M. Douglas Harpool who served as a Missouri State Representative and who previously ran for Congress and for the Missouri State Senate who listed only letters to the editor, a chapter of a book, a journal article and law review articles; Gregory Alan Phillips who served in the Wyoming State Senate who listed only three letters to the editor and one law review article; Edward G. Smith who served as an elected county judge and who previously ran for Congress and county judge who listed "None" in response to this question; and Ronnie L. White, who served as a Missouri State Representative and who listed only two YouTube campaign videos published on the Internet, a personal services website and a newspaper column. In addition, I reviewed the follow-up Questions for the Record submitted to dozens of nominees, including those listed, and none were asked any questions concerning written published campaign materials or flyers. Based on the foregoing, I did not provide any flyer to the Committee.

b. **Are there other materials—written either by you or by staff for any of your campaigns—that convey your views on issues that could come before the federal judiciary but have not yet been submitted to the Committee?**

Response: Yes.

c. **If such materials exist, please provide copies to the Committee and indicate why they have been withheld.**

Response: Attached are all campaign materials that I possess or have recently obtained from my past campaigns. They were not provided to the Committee for the reasons explained above in my response to question 3a.

d. **Are you aware of any materials created by groups not associated with your campaigns that speak to your view on issues that might come before the federal judiciary? Please provide all materials that you are aware of that discuss your campaign or your views on issues that might come before the federal judiciary.**

Response: I am not aware of any such materials but it is possible that I was asked to fill out a questionnaire by various organizations during my campaigns and that I did fill them out but I have no recollection of which groups requested those questionnaires from me.

4. **In response to a written question from Senator Feinstein, you stated that you supported creating a "Choose Life" license plate because there would be an organization within your district who could apply to be a beneficiary of the money that would be raised from the sale of these license plates.**

a. **Could you provide the name of this organization and describe the work they did for the people of your district?**

Response: The name of the organization is Birthright of Waycross, Inc. In 2003, when these bills were introduced, this nonprofit organization provided free and confidential crisis pregnancy services to help women who were or who believed that they were pregnant. This included counseling services to encourage the mother to have the child and/or consider adoption and financial assistance to help with living expenses. They also provided free birth certificates, maternity/baby clothing, free pregnancy tests, and the "proof of pregnancy" form necessary for the mother to qualify for state Medicaid services. Upon passage of H.B. 1053 in 2006, and upon subsequent ratification of a constitutional amendment by the voters, the "Choose Life Adoption Support Program" became law in Georgia in 2007. Since that time, and to my recent understanding, this organization applied for and received funding under the program.

b. **How did you learn of this organization and the benefits it would gain from this legislation? What discussions did you have with this organization relating to this legislation?**

Response: I knew this organization existed and would benefit from this legislation by being generally familiar with its services in Waycross, which is a small town. In addition, I have known the volunteer director of this organization for over twenty years and served with her on the Board of Directors of the YMCA of Waycross, so I may have learned of the services that this organization provided from conversations with her. However, to my recollection, I never discussed this legislation with any member of this organization in 2003.

5. **As part of your written response to this committee, you had submitted an appellate decision where you were one of the three judges on the panel. This decision upheld a juvenile court's decision that a minor, despite already being a parent, was not mature enough to make the decision to have an abortion without parental consent. In responding to a question regarding this decision, you stated that your role as an appellate judge was severely constrained by the "any evidence" rule, which requires that a trial court decision supported by any evidence must be upheld.**

a. **I would imagine that as an appellate judge you frequently heard cases in which you were expected to use the "any evidence" standard in evaluating a lower court judgment. In those cases, what percentage of the time did you overturn the lower court's decision?**

Response: A search of published opinions on LEXIS shows 122 cases in which I was a member of the panel, in which the court applied the "any evidence" or "clearly erroneous" standard of review. Of these cases, 116 were affirmances and 6 were reversals. I was the author of 30 opinions, with 29 affirmances and 1

reversal: *Talifero v. State*, 319 Ga. App. 65 (734 SE2d 61) (2012) (the record contained no evidence of similarity in purported similar transaction). I concurred without a separate opinion in 92 cases.

A search of unpublished opinions shows 107 cases (including the case to which this question refers) in which I was a member of the panel and the court applied the "any evidence" or "clearly erroneous" standard of review. In all 107 of these cases we affirmed the trial court. In total, I was a member of a panel in which the Court of Appeals of Georgia affirmed the trial court under this standard 97% of the time (223 times in 229 cases).

6. **You have stated that you have attended campaign events as recently as 2012. In response to a question from Senator Leahy, you stated that "[a]s expressly permitted by the Georgia Code of Judicial Conduct, I have periodically attended various partisan and nonpartisan candidate fundraisers throughout my ten-year judicial career. I have not done this regularly. Since I was nominated to be a federal judge, I have attended one fundraiser for a candidate running in a nonpartisan election for Superior Court Judge in Atlanta. "**

   a. **Please provide a complete list of the candidates that you have**

      i. **Donated money to.**

      Response: Based upon my best recollection and upon a public search of records maintained by the Georgia Government Transparency and Campaign Finance Commission, the Georgia Secretary of State (with searchable records extending back to 1998) and the Federal Election Commission, I have made campaign contributions to the following Federal and State Democratic, Republican, and nonpartisan candidates from 1998 to the present:

      1. Georgia Court of Appeals Judge Lisa Branch (2014)
      2. Congressman Austin Scott (2012)
      3. State Representative Chad Nimmer (2012)
      4. State Representative Chuck Sims (2012)
      5. State Representative C. Ellis Black (2012)
      6. Superior Court Judge Todd Markle (2011 and 2012)
      7. Senator Johnny Isakson (2011)
      8. Senator Saxby Chambliss (2008)
      9. Barry Fleming for Congress (2008)
      10. State Representative Mark Williams (2007)
      11. State Representative R.M. Channell (2006)
      12. Superior Court Judge Mike Boggs (in-kind) (2004/2005)
      13. Howard Mead for Court of Appeals (2004)
      14. Roy Barnes for Governor (2002)
      15. Richard McGee for Commissioner of Labor (2002)
      16. Barbara Christmas for State School Superintendent (2002)

ii. Attended campaign events for.

Response: I do not have a calendar or other means of determining what campaign events I may have attended in my lifetime. I have done my best to recall the events that I did attend, and I have called several people to verify this information. However, despite my best efforts, I am certain that this list is not inclusive of every campaign event that I have ever attended. That said, to the best of my recollection, I have attended campaign events for the following Democratic, Republican, and nonpartisan candidates:

1. U.S. Senator Saxby Chambliss
2. U.S. Senator Johnny Isakson
3. U.S. Representative Jack Kingston
4. Governor Nathan Deal
5. Governor Sonny Perdue
6. Governor Roy Barnes
7. Lt. Gov. Mark Taylor
8. State Senator Van Street
9. State Senator Tyler Harper
10. State Representative Chad Nimmer
11. State Representative Chuck Sims
12. State Representative R.M. Channell
13. State Representative candidate Mark Hatfield
14. Superior Court Judge Steve Jackson
15. Superior Court Judge Dwayne Gillis
16. Superior Court Judge Todd Markle
17. Superior Court Judge candidate Sam Edgar
18. Superior Court Judge candidate Shondeana Crews-Morris
19. Sheriff Randy Royal
20. Sheriff Ronnie McQuaig
21. Sheriff Robert Thomas
22. Sheriff candidate Mike O'Steen
23. Barbara Christmas for State School Superintendent

b. For each candidate listed above, to the best of your knowledge, please describe the positions that each candidate took on the following issues

i. A women's right to choose

Response: I have never had a litmus test or list of questions I posed to candidates to whom I made campaign contributions or whose campaign events I attended. While I suspect that the candidates that I have supported have varied opinions on a woman's right to choose, I personally have never questioned any candidate whom I supported regarding their position on this issue, and consequently, I do not know the position that these

candidates took on this issue at the time I made a contribution to them or attended their campaign event.

ii. LGBT marriage

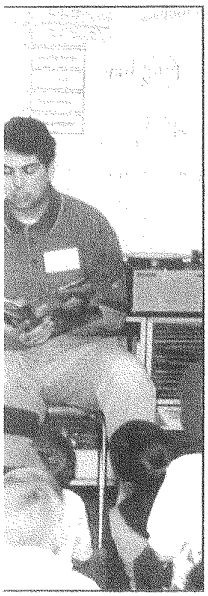
Response: I have never had a litmus test or list of questions I posed to candidates to whom I made campaign contributions or whose campaign events I attended. However, several of the candidates that I have contributed to, or whose campaign events I attended, served as Governor or legislators during the time I served in the Georgia General Assembly and the 2004 proposed constitutional amendment banning same-sex marriages was considered. I would therefore have been aware of their position or of how they voted on this issue at the time I contributed to them or attended their campaign event. For example, I would have been aware that Governor Sonny Perdue, Representative Austin Scott, Representative R. M. Channell, Representative C. Ellis Black, and Representative Chuck Sims had supported the amendment. While I suspect that the candidates that I have supported have varied opinions on the issue of same-sex marriage, I personally have never questioned any candidate whom I supported regarding their position on this issue, and consequently, I do not personally know the positions that the remaining candidates took on this issue at the time I made a contribution to them or attended their campaign event.

iii. The inclusion of a confederate symbol on the Georgia state flag.

Response: I have never had a litmus test or list of questions I posed to candidates to whom I made campaign contributions or whose campaign events I attended. However, several of the candidates that I have contributed to, or whose campaign events I attended, served as Governor, Lt. Governor, or legislators during the time I served in the Georgia General Assembly and at the time of the 2001 flag vote. I would therefore have been aware of their position or of how they voted on this issue at the time I made a contribution to them or attended their campaign event. For example, I would have been aware that Governor Roy Barnes, Lt. Governor Mark Taylor, Senator Van Street, and Representative R. M. Channell supported changing the state flag in 2001, while Representative Chuck Sims and Representative C. Ellis Black voted against the bill. I would have also been aware that State Representative candidate Mark Hatfield would have been opposed to changing the state flag based on his stated campaign position and literature. While I suspect that the candidates that I have chosen to support have varied opinions on the inclusion of a confederate symbol on the Georgia state flag, I personally have never questioned any candidate whom I supported regarding their position on this issue, and consequently, I do not personally know the position these

candidates took on this issue at the time I made a contribution to them or attended their campaign event.

ATTACHMENT ONE, SUBMITTED BY HON. MICHAEL P. BOGGS



Higher Standards for Every School

To help our children meet the high-tech challenges of the 21st Century, I'll stand up for higher educational standards in every school. That means a quality teacher in every classroom and more tutoring and counseling so every child can succeed.

Here are a few other ideas for preparing our children for the future:

The Mike Boggs Plan

Preparing Our Children for the Future

1. Swift removal of chronically disruptive students from the classroom
2. Background checks for day care supervisors, after school supervisors, and school bus drivers
3. Tougher penalties for crimes committed in a school zone

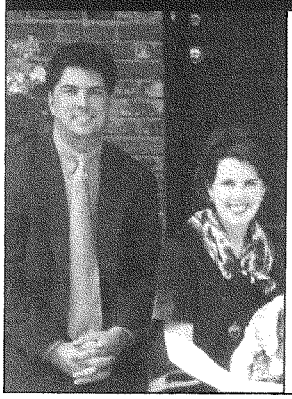
Committee to Elect Mike Boggs
P. O. Box 559
Waycross, GA 31502

PRSRT STD
US POSTAGE
PAID
MAIL ADVERTISING
SYSTEMS

ELECT DEMOCRAT MIKE BOGGS

"A Family Man Who's Committed to Our Kids"

State Representative | District 168



- Raised and educated in Ware County
- Married to kindergarten teacher Heather Haynes Boggs
- Graduate, Waycross High; attended Georgia Tech (football scholarship); BA, Georgia Southern University; JD, Mercer University School of Law
- Legislative Assistant, Congressman J. Roy Rowland, 1985-87
- President, Waycross Bar Association
- Member, Waycross/Ware County Chamber of Commerce
- Volunteer, Former Big Brother; Board member, YMCA of Waycross and Little League Football Coach
- Former Vice President, American Cancer Society, Ware County
- Active Member, Central Baptist Church

Vote in the Democratic Primary on Tuesday, July 18th

Paid for by the Committee to Elect Mike Boggs

FOR IMMEDIATE RELEASE
April 29, 2004

Contact: Mike Boggs
912-338-0350

Waycross Judicial Circuit

Boggs launches bid for Superior Court judge

State Rep. Mike Boggs officially qualified this week as a candidate for Superior Court judge in the Waycross Judicial Circuit, seeking the post held by Judge _____ Blount, who is retiring.

"In my ___ years of legal practice, I have gained the trial experience necessary to serve as a Superior Court judge," Boggs said. "Having served in the Georgia House of Representatives on the Judiciary Committee and as vice chairman of the Public Safety Committee has given me further insight into the issues facing our court system today."

Boggs, 41, has resided most of his life in the Waycross Circuit, which includes Bacon, Brantley, Charlton, Coffee, Pierce and Ware counties. A graduate of Waycross High School and Georgia Southern University, he earned his law degree from the Walter F. George School of Law at Mercer University.

During his two terms in the Georgia House, Boggs sponsored several pieces of successful legislation dealing with public safety and judicial issues. He passed the Child Protection Act, strengthening state laws protecting children from sexual exploitation and Internet pornography. Boggs also worked with the Georgia Bureau of Investigation and Georgia Sheriff's Association to pass stronger laws related to the sexual offender registry, the seizure of property from drug dealers and criminal background checks for bail bondsmen.

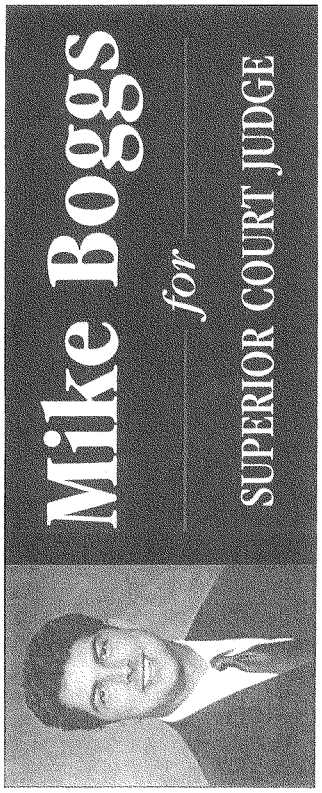
As a state representative, Boggs has also been successful in securing funding for the new public health laboratory in Waycross, completion of the Ga. 84 and U.S. 1 widening projects, expanded facilities at Okefenokee Technical College and many other local programs that require state resources.

He was named as Georgia's Freshman Legislator of the Year for the 2001-02 session and was recognized by Georgia Trend magazine's "40 under 40" list of top young leaders in the state. He is a recipient of the Kiwanis Club of Waycross James Harley Award and the Waycross YMCA Community Service Award. He is married to the former Heather Haynes of Waycross.

"It has been an honor and privilege to serve in the state legislature these past four years," Boggs said. "I am asking the voters to allow me to continue to serve the public, but now in the judicial branch of government. I pledge to be a judge who demonstrates fairness to all parties who come before the court."

The non-partisan judicial primary will be held July 20.

-end-



Commitment to Serving Others

- State Representative - Georgia House of Representatives
- 2003 County Commissioners of Georgia Legislative Award
- 2003 YMCA Community Service Award
- 2002 *Georgia Trend Magazine* Rising Star Award
- 2002 Kiwanis Club Community Service Award
- 2001 General Assembly Outstanding Freshman Legislator
- Past President - Waycross Bar Association
- Waycross YMCA Board of Directors
- Waycross College Board of Trustees
- Rotary International
- Past Vice President Local Unit - American Cancer Society

Experienced and Prepared

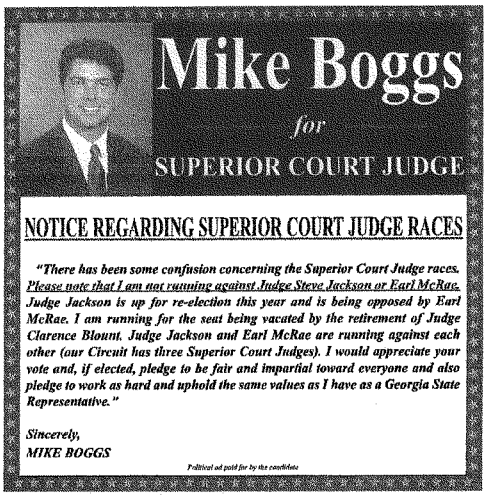
- Mercer University School of Law, Georgia Southern College
- Rated "Excellent" with "very high ethics" from the nationwide lawyer rating system
- Fourteen years of experience in varied civil and criminal cases including domestic relations, business law, banking, insurance, real estate, and personal injury litigation
- Four years of experience writing laws as a member of the GA House of Representatives, Judiciary Committee, and Chairman - Probate Law Subcommittee
- Author of Georgia's "Child Protection Act" in 2003 aimed at protecting our children from sexual predators
- Co-sponsor - "Child Endangerment Law"
- Co-sponsor - law tightening up juvenile use of ATV's
- Author of numerous laws aimed at protecting victims of crime
- Endorsed by over 250 lawyers, community leaders/citizens
- Experienced as a municipal court judge

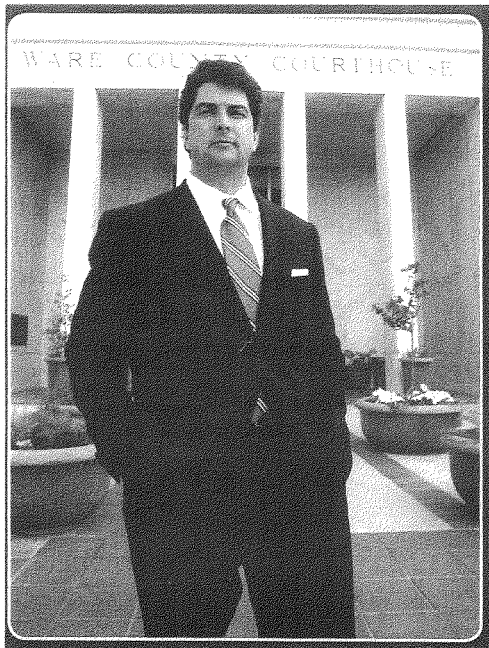
Fair and Impartial

- Committed to the fair and speedy resolution of cases
- Patient, even-tempered and morally principled
- Dedicated to fairness and justice for <u>everyone</u>
- Committed to conservative Christian family values

Please Vote July 20th

Paid for by the Committee to Elect Mike Boggs, Judge
P.O. Box 559 • Waycross, GA 31502


Mike Boggs
for
SUPERIOR COURT JUDGE
NOTICE REGARDING SUPERIOR COURT JUDGE RACES
"There has been some confusion concerning the Superior Court Judge races. Please note that I am not running against Judge Steve Jackson or Earl McRae. Judge Jackson is up for re-election this year and is being opposed by Earl McRae. I am running for the seat being vacated by the retirement of Judge Clarence Blount. Judge Jackson and Earl McRae are running against each other (our Circuit has three Superior Court Judges). I would appreciate your vote and, if elected, pledge to be fair and impartial toward everyone and also pledge to work as hard and uphold the same values as I have as a Georgia State Representative."
Sincerely,
MIKE BOGGS
Political ad paid for by the candidate



As a State Representative,

Mike Boggs

wrote laws to make our communities safer.

As Superior Court Judge, Mike will use the law to seek

Justice for all.

Please Vote July 20th

Paid for by the Committee to Elect Mike Boggs, Judge • P.O. Box 559 – Waycross, GA 31502

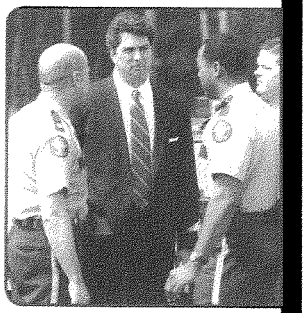
For more information, call 912-338-0350

Mike Boggs

A judge we can trust ... with the values we share.

Qualified to serve

- State Legislator, Georgia House of Representatives
- Prosecuting Attorneys Association 2004 Commitment to Justice Award
- Georgia Trend 2002 Rising Star Award
- General Assembly 2001 Outstanding Freshman Legislator
- Past President, Waycross Bar Association
- Rated "Excellent" with "very high ethics" by nationwide lawyer rating system
- Fourteen years legal experience
- Chairman, Probate Law Subcommittee of House Judiciary Committee
- Author of Georgia's Child Protection Act of 2003 aimed at protecting our children from sexual predators
- Endorsed by more than 250 attorneys, community leaders and citizens
- Experienced as a Municipal Court Judge



Dedicated to justice

- Committed to being fair and impartial to everyone
- Committed to wise management of tax dollars
- Supports diversion centers for non-violent, first-time offenders
- Pledged to more frequent court sessions to conclude cases more rapidly
- Patient, even-tempered and morally principled
- Committed to conservative Christian family values

Elect Mike Boggs, Judge
P.O. Box 559
Waycross, GA 31502

PRSRT STD
U.S. POSTAGE
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PERMIT NO. 307

**********ECRLOT**C018

MICHAEL BOGGS
OR CURRENT RESIDENT
824 SAINT MARYS DR
WAYCROSS GA 31501-3245

Mike Boggs

for

SUPERIOR COURT JUDGE

For the seat being opened by the retirement of Judge Clarence Blount

Please Vote July 20th

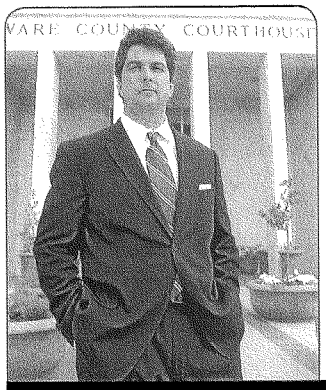
Paid for by the Committee to Elect Mike Boggs, Judge • P.O. Box 559 – Waycross, GA 31502

For more information, call 912-338-0350

A judge we can trust ...
with the values we share.
Mike Boggs
for
SUPERIOR COURT JUDGE
• Experienced and prepared
• Committed to serving others
• Fair and impartial
Please Vote July 20th
Paid for by the Committee to Elect Mike Boggs Judge
P.O. Box 559 • Waycross, GA 31502

Mike Boggs

As a State Representative,
he wrote laws to make our communities safer.



As Superior Court Judge, he'll use the law to seek

Justice for all.

Mike Boggs

for

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For the seat being opened by the retirement of Judge Clarence Blount

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For more information, call 912-338-0350

Mike Boggs

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with the values we share.

Qualified to serve

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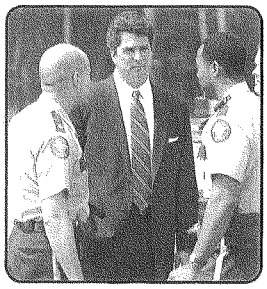

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- Supports diversion centers for non-violent, first-time offenders
- Pledged to more frequent court sessions to conclude cases more rapidly
- Patient, even-tempered and morally principled
- Committed to conservative Christian family values

Mike Boggs

for

SUPERIOR COURT JUDGE

For the seat being opened by the retirement of Judge Clarence Blount

Please Vote July 20th

Paid for by the Committee to Elect Mike Boggs, Judge • P.O. Box 559 – Waycross, GA 31502

For more information, call 912-338-0350

Thank You!

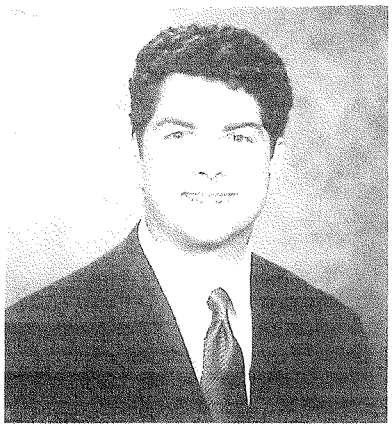
Please accept my sincere gratitude for the trust you've shown in electing me Superior Court Judge. I truly hope to be a judge you can trust with the values you share.

Mike Boggs

Paid for by the Committee to Elect Mike Boggs, Judge
P.O. Box 559, Waycross, GA 31502

Prime of Life

Serving
Ware • Brantley
Pierce Counties



Mike Boggs

— *for* —

Superior Court Judge

Experienced & Prepared

•STATE REPRESENTATIVE

Writing and supporting laws to protect the family, children, victims of crime and victims of domestic violence

•TRIAL LAWYER

Successful and trusted trial attorney with experience in all areas of the law

•RECORD OF COMMUNITY SERVICE

2004 District Attorney's Association of Georgia Legislator of the Year Award
2003 County Commissions of Georgia Legislative Award
2003 YMCA Community Service Award
2002 *Georgia Trend Magazine* Rising Star Award
2002 Kiwanis Club Community Service Award
2001 General Assembly Outstanding Freshman Legislator
Past President-Waycross Bar Association
Waycross YMCA Board of Directors
Waycross College Board of Trustees
Rotary International
Past V.P. Local Unit- American Cancer Society

Elect MIKE BOGGS Superior Court Judge on July 20th

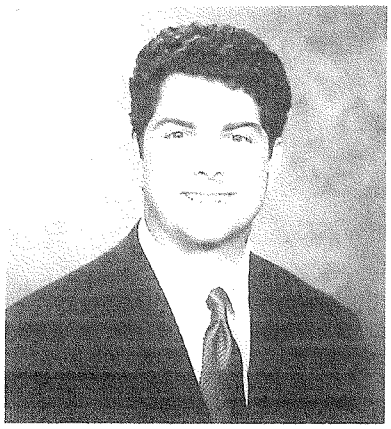
Experience you know & trust with the values you share.

Ad paid for by the committee to elect Mike Boggs, Superior Court Judge.

Prime of Life

Serving
Ware • Brantley
Pierce Counties

Mike
Boggs
— *for* —
Superior
Court Judge



Experienced & Prepared

*STATE REPRESENTATIVE
*TRIAL LAWYER
*RECORD OF COMMUNITY SERVICE

MIKE BOGGS
for
Superior Court Judge

Please Vote July 20th Experience you know & trust with the values you share!

Ad paid for by the committee to elect Mike Boggs, Superior Court Judge.

Mike Boggs

For

SUPERIOR COURT JUDGE

For the seat being vacated by the retirement of Judge Clarence Blount

EXTENSIVE TRIAL EXPERIENCE AND A PLAN TO IMPROVE SUPERIOR COURT:

- I'll be FAIR AND IMPARTIAL TO EVERYONE.
- I'll SEEK WAYS TO SPEED UP THE RESOLUTION OF CASES. NO ONE SHOULD HAVE TO WAIT 2-3 YEARS FOR A DIVORCE OR CHILD CUSTODY TRIAL.
- I'LL USE MY LEGISLATIVE EXPERIENCE AND CONTACTS TO ~~SEEK~~ SUPPORT MORE DIVERSION CENTERS AND SUBSTANCE ABUSE COUNSELING AND TREATMENT PROGRAMS AS ALTERNATIVE SENTENCING OPTIONS SO THAT WE CAN LESSEN THE TAX BURDEN ON OUR CITIZENS. IN GEORGIA 1 IN 3 RELEASED CRIMINAL DEFENDANTS WILL END UP BACK IN JAIL WITHIN 3 YEARS OF THEIR RELEASE. HOWEVER, FOR THOSE INMATES THAT PARTICIPATE IN SUBSTANCE ABUSE COUNSELING, THE RATE LOWERS TO 1 IN 4. ALSO, INMATES SENTENCED TO DIVERSION CENTERS CAN CONTINUE TO WORK AND PROVIDE SUPPORT TO THEIR FAMILIES AND CHILDREN. WE NEED TO WORK TO REDUCE THE COST OF INCARCERATION WHILE ENSURING THAT OUR MOST VIOLENT OFFENDERS ARE KEPT IN JAIL.
- TO REDUCE THE COSTS OF INCARCERATION TO OUR CITIZENS, I'LL WORK WITH OUR SHERIFF'S TO MOVE NON-VIOLENT/FIRST TIME OFFENDERS WITH HEALTH PROBLEMS OUT OF OUR JAILS WHEN POSSIBLE. OUR TAX PAYERS CANNOT AFFORD TO CONTINUE TO PROVIDE HEALTH CARE TO EVERY INMATE WITH SIGNIFICANT HEALTH ISSUES.
- I'LL BE RESPECTFUL OF OUR JURORS' TIME AND DEVELOP WAYS TO SPEED UP THE PROCESS OF JURY SELECTION TO LESSEN THE INCONVENIENCE OF JURY SERVICE TO OUR CITIZENS WHO ARE CALLED TO PROVIDE THIS VALUABLE PUBLIC SERVICE.

EXPERIENCE YOU CAN TRUST WITH THE VALUES YOU SHARE!!

For more information contact Mike Boggs at:
(O) 912-338-0350
(H) 912-284-1211
mboggs@wayxcable.com

Ad paid for by the Committee to Elect Mike Boggs, Judge

1619

"GEM" 0:60 RADIO

ANNCR:

When your father and brother are federal law enforcement agents, you grow up committed to law and order.

And Mike Boggs has always lived up to that promise.

Writing laws to keep sexual predators away from our children, crack down on child pornography, and toughen sentences for child molestation.

Other legislators called Mike Boggs a standout and honored him for his bills to tighten Georgia's drug laws.

The GBI Director thanked him for strengthening Georgia's cocaine and sex offender laws, and prosecutors all over Georgia have endorsed Mike Boggs for his work to protect victims of crime and support law enforcement.

That's why the *Waycross Journal-Herald* called Mike Boggs "a red-blooded, straight-as-an-arrow, all-American" and "a real gem."

Mike Boggs. He'll be a Superior Court Judge we can trust -- with the values we share.

MB: Paid for by the Committee to Elect Mike Boggs, Superior Court Judge.

MIKE BOGGS -- 0:60 RADIO -- GOSPEL

ANNCR: Sponsoring laws to protect children.

Helping freeze property taxes so senior citizens won't be forced from their homes.

Mike Boggs has always been there for the people who need him.

Committed to service. Committed to others. And committed to our community.

His door is always open, and we know Mike Boggs will always listen.

Fair, impartial, compassionate, hardworking, and always willing to help.

Those are the things that have made Mike Boggs a great State Representative, and those same things will make Mike Boggs a great Superior Court Judge.

Mike Boggs. He'll be a Superior Court Judge we can trust -- with the Christian values we share.

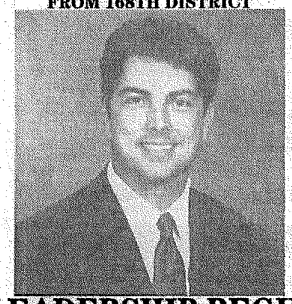
MB: Paid for by the Committee to Elect Mike Boggs Superior Court Judge.

AUDIO	VIDEO
As a legislator, Mike Boggs has written laws to keep sexual predators away from our children, crack down on child pornography, toughen sentences for child molestation, and strengthen our drug laws.	Slow push-ins to photos of MB at work at desk, as legislator, with police. Chyron: Mike Boggs Supers of Headlines: "Boggs Sponsors 'Child Protection' Legislation" "Boggs Sponsors Law Enforcement Legislation"
And prosecutors all over Georgia have endorsed Mike Boggs for his work to support law enforcement.	Photo with deputies. Chyron: Endorsed by Law Enforcement
That's why the *Waycross Journal-Herald* called Mike Boggs "a red-blooded, straight-as-an-arrow, all-American" and "a real gem."	Either plain screen or appropriate photo with *Waycross Journal-Herald* logo and quotes.
Mike Boggs.	Mike Boggs ---------- Superior Court
A judge we can trust -- with the values we share.	Disclaimer: PAID FOR BY THE COMMITTEE TO ELECT MIKE BOGGS, SUPERIOR COURT JUDGE

ATTACHMENT TWO, SUBMITTED BY HON. MICHAEL P. BOGGS

ELECT
MIKE BOGGS

**FOR STATE REPRESENTATIVE
IN THE GENERAL ASSEMBLY
FROM 168TH DISTRICT**



QUALITY LEADERSHIP BEGINS WITH A COMMITMENT.

THE MIKE BOGGS PLEDGE

- I WILL BE RESPONSIVE TO THE NEEDS OF THE CITIZENS OF WARE COUNTY.
- I WILL LISTEN TO YOUR CONCERNS.
- I WILL FIGHT AGGRESSIVELY FOR THE THINGS WARE COUNTY DESERVES.
- I WILL ALWAYS BE AVAILABLE WITH AN OFFICE AND STAFF IN WAYCROSS OPEN MONDAY THROUGH FRIDAY FROM 9-5.
- I WILL HOLD REGULAR TOWN HALL MEETINGS TO GIVE OUR RESIDENTS AN OPPORTUNITY TO EXPRESS THEIR CONCERNS.
- I WILL RETURN YOUR PHONE CALLS AND MAKE MYSELF AVAILABLE AT YOUR CONVENIENCE TO DISCUSS ISSUES OF CONCERN.
- I WILL USE MY KNOWLEDGE OF THE LAW TO EDUCATE MYSELF ON ALL ISSUES.
- I WILL KEEP OUR CITIZENS INFORMED OF NEW LAWS AND PROPOSED LAWS THROUGH NEWSLETTERS AND PRESS RELEASES.
- I WILL USE MY LEGAL EXPERIENCE TO PROPOSE NEW LAWS RATHER THAN SIMPLY VOTE ON WHAT OTHER LAWMAKERS INITIATE.

I AM COMMITTED TO SERVING YOU.
ELECT MIKE BOGGS STATE REPRESENTATIVE

TUESDAY, JULY 18TH
(Ad paid for by candidate)

1507/03a

Transition ...

The Central Thought

By Dr. David Drake

Transition ... (defined) .. "A passing from one condition, form, stage, activity, place, etc. to another." Transition is a day in the life of most of us. Individually we go through a myriad of transitions within a lifetime. Collectively we as families, social groups and civilizations find ourselves traveling the pathway from one place to another.

Churches go through transitions. Their humble beginnings from brush arbor tabernacles to multi million dollar complexes are a sure sign of the transitional journeys we engage.

Chuck Swindoll became a household name among self lifers for her portrayal of transitions in her book "Passages."

Stephen Covey in his volume "The 7 Habits of Highly Effective People" advises that the total span of life should "...begin with the end in mind." You can never get to the end of life without a host of transitions. Could I be speaking to someone through this article that needs to be in transition?

Are you reading this page and you have determined that you are one who desperately needs to pass into another stage or condition in your life? Maybe you are, as the Bible reveals, "dead" in your trespasses and sin, and you desire to be "alive" to a new and awesome life.

The "transition" from death to life ... the "passage" from death to life ... the "road" of it all when it comes to life from death is found in a relationship with Jesus Christ. Jesus Christ is the ultimate expression of transition. It is He who brings sinful man into the process of being in transition from death to life. It was He who sent Himself in transition from heaven to earth that He might bring us to God. It was He who in the transition, saw our need and stopped over every barrier to reach us with His matchless love.

The Central Thought - Our church like every church goes through the process of transition. We experience transition annually as we go through the holidays and summers months. When staff come to serve our church we go through transition. When staff leave to serve other churches and ministries, we go through transition.

My word to you who read .. DON'T FIGHT IT! Enjoy each and every part of the pathway. Transition is the health of a body as it changes and develops. Remember, the Bible says: "Man's goings are of the Lord, how can then a man understand his ways?" We are in transition and God is with us every step along the way.

Dr. David L. Drake is the pastor of the Central Baptist Church in Waycross.

Sacred Harp Sing At Hoboken School

HOBOKEN -- There will be a sacred harp sing Saturday at Hoboken School.

All are welcome to attend the 7 p.m. sing to sing along or to listen.

"Bring your children so they won't grow up without learning about their south Georgia singing heritage," said a spokesman.

Song books will be available for all

Elect
Harry M. Thrift
for District 4
County Commission
Experienced • Qualified • Dedicated
(Ad paid for by the candidate)

Area News

Assistance Needed Following Death

Citizens are being asked to contribute to assist a Waycross woman following the untimely death of her daughter on July 3 here.

Deborah Green, 107 Boulevard St., said her daughter, Vera Deonte Hayes, died unexpectedly of a massive heart attack. Ms. Green is left with a five-month-old granddaughter and has considerable funeral expenses.

Ms. Green said anyone wishing to make a contribution should send it to her at either P.O. Box 2014, Waycross or to her residence at 107 Boulevard St.

Piano Seminar Set At College

Veteran studio and stage keyboardist Bill Brown will demonstrate the secrets of piano chord-style playing during a one-day, three-hour seminar at Waycross College on Thursday, July 20, from 6:30 to 9:30 p.m.

A spokesman said the registration fee should be in by July 17.

Officials say during this seminar, participants will learn how to build and use chords for left-hand accompaniment, how to play left-hand arpeggio fill-ins, how to "fake" through a piece of sheet music and how to rack down and use families of chords.

A basic understanding of the names of the keys of the piano is required. "If you lack this requirement, please request the basics brochure when you call to register," a spokesman said.

For more information, call Waycross College, Department of Continuing Education at (912) 285-6130.

Eastern Star Chapter Meets Monday Night

Okefenokee Chapter 474, Order of the Eastern Star will conduct its regular meeting at 7:30 p.m. Monday at the masonic hall on Waring Street.

Worthy matron Lula Harris and worthy patron Chief Lee Sowell ask all the members to bring food items for the pantry for the needy.

Appeal For Help From Public Made

An elderly Waycrossan is in need of several items, including a refrigerator, and is seeking help from the public.

To help, call 283-1601 and ask for Chris Braddock.

W.O.W. To Meet Saturday, 5 p.m.

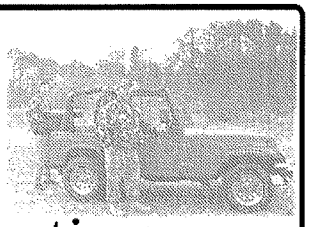
The Woodmen of the World will meet 5 p.m. Saturday at the Lodge located on Golf Club Road.

Fried chicken and watermelon will be provided by the lodge. Members are asked to bring desserts.

The evening's program will be announced later, reports Donald Guthaw, secretary.

DUI CLASSES
283-4897 $100
GA Assessment & Intervention

CHANCEY'S GARAGE
2631 Albany Ave. • Waycross, GA
(912) 283-2007
AUTOS/PICK-UPS/MEDIUM & HEAVY DUTY TRUCKS
Gas/Diesel Engines • Brakes • Clutch
• Electrical • Shocks • Tune-Ups • A/C Repair
★ DOT INSPECTIONS ★
We accept: OPEN Mon.-Fri. 8-5
"SERVING WARE COUNTY FOR OVER 30 YEARS"



Hunting for a retreat?

Dan Good
Loan Officer
Blackshear Location

A place to go at the end of the week to get away from it all? Make your dream of owning a place in the country come true with financing from AgSouth Farm Credit. Our loan packages are designed with your particular needs in mind... and you don't have to be a farmer to qualify for some of our loan programs.

- real estate purchases
- home/farm improvements
- equipment purchases
- home construction/purchases
- operating purposes
- timber/cattle/horse farms

...and a whole lot more!

Call the AgSouth Blackshear office today and begin turning your dream of having a rural lifestyle into a reality.

449-4701 • 800-522-0596
111 Carter Avenue • Blackshear

AgSouth Farm Credit, ACA
Visit our website at www.agsouth.org

ELECT
MIKE BOGGS

For State Representative
In The General Assembly
From 169th District

YOUR STATE REPRESENTATIVE IS RESPONSIBLE FOR WRITING AND UNDERSTANDING OUR STATE LAWS

LAWMAKING IS SERIOUS BUSINESS
It's Not For The Inexperienced.

The laws of our state are contained in 40 bound volumes including topics such as: Agriculture, Appeal and Error, Banking and Finance, Civil Practice, Commercial Code, Conservation and Natural Resources, Contracts, Corporations, Partnerships, Courts, Crimes and Offenses, Criminal Procedure, Domestic Relations, Education, Evidence, Fire Protection, Guardian and Ward, Handicapped Persons, Health, Insurance, Law Enforcement, Local Government, Motor Vehicles and Traffic, Property, Revenue and Taxation, Torts, and Wills, Trusts, and Estates.

I HAVE OVER 10 YEARS OF EXPERIENCE DEALING WITH THESE LAWS

LEGAL EXPERIENCE

- ***Legal Education*** I am a graduate of Mercer University's School of Law and have practiced as a lawyer for over 10 years in Atlanta and Waycross.
- ***10 Years of Daily Legal Experience*** - As a general practice lawyer, I handle cases every day involving each of these areas of law.
- ***12 Years of Legal Research Experience*** - As a lawyer, and while working for our former U.S. Congressman, I have over 12 years of experience studying each of these areas of law.
- ***Successful Results*** - I have been successful in resolving mature legal problems for my clients involving these areas of law.
- ***10 Years of Experience Applying Laws*** - It's one thing to write laws, it's another to see firsthand how they are applied. I've spent over 10 years trying cases in court where these laws are applied and I know many ways to improve on our laws.

LEGISLATIVE EXPERIENCE

- ***Legislative Assistant*** - I worked for Ware County's former United States Congressman, J. Roy Rowland in his Washington, D.C. office for two years as a Legislative Assistant where I met with State and Federal lawmakers, and wrote and researched laws on matters affecting Ware County.

PROUDLY ENDORSED BY U.S. CONGRESSMAN J. ROY ROWLAND

"Saying you're experienced for this job means nothing. I have devoted the last 15 years of my life to developing the specific experience necessary to be an effective lawmaker. I would be honored to put this experience to work for your family as your next State Representative."

YOUR VOTE FOR MIKE BOGGS IS A VOTE FOR THE EXPERIENCE THIS JOB NEEDS
(Ad paid for by candidate)

Legals

(continued from previous page)

The property is located at the corner of 2040 Bright Avenue, Waycross, GA. Sketch Map Book 10, 110.

Said sale will take place of 7-15-00 between the hours of 9:00 a.m. and noon at 2040 Bright Ave., Waycross, GA 31501.

Further said property shall be sold subject to the following liens of records, interest:

For more information please contact Estelle Mae Morgan at (912) 285-1251.

7-15-2000

IN THE SUPERIOR COURT OF WARE COUNTY
STATE OF GEORGIA
MARILYN CARTER,
Petitioner,
vs
RICHARD ARLEN CARTER
Defendant

CIVIL ACTION
FILE NO. 1999-0002

ORDER FOR SERVICE BY PUBLICATION DATED THE 30TH DAY OF JUNE, 2000

TO: RICHARD ARLEN CARTER

You are hereby commanded to file with the Clerk of said Court and serve upon the Plaintiff's attorney Antonio C. Spivey whose address is GIBSON AND SPIVEY, PC, 117 Albany Avenue, P.O. Drawer 1259, Waycross, Georgia 31501-1259 an answer to the Plaintiff's complaint within sixty (60) days of the date of the order for service by publication.

WITNESS the Honorable Stephen L. Jackson, Judge of said Court this 30 day of July 2000.

By ORTIS B. KENNEDY
Clerk of Superior Court

7-8-6Nov

LEGAL NOTICE

To David Rudolph Bynum and all persons claiming any interest in the property at 1406 AUC Avenue, Waycross, Ware County, Georgia, and fully described as follows:

All of Lot Thompson City in Block 5 in Section 1, subdivision of Waycross Ware County, Georgia, as per plat of record in the office of the Clerk of Superior Court of Ware County, Georgia, Plat Book A, Page 6, with improvements thereon, known as 1406 AUC Avenue.

You and each of you are hereby notified that an abate structure has been designated by the Building Official of the City of Waycross in an unsafe building under the provisions of Section 301 of the Standard Unsafe Building Abatement Code (the "Code") because of the following conditions:

1. All major components are inadequate for occupancy.

2. The structure is open and unoccupied.

The structure is to be vacated immediately and is to be demolished.

The City of Waycross will place a lien against the real property for any expense incurred in connection with demolition of the property.

ANY PERSON HAVING ANY LEGAL INTEREST IN THE PROPERTY MAY APPEAL THE NOTICE BY THE BUILDING OFFICIAL TO THE BOARD OF ADJUSTMENT AND APPEALS. Such appeal shall be in writing in the form specified in Section 402 of the Code and shall be filed with the Building Official within thirty (30) days from the date of the Notice and failure to appeal in the manner filed will constitute a waiver of its right to an administrative hearing.

A copy of the Code is available at Office 1 of the Building Official at 417 Hazlehurst Street, Waycross, Georgia, during normal business hours.

This the day of July, 2000.

Tony White, Building Official
Chief of Waycross
417 Hazlehurst Street
Waycross, GA 31501

7-8-2Nov

IN THE SUPERIOR COURT OF WARE COUNTY, GEORGIA
COMPLAINT FOR DIVORCE FILED THE 9TH DAY OF JULY, 2000

ORDER FOR SERVICE BY PUBLICATION DATED THE 10TH DAY OF JUNE, 2000

TO: VASHAN T. THOMAS
c/o ANASHA THOMAS
1950 FLORIDA AVE
JACKSONVILLE, FL 32210

You are hereby commanded to file with the Clerk of said Court and serve upon the Plaintiff's attorney Jan Malone, whose address is MOSER AND MOSER, 315 Albany Avenue, P.O. Drawer 629, Waycross, Georgia 31502-0629, an answer to the Plaintiff's complaint within sixty (60) days of the date of the order for service by publication.

WITNESS the Honorable Stephen L. Jackson, Judge of said Court this 7th day of July 2000.

Melissa Moser
Clerk, Superior Court

MOSER AND MOSER
PO BOX 629
Waycross, GA 31502-0629
912-283-0555

7-15-2Nov

NOTICE OF INTENT TO INCORPORATE

Notice is given that articles of incorporation will be filed with the Secretary of State for Georgia for a non-profit corporation under the Georgia Nonprofit Corporation Code. The initial registered office of the corporation will be located at 4605 Hwy 84, Waycross, GA 31501, and its initial registered agent at such address is Scott Godwin.

7-15-4Nov

IN THE PROBATE COURT OF WARE COUNTY, GEORGIA
NOTICE OF HEARING
AND CITATION

IN RE: ESTATE OF VIOLET MAE PETERS, DECEASED

TO: WILLIAM S. PARKS, Executor
Estate of VIOLET MAE PETERS
PO Box 1344
Waycross, Georgia 31502-1344

WILLIAM S. PARKS
Attorney for Executor
Georgia Bar No. 064650
203 N. Mobley Street
PO Box 1344
Waycross, Georgia 31502-1344
(912) 285-9003

7-15-4Nov

DEPARTMENT OF TRANSPORTATION
STATE OF GEORGIA
ADVERTISEMENT FOR BIDS
STATE PROJECT NO. L-5200-(39)-451-01,
L-5200-(40)-451-01
L-5200-(39)-(40) AND OTHERS
BACON, BRANTLEY, PIERCE,
WARE COUNTIES

SEALED PROPOSALS ARE INVITED FOR ALL LABOR, MATERIAL, EQUIPMENT AND OTHER THINGS NECESSARY FOR THE FOLLOWING WORK WILL BE RECEIVED BY THE UNDERSIGNED AT THE GENERAL OFFICE OF THE DEPARTMENT OF TRANSPORTATION, 2 CAPITOL SQUARE, ATLANTA, GEORGIA, 30334, UNTIL 11:00 A.M. JULY 28, 2000 AND THEN OPENED:

TOTAL MILES OF ROAD TO BE PERFORMED ON VARIOUS STREETS IN ALMA, BOSTICK, BAXLEY, BLACKSHEAR, CAMPBELLTON, DOUGLAS AND WAYCROSS, ALSO VARIOUS COUNTY ROADS.

CONTRACT TIME: 60 DAYS
CONTRACT CODE: 10000
GPR: 0.00
PERSONAL GUARANTY: NO
BRICK OR PLANTS: NONE
SPR:

PLANS AND PROPOSALS MAY BE INSPECTED AT THE GENERAL OFFICE IN ATLANTA AND THE DISTRICT OFFICE HOLDING COPIES OF THE STANDARD SPECIFICATIONS (100-70). THE PROPOSAL FORM (200-90) AND THE PLANS (DESIGNATED ITEMS) MAY BE OBTAINED FROM THE STATE TRANSPORTATION OFFICE, BUSINESS AT THE GENERAL OFFICE IN ATLANTA, THE SPECIFIC COMBINE (600-100-200). PAYMENT OF THE COMPLETE PROPOSAL MUST BE MADE WITHIN 30 DAYS OF ISSUANCE. PAYMENT IS NOT REFUNDABLE.

PAYMENTS WILL BE MADE TO THE CONTRACTOR EACH CALENDAR MONTH BASED ON THE ESTIMATED WORK COMPLETED IN PLACE AS DESCRIBED BY THE STANDARD SPECIFICATIONS PROMULGATED PRESCRIBED BY THE STANDARD SPECIFICATIONS WILL BE WITHHELD OR ALL PRO-RATA REVENUES MAY BE DIRECTED TO ESCROW ACCOUNTS AT THE OPTION OF THE CONTRACTOR. FINAL PAYMENT OF AMOUNTS WITHHELD OR DIRECTED TO ESCROW WILL NOT BE MADE UNTIL THE UNDERSIGNED HAS OBTAINED THAT THE WORK HAS BEEN SATISFACTORILY COMPLETED AND ACCEPTED.

THE STATE RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS.

T. TODD COLEMAN, JR.
COMMISSIONER, DEPARTMENT OF TRANSPORTATION

7-15-2Nov

AUGUSTA AVE STORAGE Pursuant to the Georgia Self Service Storage Facility act, twenty (20) units of self storage will be sold at public sale on August 7, 2000 at 10:00 A.M. at 1000 S. Old Highway Waycross, GA 31501. Augusta Ave Storage reserves a public sale to the highest bidder to cash for the contents of the units owned by the following have the right to redeem contents up to sale.

A-3 - Barbara Gaine
Sofa Chair, Chairs & Drawers & Boxes
A-10 - Brian Mullins
Tables, Chairs, Dresser, Clothes & Boxes
A-13 - James Hudson
Desk, Drapery Case, Chairs & Boxes
A-14 - Gregory Thomas
Dresser, Table, Dresser & Boxes
D-104 - Clarence Wall
Chairs, Speaker, Dresser, Baby items & Boxes
B-20 - Ronald Clark
Chairs, Chairs, Mattress, Dresser & Tables
C-1 - Amy Turner
Dresser, Toys, Clothes, Boxes & Chairs
D-30 - Rose Roberts
Couch, Stove, Chairs, Lamps, Clothes & Boxes
D-13 - John Mc Ge Dallas
Speakers & Stereo, TV Stand, Box, Wallpaper, Blinds, Desk & Chairs
B-4 - Charlotte Sapp
Food Table, Stereo, Box, Heater & Boxes

7-15-2Nov

Public Notice

Notice is hereby given to the general public that a request for a variance has been submitted to the Waycross Board of Zoning Appeals. The property is located at 400 N. Holcolm Street, Block 103, Lots 1 & 2. The specific request is as follows:

"A variance of fourteen feet (14') from the minimum twenty feet feet (21') rear yard setback in accordance with Section 707 (b)(c) of the City of Waycross Zoning Ordinance for the purpose of constructing a housing addition seven feet (7') from the rear property line in a R2 zone."

"A variance from the requirement that all residential structures are each for a church be located on a street or cul-de-sac, drive or access shall with Section 706.(b) of the City of Waycross Zoning Ordinance for the purpose of providing a church addition and ministry in a church use in a zone."

"A variance from the requirement that all residential housing units a minimum lot size of no less than twenty feet (20') from a residential property line."

The Waycross Board of Zoning Appeals will conduct a public hearing to consider the above cases Wednesday, July 26, 2000 at 5:15 p.m. in the Commission Chambers on the first floor of City Hall, 400 Francis Street, Waycross, Georgia. The public is invited to attend.

Hardship necessitating is located at the Waycross Street zone variance is City Hall.

Tony White - Plan examiner
Community Improvement Director
City of Waycross, Georgia

7-15-1Nov

NOTICE

GEORGIA, WARE COUNTY
PROBATE COURT

MONINA WILLIAMS JR. has petitioned to be appointed Administrator of the estate of RONNIE WILLIAMS, JR., deceased, and there is no petition to be appointed for a waiver of bond under grant of letters. Persons interested in GCDA 53-12-262 to file written objections to the petition must be in writing, setting forth the grounds of any such objections, and must be filed with the court on or before August 7, 2000. If any objections are filed, a hearing will be scheduled on a later date. If no objections are filed, the petition may be granted without a hearing.

Marcus Lee Stroud, Jr.
Judge of the Probate Court
By Annette Nichols
Clerk of the Probate Court

July 12, 2000

7-15-5Nov

CITATION

GEORGIA - BROOKS COUNTY
WARE COUNTY

IN ESTATE OF GEORGE B. WOODWARD, Deceased

Southeast Bank, Southeast Georgia, formerly known as Southeast Bank Southeast Georgia, N.A. Executor has applied for Letters of Dismission from said state. Notice is hereby given to persons to show cause if any they can, why said application should not be granted. All objections must be in writing setting forth the grounds of any such objections, and must be filed on or before 10:00 a.m. on the first Monday in August, August 7, 2000 noon.

WITNESS the Honorable Marcus Stroud, Judge

By Annette Nichols
Clerk, Probate Court

SCHWARZ CONNER, PC
PO Box 1132
Waycross, GA 31502
912-285-0991

7-15-5Nov

PUBLIC NOTICE

Pursuant to a request, the Commission of the City of Waycross has scheduled a public hearing to be held on August 1, 2000, at 6:00 p.m. in the City Hall, 400 Francis Street, Waycross, Georgia for the purpose of considering the closing of Adams Avenue extending from the intersection with Francis Street to the CSX right-of-way. A copy of the request for closing the street and a map of the area are available for public review in the office of the City Clerk during normal business hours.

All persons interested in the Commission and who consider the advertising of closing of the Carnegie Avenue street of the City. A map of the area where the street is located is also available for public review in the City Clerk's Office during normal business hours.

This 13th day of July 2000.

Charlotte Hickman
City Clerk

7-15-4Nov

Waycross Auto Sales
705 Sax GA Parkway
284-1213

01 Mercury Grand Marquis	$700 Down	$195
01 Toyota Corolla	$600 Down	$195
01 Nissan Maxima Wagon	$600 Down	$195
01 Mercury Country	$600 Down	$195
01 Mercury Sable Wagon	$600 Down	$195
01 Nissan Sentra	$600 Down	$195
01 Dodge Stratus	$600 Down	$195
01 Lincoln Town Car	$600 Down	$195
01 Geo Tracker	$600 Down	$195
01 Dodge Dakota	$600 Down	$195
01 Honda CR-V	$600 Down	$195

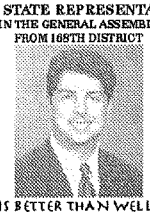
NO CREDIT CHECK
WE FINANCE!
Payments From $150 to $200
Ask About Our Layaway

'Real Life Is Alcohol-Free'
Waycross-Ware Drug Action Council

DUI CLASSES
283-4897
GA Assessment & Intervention

Clarence and Martha Billups
Ask You To
VOTE and ELECT Our Uncle
A.W. Myrick,
Ware County Commission
District 4
Integrity, Quality, Competent & Progressive
(Ad paid for by Clarence & Martha Billups)

ELECT
MIKE BOGGS
FOR STATE REPRESENTATIVE
IN THE GENERAL ASSEMBLY
FROM 168TH DISTRICT



"WELL DONE IS BETTER THAN WELL SAID"
-Benjamin Franklin (1706-1790)

"Saying you're a leader, or that you are interested in bringing economic growth to our community means nothing alone -

YOU MUST HAVE A PLAN.

"As a member of the Waycross-Ware County Chamber of Commerce, and as a local business owner, I will listen to the needs of our community in attracting quality businesses here. During the past eight years, I have made it my business to educate myself on issues of economic growth by being involved in efforts to bring business here and by speaking directly to members of our Area Development Authority, and former business development leaders. I have also spent time talking to business owners who have left Ware County, and those interested in locating here. I have done my homework and possess the facts to lead Waycross forward.

I can use this knowledge to successfully pursue economic recruitment."

HERE'S WHAT I'LL DO:

- ROADS MEAN JOBS: As your Representative, I'll fight for completion of Governor Barnes' Development Highways Project, including the completion of four-laning U.S. Highway No. 1 and the Valdosta Highway because better roads mean more jobs.
- EDUCATION: I'll work closely with my friends at Waycross College (where I serve on the Board of Trustees) and Okefenokee Technical Institute, to provide funding and resources for new educational programs aimed at training our work force for the demands of more technical jobs because businesses have complained that our labor force is not able to meet the technical demands of their jobs.
- CONTACTS/KNOWLEDGE: I'll work with my friends on the Regional Development Authority, the S.E. GA. Regional Development Center, the President of our State Chamber of Commerce, and my contacts in Atlanta and Washington to aggressively pursue business development.
- GRANTS: I'll work for funds, grants, and tax incentives to support our Downtown Waycross Development Authority and support the refurbishing of downtown buildings in efforts to encourage business growth. I'll fight for a share of the same monies paid yearly to other, more aggressive, communities.
- LOWER TAXES AND INCENTIVES: I'll work to keep our property taxes low by expanding our taxpayer relief laws and work to provide tax incentives and benefit packages to business willing to locate here because the payoff is more jobs and lower taxes.
- MEDICAL COMMUNITY: I'll continue to work with our hospital in their efforts to expand the level and quality of medical services offered because expansion means more quality jobs for our citizens.
- BUSINESS RETENTION: I'll work with our current businesses to provide ways to keep them in our community because losing jobs is one thing, but letting it happen without a fight is another. While searching for new economic growth we cannot afford to ignore the businesses that have graciously made a commitment to Ware County. I'll work to provide advanced training for their employees, explore methods to improve retirement and health care available to their employees, and work to reduce the bureaucratic red tape our businesses face in running their business.

"I'm Mike Boggs. I've devoted a decade of community service and legal experience representing the citizens of Ware County, and I'd be honored to put that same experience to work for you and your family as your State Representative."

ELECT MIKE BOGGS STATE REPRESENTATIVE

EXPERIENCE YOU CAN TRUST

RESULTS YOU CAN COUNT ON

(Ad paid for by candidate)

Okefenokee Heritage Center
BE A MEMBER
285-4260
www.okeneritage.org

American Heart Association
Fighting Heart Disease and Stroke
MEMORIAL, IN HONOR & SPECIAL OCCASION
Ware Chair is Virginia Fenwick
P.O. Box 119
Waycross, GA 31502
This space provided as a public service.

HOME LOANS for HOMEOWNERS
(Home Equity Loans Available)
- Low Monthly Payments
- Reduce Years of Equity
- Refinance & Lower Payments
- Make Home Improvements
- Eliminate Pmi Insurance
- Pay Out of Collection
- Consolidate Debts
- Lower Your Payment Current OK
- Homeowner At Your Site
- Purchase Auto Home Title
- 10 Hr Process Your Loans
- No Application Fees Up Front
- Subject to Approval
- Rates Subject to Change
- Some Restrictions Apply

EXAMPLE LOANS AT 8% RATE

AMOUNT	180 MONTHS	360 MONTHS
$10,000	$95.65	N/A
$20,000	$191.13	$146.76
$30,000	$286.70	$220.12
$50,000	$477.83	$366.88
$70,000	$716.74	$550.32

GEORGIA RESIDENTIAL MORTGAGE LICENSEE

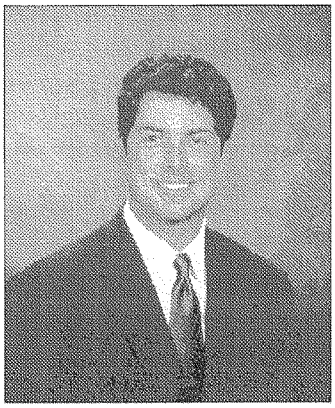
CONCORD MORTGAGE, INC.
2321 Northside Dr • Building B Suite 340 • Macon, GA 31210
1-800-470-0014 OR 1-912-992-9867

P-12 Waycross Journal-Herald, Monday July 17, 2006

ELECT

MIKE BOGGS

STATE REPRESENTATIVE



"It's time for a conservative and common sense approach to government . . . an approach based on personal responsibility, hard work, and traditional family values"

I'M READY TO WORK FOR WARE COUNTY.

MIKE BOGGS

DEMOCRAT

VOTE FOR PROVEN EXPERIENCE

EXPERIENCE WRITING LAWS,
EXPERIENCE APPLYING LAWS &
EXPERIENCE REPRESENTING OUR CITIZENS

(Ad paid for by candidate)

PHOTO BY MARTHA DAVIS

NITY HEALTH CENTER CELEBRATES ITS FIFTH YEAR OF OPERATION
ley (L-R), DCH's Jim Couch, Ola Smith, Thomas Williams, Mayor Fluker

ommunity Health Deputy Speaks Here At Banquet

PHOTO BY MARTHA DAVIS

NOV. 5 OFFICIALLY "RACHAEL GAIL HENDERSON DAY"
Mayor Fluker Presents Proclamation To Activist Attorney

FALL PRE-SEASON SALE

EASY ON THE OZONE
HARD ON THE COMPETITION

- Free Estimates
- 100% Financing Available

Carrier

UP TO $1,000 REBATE Or 10 YEAR PARTS & LABOR WARRANTY ON SELECTED UNITS*

CUSTOM MADE INDOOR WEATHER™ Piston
CALL 449-0025
AIR SYSTEMS SPECIALIST
*OFFER GOOD THROUGH SEPTEMBER 15, 2000.
GEORGIA POWER GoodCents
HEATING AND AIR CONDITIONING SERVICE, MAINTENANCE AND INSTALLATION
VISIT US ON THE WEB AT www.airsystemsspecialist.com
BLACKSHEAR, GEORGIA

Elect
Harry M.
Thrift

For Home Delivery Of The
WAYCROSS JOURNAL-HERALD
Call (912) 283-2244

Elect
MIKE BOGGS
STATE REPRESENTATIVE
November 7th

Mike Boggs, Heather Boggs, Joey, Becky Haynes and Porky Haynes

People You Know
&
A Family You Can Trust

Elect
MIKE BOGGS
STATE REPRESENTATIVE
November 7th
VALUES YOU CAN TRUST.
EXPERIENCE YOU CAN COUNT ON.
Ad Paid for by the Candidate

Elect
ERIC WILSON
To the State Senate

He will get things done for South Georgia

"I will fight for the people of the 6th district!"

CHILDREN: "We need to focus on education. We must have smaller class sizes and focus on reading. It is important that we get back to the basics and students learn to read and write by the end of the third grade."

SENIOR CITIZENS: "Senior Citizens should not have to choose between food and medication. Georgia can be a leader in providing assistance for prescription medicine for our senior citizens."

other back to Alabama for her
ode holiday. About 100 rela-
er took some hugging and
ing her and talking be-
ads.

"She never was the same," her
, said. "All that reminiscing
excitement -- it left her with
Saturday."

Dyer is survived by her son,
grandchildren, 17 great-
ndchildren and seven great-
of grandchildren.

counsellor.

Volunteers sprayed insecticide and mosquitoes oil to fight flies and the stench of decomposing corpses. And authorities ordered 200 masks for relief workers who have been working in shifts to dig out bodies since the landslide struck on Wednesday evening.

On Friday, more than 100 people waited on a narrow road leading to the devastated area for word on the fate of loved ones.

In Bombay, skies cleared after

two days, the highest in nearly five decades, PTI said.

Clear skies made the recovery operation easier but municipal workers had mostly given up hope of finding survivors.

Bulldozers plowed down 40 tin and concrete huts to make a path to the hill where poor migrants had built their homes in Azad Nagar shanty in northeastern Bombay.

As dump trucks loaded with debris lumbered past, relatives had died near the site to identify and col-

from southern and central Indian states who had left their villages in the hope of earning more money in Bombay.

Drug Problem?
NARCOTICS ANONYMOUS
has the answer . . .
Call: 1-800-334-8922
HELPLINE

SHERIFF
OF WARE COUNTY
18 YEARS EXPERIENCE
OPEN DOOR-FACE TO FACE POLICY
FOR ALL THE PEOPLE
OF WARE COUNTY
(Ad paid for by candidate)

MIKE BOGGS
FOR STATE REPRESENTATIVE
IN THE GENERAL ASSEMBLY
FROM 168TH DISTRICT

Proudly endorsed by Ware County's former
United States Congressman J. Roy Rowland

As a legislative assistant to J. Roy Rowland in Washington, D.C., for two years, I learned firsthand about the legislative process. I regularly assisted in writing federal and state laws, researched laws, attended committee hearings and dealt each day with helping Ware County residents solve their problems. I made some terrific contacts in State and Federal Government which I can use as State Representative. This experience was invaluable and is the exact type of training needed to be an effective law maker. I would be honored to put this experience to work for you and your family as your next State Representative.

MIKE BOGGS
FOR STATE REPRESENTATIVE
168th District

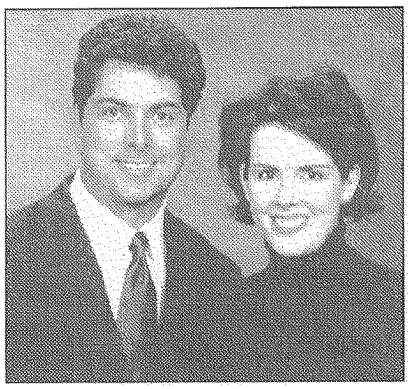
Experience You Can Trust.
Results You Can Count On.

I'd appreciate your vote on Tuesday, July 18th
(Ad paid for by candidate)

- ELECT -

MIKE BOGGS

STATE REPRESENTATIVE



"I'm Mike Boggs and my wife and I are proud to call Ware County our home. I have over a decade of community service, legal experience and legislative experience representing the citizens of Ware County and I'd be honored to put that same experience to work for you and your family as your State Representative.

"For a conservative, common sense approach to government"

- I pledge to enact legislation to impose a PROPERTY TAX FREEZE on the amount of taxes we pay on our homes due to re-evaluations.
- I will fight for our senior citizens to provide AFFORDABLE PRESCRIPTION DRUGS and push for laws that allow seniors to live independently & support increasing the tax credit for families caring for elderly relatives.
- I'll fight to improve education and to support our teachers, administrators and support staffs, and I'll fight for lower class sizes, better pay raises for teachers & more local control of education; and
- As a strong supporter of the Second Amendment, I'll fight to support our gun owners

- ELECT -

MIKE BOGGS

Democrat

PROVEN EXPERIENCE/PROVEN LEADERSHIP

YOUR VOTE ON NOVEMBER 7th IS APPRECIATED

(AD PAID FOR BY THE CANDIDATE)

ldoes you me to anyone else, you con-
tain as you can Him. I am not going to
at life will be as easy as you might
be, but I will tell you that the differ-
thing to compare to how He will make
eep on the inside where no one else
know of.
know someone who claims to be saved
ell you it isn't worth the trouble to ask
your life, then I think I would be safe
they don't know Him as they ought to.
m around for a long time and I haven't
e who is a true Christian who wanted
ive that old lifestyle. It doesn't matter
e money you might have, you can't buy
. I've known people who have had a

(see STRAIGHT, page 8)

---

tee and Pritchard are ironing out the details of the contract under the oversight of the county attorney.

"I have contacted an outside engineer to review the specifications," Pritchard said. "I have tried to contact the NRA, who have a range technician, to have them look at the plans. I'm doing the best I can to accomplish a project where I get more criticism than assistance."

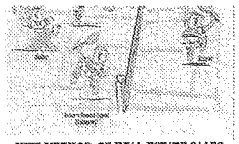
Tyson saved one criticism for last.

"I sat down and calculated the cost of doing what this plan calls for," he said. "By my estimate, someone will make one devil of a good profit."

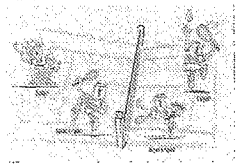
Tyson declined to offer a estimated figure.

The board disagrees. They believe that the contractor will make a fair profit.

"According to the bids we originally received, the contractor will make about half of his earlier proposal," Pope said. "His profits are drastically reduced."



NEW METHOD OF REAL ESTATE SALES



Real Estate Buyers - Which Method Do You Want to Use?

Call our office to schedule a free consultation to learn how you can have a trained buyer's agent working for you!

Gateway Realty Services, Inc.
516 Lott Street
Waycross, Ga 31501
Phone: 912-285-7216
Fax: 912-285-5517
www.gatewayrealtyservices.com

Talking House

MLS

EQUAL HOUSING LENDER

Vote & Elect
Mike BOGGS
★ State Representative ★

MIKE BOGGS WILL SUPPORT OUR GUN OWNERS

"As a lifetime gun owner, you can count on me to support our Constitutional right to own firearms"

- I OPPOSE MANDATORY TRIGGER LOCKS.
- I OPPOSE PROPOSALS TO FURTHER REGISTER OUR FIREARMS.
- I OPPOSE ADDITIONAL RESTRICTIVE STATE LEGISLATION REGULATING FIREARMS.
- I SUPPORT STRICTER ENFORCEMENT OF CURRENT LAWS PROHIBITING FIREARMS SALES TO JUVENILES AND FELONS.
- I SUPPORT FIREARMS SAFETY AND EDUCATION PROGRAMS AIMED AT EDUCATING OUR CHILDREN ON GUN SAFETY.
- I OPPOSE LAWS AIMED AT LIMITING THE NUMBER OF FIREARMS AND/OR AMOUNT OF AMMUNITION A LAW-ABIDING CITIZEN MAY PURCHASE WITHIN A GIVEN TIME.
- I WILL SUPPORT LAWS WHICH INCREASE THE PENALTY FOR CRIMINALS WHO USE A WEAPON WHILE COMMITTING A CRIME.

KERCY
MIKE BOGGS
DEMOCRAT FOR STATE REPRESENTATIVE
NOVEMBER 7TH
(AD PAID FOR BY CAMPAIGN)

being received at the residence of J.H. and Millie Tanner, 6415 Tanner Road in the Dixie Union community.

Mr. Leroy Neely

Mr. Leroy Neely, 52, of Folkston, died suddenly Wednesday (Oct. 11, 2000) at the Southeast Georgia Regional Medical Center in Brunswick.

He was engaged in the recycling business and was of the Baptist faith. He was a Bulloch County native and the son of the late Roy and Johnnie McMichen Neely.

He is survived by a son, Tommy Neely, in North Carolina; three sisters, Kathleen Woods (husband Bennie) of Waynesville, Susan Barnard of Brooklet and Bonnie Barnard (husband Carl) of Newington; and two brothers, Ronald Neely (wife Carolyn) of Millen and Danny R. Neely Jr. (wife Lynn) of Folkston.

A graveside funeral will be conducted at 4 p.m. Saturday at the Woods Cemetery in Waynesville. The Rev. Mitch Thompson will officiate.

Visitation is taking place tonight at Chambless Funeral Home in Nahunta.

Mrs. Gladys Mae Smith

The funeral for Mrs. Gladys Mae Smith, 60, will take place at 1 p.m. Saturday at Friendship Baptist Church. The Rev. Walter Scott Jr. will officiate.

She was born in Warreston, Ga. but was reared in Hoboken and attended Brantley County public schools. She made her home in Waycross for many years.

place at 3 p.m. Saturday at Bethel Union Baptist Church, Jesup, where was a deacon.

The body will be placed in the church at 10:30 a.m. The church service will be followed by burial in Jesup City Cemetery.

He was born July 15, 1906 in Brookman, Ga. His parents were Mr. and Mrs. Ned Davis. He was self-employed as a pulpwood laborer. He and his first wife, the late Alma Tyson, were the parents of two sons. The late Minnie Davis became his wife in 1963. He died Tuesday (Oct. 10, 2000) at the Sun Bridge Nursing Home in Jesup, after an extended illness.

He is survived by three sons, Willie Davis (wife Frances) of Waycross, Alphonso Davis of Smithfield, Va. and David Earl Davis of Jesup; a devoted friend, Martha Jackson of Jesup; 10 grandchildren, Willie Davis Jr. of Corona, Calif., Cynthia Westbrook Wanda Hazan and Shera Davis of Richmond, Va., Donnie Davis of Smithfield, Dr. Lori Revere, Sheri Bolden, Jana Croom and Kikky Smith of Atlanta and Katherine Smith of Waycross; and many great- and great-great-grandchildren.

Arrangements are with Perry Brothers Funeral Home of Waycross.

There will be visitation Saturday at the funeral home.

The pallbearers will be James M. Proctor, Richard L. Proctor, Richard L. Proctor Jr., Ronnie Thompson, Randall O'Quinn, Mike Brown and Willie Usher.

Charles Nicholas Rood

A graveside service for Mr. Charles Nicholas Rood, 50, will be conducted at 3:30 p.m. Saturday at Hazzard Hill Cemetery. The Rev. Kenneth McMillan will officiate.

"Nicky" was a Waycross native and a 1968 graduate of Center High School. He was a U.S. Army veteran and a member of Austin Chapel CME Church. His parents were the late William D. Rood Sr. and Willie Neaze Evans Rood.

He is survived by a daughter, Sameka Nicole Rood of Waycross; a brother, William D. Rood Jr. of Waycross; six sisters, Natalie T. Rood, Tisha Rood-Simmons, Tanya Rood and Tracie Cooper-McKelvin, all of Waycross, Octavia W. Jenkins of Queens, N.Y. and Rhonda Cooper-Brown, in Germany; an uncle, Samuel Evans of Waycross; four aunts, Alwinter Young, Susan McDaniels, Georgia Evans and Walter Mae Evans, all of Waycross; a special nephew, Arias Davis of

friends.

Friends are being received here at Orie Thomas' residence, 1001 Lee Ave.

Mr. Obie Lock

HOMERVILLE — The funeral for Mr. Obie Lock, 65, will be conducted at 2 p.m. Saturday at Antioch Baptist Church with the Rev. Jack Harris officiating.

He was a DuPont native and received his public school education in Clinch County. He was retired from Brockway Standard following 24 years of service. His parents were the late Henderson and Beulah Lock.

The survivors include a special friend, Alice Lacy of Homerville; a

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SAT 8AM TO NOON
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MIKE BOGGS
DEMOCRAT
STATE REPRESENTATIVE
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• I'LL SUPPORT INCREASING FUNDING TO REDUCE THE WAITING LIST FOR IN-HOME CARE SERVICES THAT ALLOW SENIORS TO LIVE INDEPENDENTLY.
• I'LL SUPPORT MAKING IT ILLEGAL FOR BANKS AND INSURANCE COMPANIES OWNED BY THE SAME CORPORATION TO SHARE YOUR PERSONAL MEDICAL OR FINANCIAL INFORMATION.
• I'LL SUPPORT TAX CREDITS FOR THE PURCHASE OF LONG-TERM CARE INSURANCE.
• I'LL SUPPORT INCREASING THE TAX CREDIT FOR FAMILIES CARING FOR ELDERLY RELATIVES.

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MEDICAL & FINANCIAL PRIVACY
OUR SENIORS DESERVE NOTHING LESS!!
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NOVEMBER 7TH
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The annual Red Ribbon Parade is scheduled for today at 4:30 p.m. starting at Mary Street Park and following the traditional parade route.

Historically, this is one of the largest parades for Waycross-Ware County. After the parade there will be a Red Ribbon Fall Festival in Mary Street Park until 7:30.

For more information, call the Drug Action Council office at 287-1548.

Woman Slightly Hurt In Collision

Two vehicles collided on the South Georgia Parkway Friday as one of the drivers was exiting a parking lot at a convenience store, said Lt. Mike Barber of the Waycross Police Department.

Diana Crews, 37, of Nicholls, was slightly injured in the 4:13 p.m. accident, said Barber. She was taken to Satilla Regional Medical Center for treatment.

Crews, driving a 1996 Buick, was headed west on the South Georgia Parkway. A 1989 Ford Probe driven by Delacia Gale, 18, of Waycross, pulled out of Kelly Supermarket's parking lot and was struck by Crews' vehicle, said Barber.

Gale was not injured in the accident, which occurred at approximately 4:15 p.m., said Barber.

Crews was taken by ambulance to Satilla Regional Medical Center following the 4:15 p.m. accident, said Barber.

The accident occurred as Joseph Spacey, 85, of Waycross, was headed west on Memorial Drive, attempting to make a left turn onto Lee Avenue southbound. Barber said Guy, driving a 1984 GMC pickup truck was headed east on Memorial Drive. Spacey drove into the path of Guy's vehicle.

Spacey was charged with improper left turn, Barber said.

Officer Jack Bennett was in charge of the accident investigation.

Depot, REA Design Bids To Be Opened

The Downtown Waycross Development Authority (DWDA) will accept sealed proposals from architectural firms for the design of the interior and exterior of the Waycross Railroad Depot Phase II and the Railway Express Agency Building until 10 a.m. Wednesday.

The bid opening will take place at the office of the owner's representative, Leslie Thayeson, 315 Plant Avenue.

Planned Saturday

BLACKSHEAR — The Blackshear Pecan Festival will take place Saturday from 10 a.m. to 10 p.m.

There will be contests, games, entertainment and other activities all day, including a fishing competition and horseshoe pitching. There will be a cash prize for the winner in the horseshoe competition.

Local country group Alibi will appear in concert at 6 p.m.

Everyone is invited to enjoy the fun.

Holy Land Trip To Be Discussed At Meeting

A meeting at Shoney's is planned for Thursday, 7 p.m., for persons interested in learning details of a holy land tour planned for next spring.

Dr. David Drake, pastor of Central Baptist Church, is organizing and hosting the trip. Many historical and inspirational sites will be visited by the tour group May 22-June 7, 2001 (one week after the local school term ends).

Dr. Drake also invites those interested to visit a website: www.earthlyhome.org or to contact him at 284-9392. He will provide a color brochure to anyone interested.

He said the tour includes five star, first class accommodations and travel at an affordable price.

Blackshear School's Book Fair To Begin

BLACKSHEAR — Blackshear Elementary School will be sponsoring a Scholastic Fall Book Fair Saturday at the Connected Services building on Main Street in Blackshear.

Aglow is an organization that brings together women of all Christian denominations for worship, praise and sharing. More information is available at 449-6921 or 847-5080.

Church On Albany Plans Saturday Sale

Victory Temple, 1804 Albany Ave., has announced plans for a Yard Sale from 7:30 a.m. until 2 p.m. Saturday.

"We'll have men's, women's and children's clothing and shoes, household, and accessories," said a spokesman.

Biker Rally, Alibi Show Benefits U.W.

The third annual United Way Biker Rally and Alibi concert is coming up Saturday.

The $500 poker run leaves Waycross at 10 a.m. and passes through Pearson, Douglas, Alma, Fitzup, Patterson and Blackshear, winding up at the Waycross Motor Speedway where local bands Alibi and Geary will perform.

Registration ($20 each) is from 9 until 10 at Southern Outdoor Sports, 2496 Memorial Drive.

Leaving at 10, the group will pick up riders at the Harvey's parking lot on U.S. 441 in Pearson, then continue

voting officials here stress that registered voters may vote a split ticket in the general election on Nov. 7.

Confusion stems from the fact that primary elections require that voters select either a Democratic or

... Mill

(continued from page 2)

doing everything we can to help each other during this time," Jones added.

Jones said that customary will not be significantly impacted by that decision. "We will continue to work with our customers to make sure they are fully satisfied," he said. "We will be able to supply our customers with products already in inventory."

The Waycross Plywood Mill is part of BP's Engineered Wood Products business, headquartered in Savannah. The business produces plywood, oriented strand board, treated poles and laminated veneer lumber products used for residential and commercial construction throughout North America and Europe.

BP's Engineered Wood Products business includes six plywood mills, three oriented strand board plants, one utility pole plant, one laminated veneer lumber mill, two distribution centers and a sales office.

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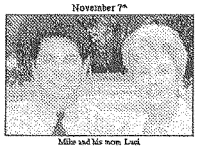
Elect
MIKE BOGGS
STATE REPRESENTATIVE
November 7th


Mike and his mom Lucil

People You Know
&
A Family You Can Trust
"I'm proud of the conservative, Christian values taught to me by my parents and pledge to remember these lessons as your State Representative".

Elect
MIKE BOGGS
STATE REPRESENTATIVE
November 7th
VALUES YOU CAN TRUST.
EXPERIENCE YOU CAN COUNT ON.
Ad Paid for by the Candidate

ARE YOU DISSATISFIED WITH EXCESSIVE PROPERTY TAX ASSESSMENTS? I AM, AND I HAVE A PLAN TO END THIS PROPERTY TAX PROBLEM IN WARE COUNTY.

I own property in our community that increased in value 30% this year.

Many of our seniors have their homes paid for but are nearly unable to stay in their home because of outrageous property tax re-evaluations causing increases of 100 – 300% in their property tax values this year alone.

Many Ware County property owners have had their property values re-evaluated several times in the last few years, while others have not been re-evaluated in years.

Many in our business and medical community have seen enormous property tax value increases this year alone of up to 800%.

AS YOUR STATE REPRESENTATIVE I WILL MAKE IT MY FIRST PRIORITY TO FIX THIS PROBLEM.

- I WILL ENACT LEGISLATION TO IMPOSE A **PROPERTY TAX FREEZE** ON THE AMOUNT OF TAXES WE PAY DUE TO RE-EVALUATIONS.
- HOWEVER, PROPERTY "TAX FREEZE" LAWS APPLY ONLY TO HOMES WE LIVE IN. **AS SUCH, THESE LAWS ALONE DON'T ADDRESS FARM PROPERTY OR COMMERCIAL/BUSINESS PROPERTY.**
- TO REMEDY THIS PROBLEM, I WILL FIGHT FOR LAWS TO **LIMIT** OR **CAP** THE AMOUNT OF PROPERTY TAX VALUE INCREASES PER YEAR.
- I WILL FIGHT FOR LAWS TO LIMIT HOW OFTEN YOUR PROPERTY CAN BE RE-EVALUATED, AND
- IF TAX FREEZE LAWS DON'T WORK, I WILL FIGHT TO INCREASE THE CURRENT HOMESTEAD EXEMPTION.

Elect

MIKE BOGGS

DEMOCRAT FOR STATE REPRESENTATIVE

November 7th

REAL TAX RELIEF FOR ALL OF WARE COUNTY'S PROPERTY OWNERS.

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Rural Center at 7-9 age group (by Ewell Cason); the 9-11 age group (by Jenny Kirkland, Bank of America, donated by bank employees) and the 12-17 age bracket (Waycross Bank and Trust). Savings Bonds were to be taken to the winners while each child who participated in Ms. Williams' program was presented a gift bag full of goodies donated from area businesses just for this occasion.

Contributions to MAGIN Children's Art Contest included Jerry Saunders (Michael's Deli), 10 $5 gift certificates; Burger King, 45 certificates for free sandwiches and 50 free toys; Wendy's, 45 certificates for free Frosty's/Taco Salads; McDonald's, 44 certificates for Free French Fries; Chick Fil-A, 45 certificates for free chicken sandwiches; Dairy Queen, 45 certificates for

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Concerted Services (Magnolia House), 43 free pencils and candles for each child; Okefenokee Regional Library (Charles Boone, Dr. Maxine Stock, and library staff support and help throughout the month hosting the Art Exhibit; Yarbrough Office

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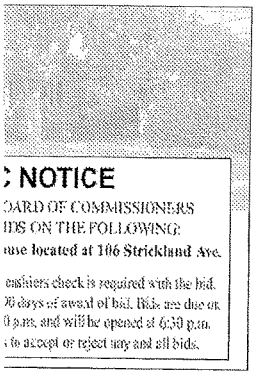

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HS ON THE FOLLOWING:
ave located at 106 Strickland Ave.

cashiers check is required with the bid.
06 days of award of bid. Bids are due on
0 p.m. and will be opened at 6:30 p.m.
to accept or reject any and all bids.

ARE YOU DISSATISFIED WITH OUR RECENT EXCESSIVE PROPERTY TAX ASSESSMENTS? I AM, AND I HAVE A PLAN TO END THIS OUT OF CONTROL PROPERTY TAX ISSUE IN WARE COUNTY.

I own property in our community and one of my property values went up 80% this year.

I know people who have their homes paid for but are nearly unable to stay in their home because of outrageous property tax re-evaluations causing increases of 100 - 300% in their property tax values this year alone.

I know of many who have had their property values re-evaluated several times in the last few years, while others have not seen their property tax values increase in years.

I know many in our **business** and **medical community** who have seen enormous property tax value increases this year alone of up to 800%.

AS YOUR STATE REPRESENTATIVE I WILL MAKE IT MY FIRST PRIORITY TO FIX THIS PROBLEM.

- "The Georgia Supreme Court is determining whether local property tax freeze laws are constitutional, if they find in favor of these laws, I WILL ENACT LEGISLATION TO IMPOSE A FREEZE ON PROPERTY TAXES IN WARE CO.

HOWEVER-

- Property "tax freeze" laws only apply to "homestead" property, that is, property that you live in. **AS SUCH, THESE LAWS ALONE DON'T ADDRESS FARM PROPERTY OR COMMERCIAL PROPERTY.**

- I BELIEVE ALL PROPERTY OWNERS IN WARE COUNTY DESERVE TAX RELIEF.

THEREFORE-

- I will to also introduce legislation to **LIMIT** and **CAP** the amount of **all** property tax increases per year to bear an actual relationship to the rate of inflation.

- LET'S END THE DAYS OF UNFAIR PROPERTY TAX VALUE INCREASES.

Vote & Elect
Mike BOGGS
★ State Representative ★

Elect
MIKE BOGGS
DEMOCRAT FOR STATE REPRESENTATIVE
November 7th

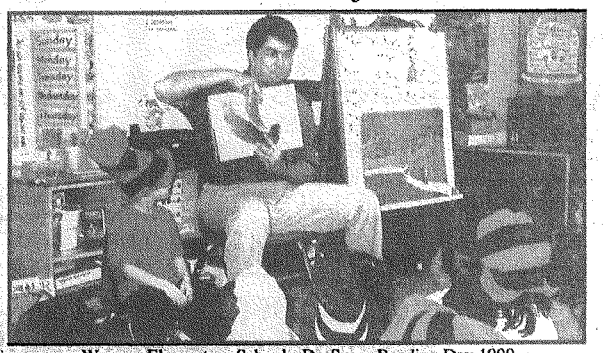
REAL TAX RELIEF FOR ALL OF WARE COUNTIES PROPERTY OWNERS
(Ad paid for by candidate)

MIKE BOGGS

For State Representative

A RECORD OF COMMUNITY SERVICE

"WELL DONE IS BETTER THAN WELL SAID"
-Benjamin Franklin (1706-1790)



Wacona Elementary School - Dr. Suess Reading Day 1999

- My wife and I are active members of Central Baptist Church.
- Annual volunteer speaker for Reading and Career Days at Ruskin and Wacona Elementary Schools.
- Member - Waycross College Foundation Board.
- Former President - Waycross Bar Association.
- Member - Board of Directors, Waycross YMCA.
- Member - Waycross/Ware County Chamber of Commerce.
- Graduate of the Chamber of Commerce "Leadership Waycross" program.
- Member - Waycross Rotary Club
- Member - Ware County Athletic Boosters Club.
- Co-Chair of the "Paul Azinger Charity Golf Classic" fund raiser for the benefit of the Georgia Lions Camp for the Blind in Waycross.
- Former Vice President of the local unit of the American Cancer Society and Co-Chair of the first ever "Relay for Life" fundraiser in Ware County.
- Former little league football coach for the Ware County Recreation Department.
- Business owners symposium speaker for Chamber of Commerce.

"For years I have tried to demonstrate my commitment to improving our community; I'd be honored to continue this work as your State Representative."

ELECT

MIKE BOGGS

November 7th

(Ad paid for by candidate)

111019a

ace in Douglas; Lace Futch, executive of the Southeast Georgia Regional pment Commission; Marcia Kilmark from left), secretary to Mayor Fluker, ss City Manager C.B. "Bucky" Hays and Lee of the RDC.

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One trip highlight is a full day jet boating on the Snake River in Hell's Canyon with lunch on the riverbank at a wilderness lodge.

The Lewis and Clark Trail and the Nez Perce Indian National Historic Park will also be visited. In Glacier National Park, the "Going to the Sun Highway" will be traveled.

Transfers from Waycross to Jacksonville, Fla., airfare, nine-day deluxe tour; 18 meals, baggage handling and gratuities are included.

For more information, call Mark and Peggy at 283-1314 or 283-0617.

Dead Heat Still There After Recount

HOMERVILLE -- There will be a runoff on Tuesday, Aug. 8, for the Post 1 seat on the Clinch County Commission following a recount of votes on Wednesday. A dead heat developed in balloting for the race during Tuesday's Democratic primary election here.

A probate office spokesman said the candidates, Herman Corbitt and incumbent Mark Steadley, were deadlocked at 213 votes each following the recount Wednesday.

Local law enforcement has released the following information:

· Arrest: Corey McKelvin, 18, 811 Lee Ave.; charged with possession of marijuana with intent to distribute; following vehicle stop, a large quantity of marijuana found in car; plastic sandwich bags, type often used for sale of marijuana, also found.

· Theft by taking: man left boat and trailer offered as trade-in at mobile home dealer in 2200 block of Brunswick Highway for more than month; didn't buy home; dealer called him couple of times about picking up boat; when he finally came Wednesday, boat and trailer missing.

· Theft by taking: woman said McCullough weedeater ($200 value) stolen from under her mobile home in 2400 block of Ambrose Street Tuesday night.

· Theft: two unlocked cars parked under carport in 2700 block of Autumn Ridge Lane were entered early today; several items of clothing taken.

· Theft: wallet with drivers license and ATM card stolen from car parked at home in 1700 block of Gilchrist Avenue Tuesday night.

· Theft: woman said her car was locked and alarm set Monday at home; she later found all doors unlocked, but no alarm sounded; purse was taken from under seat with $67 in cash, credit cards and checks inside.

· Theft: five cars parked at home in 2200 block of Hilliard Avenue appeared to be entered; nothing known to be missing.

· Theft: cellular phone taken from car parked at home in 1100 block of N. Augusta Avenue after midnight Tuesday; contents of glovebox scattered inside car.

· Arrest: Tim Young, 30, 1014 Cabinet St. charged with burglary; man already in custody on another charge; further investigation made him suspect in burglary in 1100 block of Caswell Avenue, July 4-5; several items of jewelry, VCR, two TVs, CDs and Sony Playstation stolen.

· Armed robbery: man told police he asked for ride from store in 1700 block of Memorial Drive; a man agreed to give him a ride, then, once inside the car, driver started beating passenger about head with handgun; took his wallet; pushed him out of car in 1000 block of Memorial Drive.

· Theft of motor vehicle: Waycross Police detectives are investigating reports of man seen driving Nissan Sentra on several occasions, in town and out; car belongs to another person; owner did not give permission for suspect to drive the car.

ELECT

MIKE BOGGS

STATE REPRESENTATIVE DEMOCRAT

TO THE CITIZENS OF WARE COUNTY:

I WANT TO TAKE THIS OPPORTUNITY TO THANK YOU FOR YOUR OVERWHELMING SUPPORT OF MY CANDIDACY IN TUESDAY'S ELECTION. I AM ETERNALLY GRATEFUL TO SO MANY. I LOOK FORWARD TO CONTINUING OUR MESSAGE AND MOMENTUM INTO THE GENERAL ELECTION IN NOVEMBER.

I ALSO WISH TO THANK MY OPPONENT LARRY BARBER, HIS WIFE KAY, AND ALL OF HIS HARD WORKING SUPPORTERS FOR THE MANNER IN WHICH THE RACE WAS CONDUCTED. LARRY COMMITTED EARLY ON TO A CLEAN AND HONORABLE RACE AND IN EVERY WAY LIVED UP TO HIS COMMITTMENT. HE IS TO BE COMMENDED FOR HIS WORK. AS THE DEMOCRATIC CANDIDATE FOR STATE REPRESENTATIVE, I NOW LOOK FORWARD TO A UNITED DEMOCRATIC EFFORT IN THE GENERAL ELECTION IN SUPPORT OF OUR MESSAGE A CONSERVATIVE, COMMON SENSE APPROACH TO GOVERNMENT. THANK YOU EVERYONE.

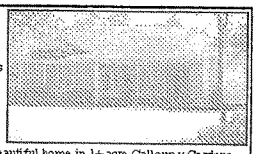
SINCERELY,

Mike Boggs

MIKE BOGGS

FOR SALE

6356 Riverwoods Drive



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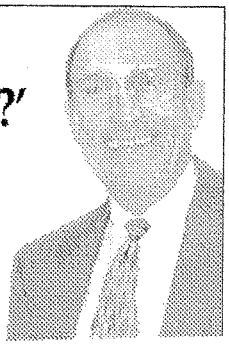
r...come join us! We'll both be glad you did.

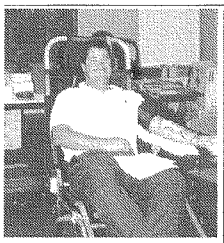
ed activities in the coming weeks. Call one of our three now you can became a Reward Express Club member...



18th.....Rest. booking Trip to Braves game.....At Locations
22nd....Stress Mngmt. Brunch Sundays 6:30 am.....Pat/Waycross
23rd.....Cajun Bingo Lunch Capt. Joe's (10:30 am).....Jesup

There will be lots more great activities and fun for all of us. [illegible] would like

Waycross
Jesup
Jesup
Locations
Pat/Wayc



Special Photo

Red Cross Has Successful Blood Drive At SRMC

The American Red Cross held a Blood Drive at SRMC during the summer and a total of 41 units were donated. Donors included Curtis Tomlin of Satilla Regional Medical Center. The American Red Cross encourages people to donate blood all year, especially when the need is urgent. Currently, the need for "O" type blood is categorized as urgent. A Red Cross community blood drive is coming up Monday at Central Baptist Church. Hours are 1-7 p.m. The next Blood Drive at SRMC will be held Dec. 22, and everyone is invited to participate. There will be giveaways and door prizes for those who donate. For more information on SRMC blood drives, call Cindy Ball at 287-2356.

FILE PHOTO

ARCHIE HEAD
Promoted To Lieutenant

FILE PHOTO

FURRINDA DURHAM
Sergeant Of Detention

Sheriff Announces Promotions

Two Ware County Sheriff's Department employees have been promoted in rank, said Sheriff Ronnie H. McQuaig. He said these promotions are in fill vacancies, which exist in the office.

Archie J. Head was promoted from Sergeant in the Patrol Division to Lieutenant in charge of Civil and County Division. Lt. Head is a 17-year veteran of the department. He began his law enforcement career as a county deputy after having completed a 20-year career in the U.S. Army. Lt. Head advanced through the ranks in the department from deputy sheriff, to corporal and later to sergeant.

Lt. Head will oversee the daily security needs of the Ware County Courts. He will also supervise the civil process service.

Sheriff McQuaig said he is confident that Lt. Head will do an excellent job in his new capacity, and the judges have also expressed similar feelings.

Detention Officer Furrinda Durham was promoted to the rank of Detention Sergeant in the Ware County Detention Center.

Sgt. Durham has 2 years with the department, and supervises a shift of detention officers in the daily operational duties of the jail.

Sheriff McQuaig said that Sgt. Durham is a conscientious employee, and is recognized for professionalism.

OLE TIMES COUNTRY BUFFET
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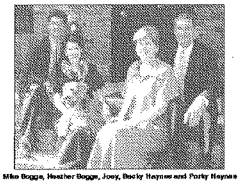
Smoked House Bar-B-Que
On The Buffet
MONDAY, WEDNESDAY & SATURDAY NIGHT
TUESDAY
SHRIMP NIGHT!
All You Can Eat $5.99
FRIDAY & SATURDAY NIGHT
SEAFOOD ON THE BUFFET
$7.99
OVER 100 ft. of Buffet
LUNCH BUFFET
$4.99
Plus Tax & Drinks
HAND CUT SIRLOIN STEAKS NIGHTLY!
ON BUFFET MON. - SAT.
Register To Win Free Television & Dinners
Senior Citizens $3.99 Mon.-Sat. 2-4:30
COME ROCK IN OUR ROCKING CHAIRS



Mike Boggs, Heather Boggs, Joey, Becky Haynes and Porky Haynes

VOTE & ELECT

MIKE BOGGS

STATE REPRESENTATIVE FOR WARE COUNTY

DEDICATED TO A PROFESSIONAL, CONSERVATIVE, AND PROACTIVE/AGGRESSIVE APPROACH TO REPRESENTING ALL THE CITIZENS OF WARE COUNTY

FAMILY BACKGROUND

- **My wife is Heather Haynes Boggs,** daughter of Porky and Becky Haynes. She is a Graduate of Ware County Senior High School and is employed by the Ware County School System. She has taught 1st grade at Gilchrist Park Elementary School and now teaches Kindergarten at Ruth Elementary School. She was also the 2000/2001 Teacher of the Year at Ruth.
- **My Father-in-Law is Porky Haynes.** Porky was raised in the Gilchrist Park community and is a graduate of Waycross High School. He has served as Vice President of Student Services for Okefenokee Technical Institute for past 21 years and formerly was a school counselor at Waycross High School for 10 years and Ware County High School for 2 years.
- **My Mother-in-Law is Becky Haynes.** Becky is employed by the Ware County School System and currently is a Kindergarten SIA teacher at Waycross Elementary School where she has worked for the past 21 years. She has been in public education for the past 34 years.
- **My parents are Lucy Boggs and the late Morris Boggs of Waycross.** My father previously served as a member of the Board of Education for 4 years and served as its president from 1980-1981.
- **My sister Michele Yarn** is a graduate of Waycross High School and is also employed by the Ware County School System where she has taught for past 13 years. Michele originally taught at McDonald Street Elementary School and now teaches Reading Recovery at Waycross Elementary School.
- My sister Erin Farmer is employed as a sales person with Walker-Jones and is likewise a graduate of Waycross High School.
- **My brother Gary Boggs** is a graduate of the Southwood School and for the past 15 years has been employed by the United States Department of Justice as a Drug Enforcement Agent in Detroit, Michigan.

PERSONAL INFORMATION

- I attended Wilkinson Heights Elementary School, Center Junior High School and am a graduate of Waycross High School. During High School, I was involved in many extra-curricular activities including playing football from 1979-1981. I received a scholarship to play football at Georgia Tech and later graduated from Georgia Southern University with a Bachelors Degree in Political Science and a minor in Psychology. I also received an Associates Degree in Pre-Law from Waycross College.
- I worked as a Legislative Assistant in the Washington, D.C. office of former United States Congressman J. Roy Rowland from 1986-1987.
- I am a graduate of Mercer University's School of Law and worked as an attorney in Atlanta for ten years prior to returning to make my home in Waycross in 1992.

COMMUNITY INVOLVEMENT

- My wife and I are active members of Central Baptist Church.
- I currently serve on the Waycross College Foundation Board.
- I am president of the Waycross Bar Association.
- I was elected to the Student Government Association as Representative for my senior law school class.
- I serve as a member of the Board of Directors for the Waycross YMCA.
- I am a member of the Waycross/Ware County Chamber of Commerce.
- I am a graduate of the Chamber of Commerce "Leadership Waycross" program.
- I am a member of the Waycross Area Board of Realtors.
- I am a former volunteer in the Big Brothers-Big Sisters program of Northern Virginia.
- I am a former member of Rotary.
- I have co-chaired the "Paul Stringer Charity Golf Classic" fundraiser for the benefit of the Georgia Lions Camp for the Blind in Waycross for the past ten years.
- I have been Vice President of the local unit of the American Cancer Society and co-chaired the first ever Relay for Life in Ware County.
- I am a former Bible league football coach for the Ware County Recreation Department and grew up in the Recreation Department as a participant in all youth sports.

PEOPLE YOU KNOW, A FAMILY YOU CAN TRUST, AND THE EXPERIENCE NECESSARY TO PROFESSIONALLY REPRESENT THE CITIZENS OF WARE COUNTY

YOUR VOTE FOR MIKE BOGGS IS APPRECIATED.

Ad paid for by the committee to elect Mike Boggs: Jerry Aldenman, Chairman; Pat Reid, Treasurer.

Area News

Man Wounded During 'Domestic Situation'

DOUGLAS — A Merrittall County man who entered the home of a Jesseville woman and was holding three people at gunpoint was shot and wounded in the chest, said Bill Butler, GBI Agent-In-Charge at the Douglas GBI Office.

Dewey Snipes was shot once in he chest by David Fay Cox, , said Butler, while Snipes was holding Mr. Verdie Mae Clifton and two others at gunpoint during what law-men called a domestic situation.

Snipes is charged with aggravated assault for pointing a gun at the boy. Cox was not charged in the shooting, Butler said.

Snipes will survive the shooting, Butler said. He was taken to Midelsbrk South Georgia Medical Center where he remains in serious condition.

The incident occurred between 10 and 11 p.m. Saturday.

SE Bookeepers Meeting Nov. 14

The Southeastern Bookeepers Association Inc., will hold a meeting at Thursday, Nov.14, at the Ware County Courthouse at 7 p.m.

President Bishop A. Osborn urges members to attend.

Robbers Take $280 From Waycross Man

An elderly man was robbed by two men who pushed their way into his home, said Ware County Sheriff Jessie McQuaig.

A man who lives in the 1400 block of Gibbsbie Avenue said that two black men drove up to his home about 12:30 p.m. Wednesday, McQuaig said. They approached the resident about doing repairs to the house.

The victim invited them into his home to talk, said McQuaig. At one point, the two men asked to see the homeowner's Medicaid card. While at his wallet out, one at the men snatched approximately $280 from him. Both robbers ran back to their truck and left the area.

The only other description given on the two suspects was that the man who snatched the money wore a blue shirt and blue pants, said McQuaig. The victim was unable to get the tag number on their vehicle.

Discrimination Case Takes Complete Turn

JESSENVILLE — An 11th Circuit Court of Appeals judge has overturned a decision involving a former Clinch County High principal's own allegiing racial discrimination against the Clinch County Board of Education.

As a result of the decision, Dr. Kay Hinson, former principal of Clinch County High School, will probably have her day in court. The decision reversed a previous ruling by U.S. District Court Judge Hugh Lawson.

Observers say the issue will now return to the U.S. District Court, where a jury could hear the case as early as May 2001.

Hinson filed suit against the school board in December 1997.

First Baptist Invites All To 'Billy Graham'

First Baptist Church here has seats available on a 43-passenger charter bus to the Billy Graham Crusade Saturday and Sunday at Alltel Stadium in Jacksonville, Fla.

A spokesman said tickets to ride the bus may be purchased for $10 from Mark Williams by calling the church at 283-5757.

The crusade is general seating, and the $10 helps to defray the cost of the bus and a lock seater which will be provided on the bus.

The bus will leave the church parking lot at 4:15 p.m. Saturday and Sunday at 702 Blackshe St., and will be parking in the lot directly adjacent to Alltel Stadium where the crusade is being held.

The crusade starts tonight.

Lonnie Poole

Good NeighBear Visits YMCA Kindergarten

The State Farm Good NeighBear talked to the YMCA Kindergarten about Halloween safety Tuesday and gave each child a treat bag. This is the third year the Good NeighBear from Donnie Strickland's State Farm Agency has visited the kindergarten, said YMCA director Dan Nix. Donnie Strickland's State Farm insurance agency office is located in Waycross at the corner of Screven Avenue and Doney Street. The phone number is 283-7345. Joining the kids, Strickland and the Good NeighBear are Craig Hutcheson, Cleotd Hutcheson and Tara Bowers. The Trick or Treat bags contained coloring books, crayons, pencils, air planes and candy.

L. Ron Hubbard Anthology: Better Than Last Year

By JOHN SCOTT COOPER
Staff Writer

I had the privilege of reviewing the "L. Ron Hubbard Present Writers of the Future, Volume 15," last year, and "Volume 16" this year. While finding both to contain imaginative and pleasing stories, the 2000 edition had an overall greater "feel quotient."

Anthologies of this type, that presume the work of new authors, are wonderful ideas. "Writers of the Future" lays claim to opening the door to the careers of 170 now established writers and illustrators during the past 16 years.

The book also includes lessons from well-known and highly regarded writers and illustrators such as L. Ron Hubbard, Judith Hillman, Algis Budrys and Michael H. Payne. These segments provide insight into practical reasons, such as how research produces stories that sell and how focusing on artist's eye on the seemingly insignificant minutiae of life is a major part of creativity. Perhaps like these closely illustrate advice Algis Budrys's recommendations to educating and inspiring writers.

There stories found in Volume 16 particularly affected me with their depth of character creation and uniqueness of plot. Gary Murphy's "Falling Up Hands," a story about a man hiding in a remote colony on the edge of the galaxy and what happened when he was found, was the first quiet winner. A dated place story, "Dinkdemont," by Dan Dyson, was a novelette favorite of how the ancient art of blacksmithing could become a valuable resource following a future holocaust.

Maybe it's because I live in the

(see REVIEW, page 7)

... Trial

(continued from page 1)

such time. But we do not live in the old west. John Wesley Hardin never met a man for snoring, but you can't do that in Ware County. There's few persons who cannot really sleep, and that's Otwaldsey Wells. I submit he intended to kill him. You were sent through the evidence, how brutal one person can be. Jason Harris is guilty of malice murder."

Currie said he feels sorry for the family of Otwaldsey Wells, because he was taken from their bosom. He also expressed sorrow for the family of Lamon Harris.

They are victims as well. They have been sentenced by a verdicts that permanent society. Lamon Harris should be held accountable for what he did. Only Lamon should be blamed. He was the aggressor. He shot him down like a dog in the street. Wells never had a chance."

Currie also pointed out to the jury that a person's guilt or innocence cannot be judged by their outward appearance.

"Lamon Harris is a nice looking young man. He's married wife and has a good family," Currie said. "But Lamon Harris has to be held accountable for the murder of Otwaldsey Wells."

At 1:30 p.m. the jury returned to the courtroom for a charge conference of the two murder charges. Judge Bloner again explained in detail the difference between felony murder and malice murder.

After a little more than an hour, the jury returned to the courtroom at 3:12 p.m. and announced their verdict.

Judge Bloner then pronounced the "mandatory sentence" of life in prison.

... Sound Of Gold

(continued from page 2)

11:00 Attention
11:15 Chatham Co.
11:30 Clinton
11:45 Lee Co.
12:00 Festival Awards

The Competition Schedule is as follows:

1:00 Emanuel Co. Institute
1:15 Calvary Baptist
1:30 Hobson Co., Fla.
1:45 Douglas Co.
2:00 Break
2:15 Sumter Co.
2:30 Appling Co.
2:45 Richmond Hill
3:00 Break
3:15 Glynn Academy
3:30 Americus
3:45 Break
4:00 Camden Co.
4:15 Lee Co.
4:30 Warren Robins
4:45 Golden Gate Blue Band
5:00 Preliminary Awards
7:00 Finals Begin
9:15 Fall Revival
9:30 Finals Awards

Elect
Harry M.
Thrift
Tuesday, November 7th
for District 4
County Commission
Experienced • Qualified • Dedicated
(Adgent Party candidate)

The Time Is Now . . .

Carl's Carpet Service
is having a
REMNANT SALE
Saturday, November 4, 2000
7:00 a.m.-Until
• Area Rugs • Carpet Remnants
3149 State Street • Waycross
283-7183

Elect
MIKE BOGGS
STATE REPRESENTATIVE
NOVEMBER 7TH

"ENDORSED BY EDUCATORS"

I AM PROUD TO ANNOUNCE THAT THE GEORGIA ASSOCIATION OF EDUCATORS APPROVED THE RECOMMENDATION OF GAE MEMBERS IN WARE COUNTY TO ENDORSE MY CANDIDACY FOR ELECTION AS STATE REPRESENTATIVE.

"MY WIFE AND SISTER TEACH IN OUR LOCAL SCHOOLS, MY IN-LAWS, BECKY AND JOHNNY HAGNES ARE RECENTLY RETIRED LIFETIME EDUCATORS FROM OUR LOCAL SCHOOL SYSTEM, AND MY FATHER, MORRIS BOGGS, WAS THE PRESIDENT OF THE WAYCROSS CITY SCHOOL BOARD."

AS YOUR STATE REPRESENTATIVE, YOU CAN BET THAT I WILL NEVER STOP FIGHTING FOR OUR TEACHERS, ADMINISTRATORS, AND SUPPORT PERSONNEL.

Vote & Elect
Mike BOGGS
• State Representative •

(Ad paid for by candidate)

CPAs Gather For Monthly Meeting Here

Members and visitors of the Waycross Chapter of CPAs were welcomed by chapter president Paul Spivey at its October meeting at the Holiday Inn here.

Members were reminded of the chapter's continuing education programs in November and December. Also, an annual golfing event was discussed and planned for May 2001 with Bill Hagstrom as chairman of this event.

The chapter president introduced the program speaker, Nan Ellen Fuller, IRS. She works in the taxpayer advocate office of the Internal Revenue Service in Atlanta. She introduced the taxpayer advocate service to the chapter.

A power point presentation was given by the speaker. Members were reminded that any tax questions are easily resolved with a call or letter to the IRS. But some problems are tougher and more persistent.

Now, for those tough ongoing problems — you have a powerful new resource — the taxpayer advocate service. The IRS has greatly broadened and enhanced its problem-solving capabilities by creating this stronger and more independent taxpayer advocate service.

As an independent arm of the IRS, the taxpayer advocate service represents the interest and concerns of American taxpayers, and protects the taxpayer rights.

Fuller related that the mission statement of the taxpayer advocate office is: we help taxpayers resolve problems with the IRS and recommend changes to prevent the problems.

Vice president-elect Eddie Thomas gave the chapter an update of future programs and activities of the chapter.

The door prize was won by Robert "Jack" Conroy

SLASH PINE ELECTRIC MEMBERSHIP CORPORATION
STATEMENT OF NONDISCRIMINATION

Slash Pine Electric Membership Corporation is the recipient of Federal financial assistance from the Rural Utilities Service, an agency of the U. S. Department of Agriculture, and is subject to the provisions of Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, as amended, and the rules and regulations of the U. S. Department of Agriculture which provide that no person in the United States on the basis of race, color, national origin, age or handicap shall be excluded from participation in, admission or access to, denied the benefits of, or otherwise be subjected to discrimination under any of this organization's programs or activities.

The person responsible for coordinating this organization's nondiscrimination compliance efforts is Edward Tinlon, General Manager. Any individual, or specific class of individuals, who feels that this organization has subjected them to discrimination may obtain further information about the statutes and regulations listed above from and/or file a written complaint with this organization; or the Secretary U.S. Department of Agriculture, Washington, D.C. 20250; or the Administrator, Rural Utilities Service, Washington, D.C. 20250. Complaints must be filed within 180 days after the alleged discrimination. Confidentiality will be maintained to the extent possible.

ATTACHMENT THREE, SUBMITTED BY HON. MICHAEL P. BOGGS

Democratic Party of Georgia
1100 Spring Street, Suite 710
Atlanta, GA 30309

Vote for David Burgess for Public Service Commissioner
Vote for Mike Boggs for State Representative
Paid for by the Democratic Party of Georgia, David Worley, Chairman;
Steve Leeds, Secretary; Hattie Dorsey, Vice Chair

Non-Profit Org.
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MR-MRS MICHAEL P BOGGS S5 P28
OR CURRENT RESIDENT
824 SAINT MARYS AVE
WAYCROSS, GA 31501-3245

Elect

Mike Boggs

State Representative

Committed to Our Children

- ❑ Reducing class sizes to the lowest levels ever
- ❑ Getting parents involved in their children's education
- ❑ Higher academic standards for every school

Vote on Tuesday, November 7th

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Atlanta, GA 30309

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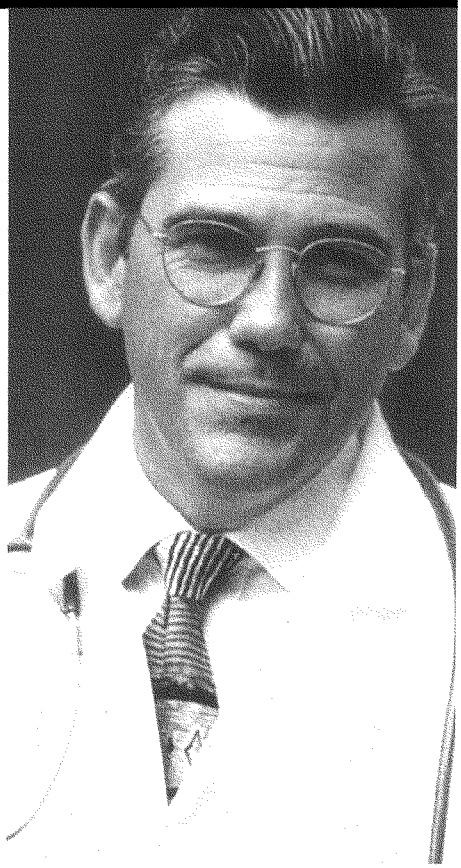
ECRLOT C-016
MR-MRS MICHAEL P BOGGS S5 P20
OR CURRENT RESIDENT
824 SAINT MARYS AVE
WAYCROSS, GA 31501-3245

He Looks Out For The Health Of Senior Citizens



...So Does Mike Boggs

These days it takes more than just a good doctor to help keep families and seniors healthy. Meet Mike Boggs. He knows firsthand that affordable health care can go a long way to help families stay healthy and seniors stay active.

YMCA Board Member, Former American Cancer Society Volunteer, Candidate for State House

Mike is the former vice president of the Ware County unit of the American Cancer Society. He hears it firsthand from other families about expensive prescription drugs and exploding health care costs. He'll take those stories with him to the State House where he'll fight for real results for affordable health care. You can bet he'll vote to give patients the right to hold negligent HMOs accountable in court and he'll take on Medicaid bureaucrats by voting to keep them from controlling prescription drug approvals and denying life-saving prescription refills.

The Mike Boggs Declaration of Independence *For* Seniors

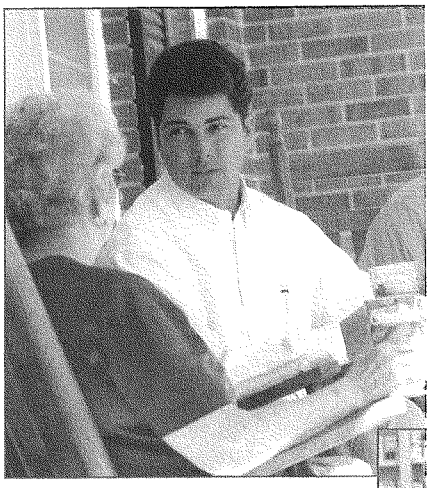
- ❑ Provide tax credits for the purchase of long-term care insurance
- ❑ Increase funding to reduce the waiting list for in-home care services -- allowing more seniors to live independently
- ❑ Update and modernize the Georgia Family Caregiver Support Act, which provides support to families that need help caring for their loved ones
- ❑ Increase tax credits for care-giving expenses -- which allows families to deduct expenses used for senior care

Elect Mike Boggs on Tuesday, November 7th

Laughter is the Second Best Medicine

Mike Boggs Beli
Every Georgiar
Count On is the P

Laughter used to be the best medicine. But that was before the cost of prescription drugs went through the roof, HMOs started denying reasonable treatment, and insurance company bureaucrats started making medical decisions.

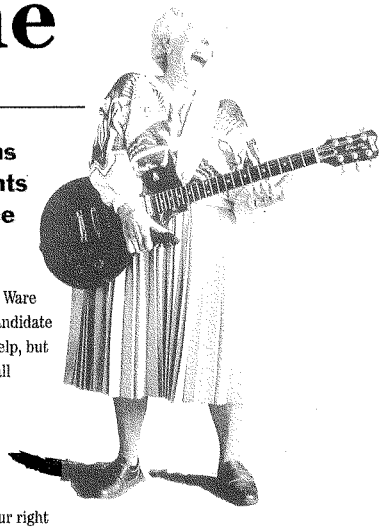


Prescription Drugs at Lower Prices

The cost of prescription drugs is out of control. Often families are forced to choose between paying for the essentials and paying for the medicine their doctor prescribes. Lowering the cost of prescription drugs should be a top priority.

Under my plan any family in the state will be able to purchase a GeogiaCare card for $5, which allows them to purchase prescription drugs at the same low prices government insurance programs pay. For as little as $5, lower prescription drugs can become a reality.

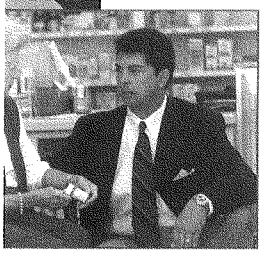
ves Health Care Can Afford and st Medicine



Putting Medical Decisions Back in the Hands of Patients and Doctors -- Not Insurance Company Bureaucrats

I'm Mike Boggs. I'm the former vice president of the Ware County Unit of the American Cancer Society and a candidate for the State House. The way I see it, laughter can help, but prescription medicine and health insurance we can all afford is the *real* answer.

In the State House, I'll be voting 100% of the time to get medical decisions back in the hands of doctors and patients -- not insurance company bean counters. And you can bet I'll always stand up for your right to sue reckless HMOs when they cause harm.



Elect Mike Boggs for State Representative on Tuesday, November 7th

Sometimes laughter is the best medicine. In the State House, I'll continue the fight to make sure it's not the *only* medicine Georgians can afford. I'm Mike Boggs. **On Tuesday, November 7th, I'd be honored to have your support.**

Democratic Party of Georgia
1100 Spring Street, Suite 710
Atlanta, GA 30309

Vote for Mike Boggs for State Representative
Paid for by the Democratic Party of Georgia, David Worley, Chairman;
Steve Leeds, Secretary; Hattie Dorsey, Vice Chair

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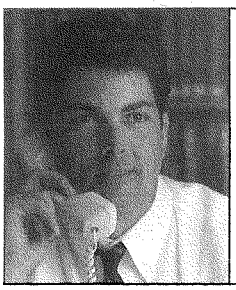
WAYCROSS, GA 31501-3245

Elect

Mike Boggs

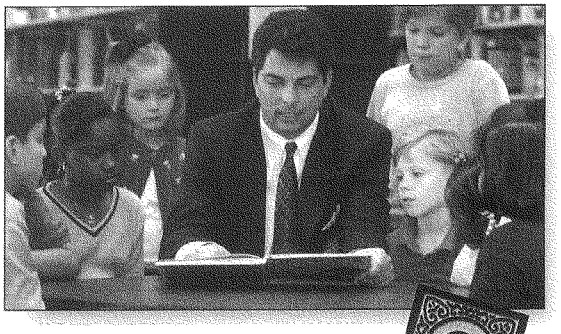
for State Representative



- ❑ Protecting your private medical records from being sold without permission
- ❑ Lowering prescription drug prices so families can better budget their health care needs
- ❑ Reining in HMOs so families can choose their own doctors and hospitals

Vote on Tuesday, November 7th

Mike Boggs Will Vote to Make it Easier for Teachers to Remove Disruptive Students From the Classroom



Concentrating is hard enough for young minds. But it's a bad mix when you've got a disruptive student in the classroom and you can't do a thing about it. I'm Mike Boggs. I'm on the board at the YMCA and I'm married to a kindergarten teacher and former "Teacher of the Year" at Ruskin Elementary.

Fighting for Smaller Class Sizes

The way I see it, it's time to put teachers back in control of their own classrooms again. And in the State House that's exactly what I'll be fighting to do. As the husband, son-in-law, and brother of lifetime educators I've got a personal stake in fighting for the law that makes it easier for teachers and principals to remove disruptive kids so others can learn. I'll vote to reduce class sizes to their lowest levels ever and to include parents in their children's education.

Always Fighting for Our Kids

I'm Mike Boggs. I want you to know there won't be a minute that I won't be fighting for Georgia's children. **I'd be honored to have your vote on Tuesday, November 7th.**

Vote Mike Boggs, Tuesday, November 7th

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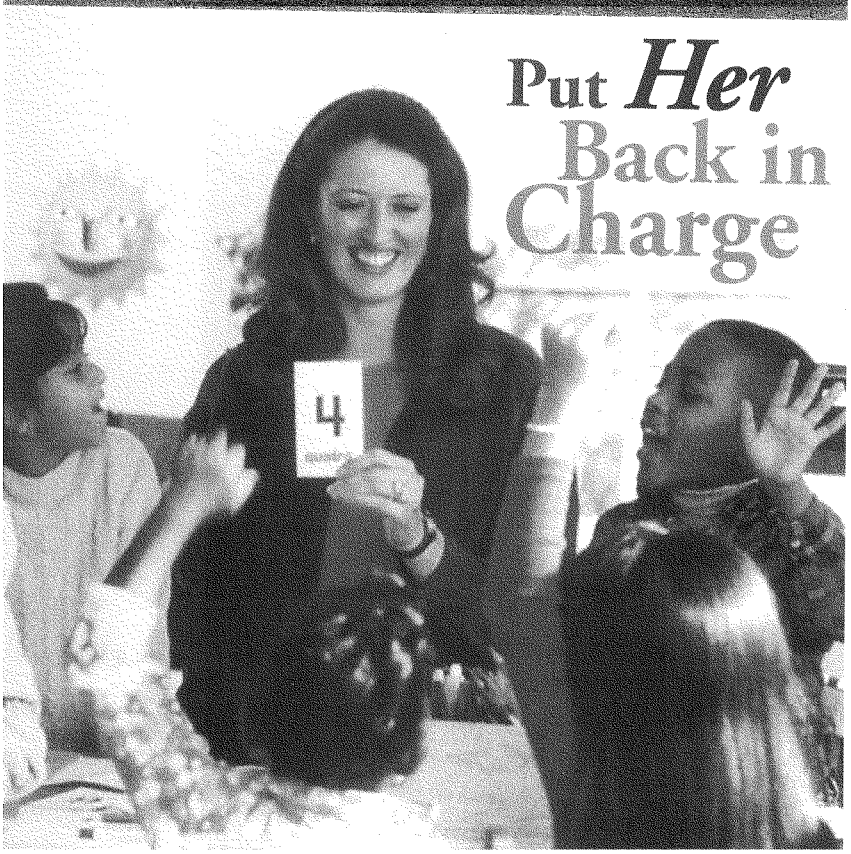


Mike Boggs Will Fight to Make It Easier to Get Parents Involved in Their Children's Education Again

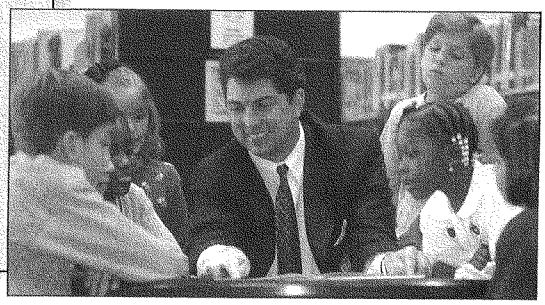
Real learning begins at home. It starts with the parents. Mike Boggs should know. He's the husband, son-in-law, and brother of lifetime educators. That's how you'll know in the State House Mike will vote to make it easier -- not harder -- for parents to get involved in their children's education.

Reducing Class Sizes and Increasing Parental Involvement

Mike will stand up for legislation that reduces class sizes to an all-time low, he'll continue to fight to raise standards for our students and teachers, and to get parents involved in their children's education. Because the best education begins at home.

Protecting Children and Preserving HOPE

Mike won a football scholarship to Georgia Tech and worked his way through law school so you can bet he'll vote 100% of the time to protect and preserve the HOPE Scholarship and to expand the PROMISE Scholarship -- so more students can afford college. And he'll never stop fighting for the toughest laws against bringing drugs and guns on to school property. **Committed to Our Kids. Mike Boggs for State Representative. Vote on Tuesday, November 7th.**



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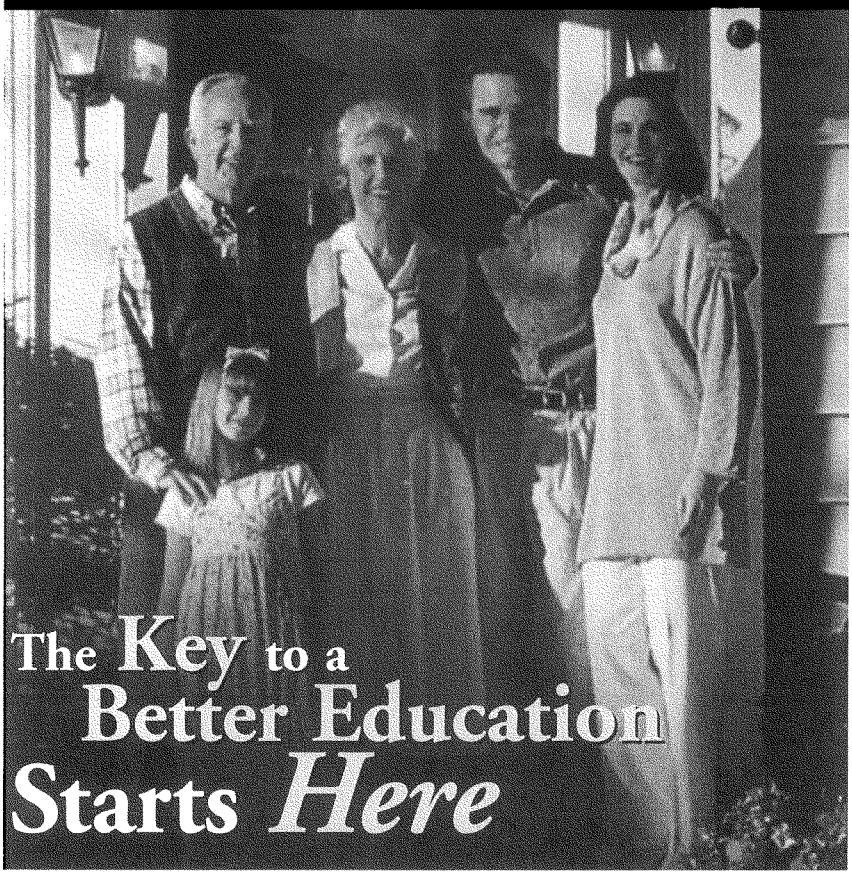
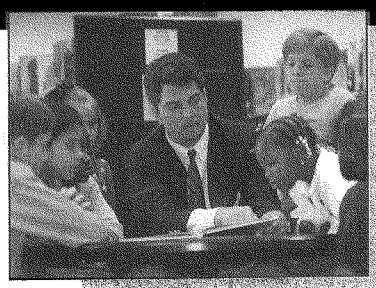


...Start with Smaller Class Sizes

Mike Boggs is Putting Children First with Reduced Class Sizes and More Parental Involvement



It all starts with a dream.

The dreams we have for our kids and the ones they have for themselves. But no dream gets off the ground without a solid education. That means smaller class sizes with more individual attention. Mike Boggs has the right plan to help our childrens dreams come true.

Involving Parents and Increasing Standards

In the State House, Mike will vote to reduce class sizes, raise academic standards for students and teachers, and to involve parents in their children's education because the best education starts at home. Mike is the product of local public schools, Georgia Southern, and Mercer Law School, so you can bet he'll always be there to protect and preserve the HOPE Scholarship and to expand the PROMISE Scholarship.

Putting Our Children's Dreams First

Mike will use his experience as a current YMCA board member to put old-fashioned values like respect and decency back in the classroom and he'll vote to make it easier for teachers to remove disruptive students from the classroom. **Mike Boggs. State Representative. A Man Who's Committed to Our Kids. Protecting the Dreams of Every Georgia Child. Vote on Tuesday, November 7th.**

Endorsed by Georgia Teachers

Vote Mike Boggs for State Representative, Tuesday, Nov. 7th

Democratic Party of Georgia
1100 Spring Street, Suite 710
Atlanta, GA 30309

Vote for Mike Boggs for State Representative
Paid for by the Democratic Party of Georgia, David Worley, Chairman;
Steve Leeds, Secretary; Hattie Dorsey, Vice Chair

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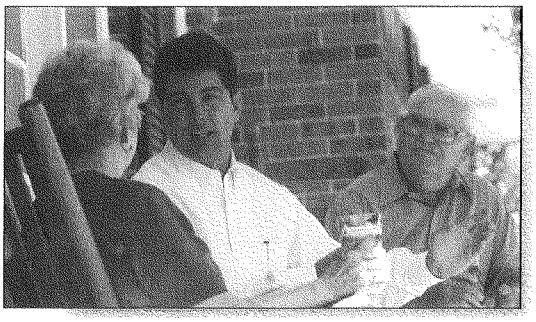
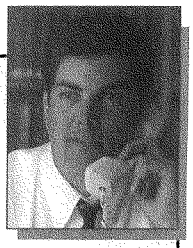
**********ECRLOT**C-010
MR-MRS MICHAEL P BOGGS S5 P20
OR CURRENT RESIDENT
824 SAINT MARYS AVE
WAYCROSS, GA 31501-3245

Mike Boggs Will Vote to Protect the Dignity, Health, and Independence of Georgia Seniors



They aren't somebody else's parents -- they're ours. Yours and mine. If elected, I will fight for affordable health care and protection against telemarketers who prey on the trust of our elders.

The Mike Boggs' Declaration of Independence for Our Seniors



- ❑ Fight to bar HMOs from denying needed refills
- ❑ Fight for incentives and tax breaks for at-home care for the elderly
- ❑ Fight for senior protection by increasing regulations on telemarketers

VOTE MIKE BOGGS ON TUESDAY, NOVEMBER 7TH

ATTACHMENT FOUR, SUBMITTED BY HON. MICHAEL P. BOGGS

10-27-00
P. 2

MIKE BOGGS
A CONSERVATIVE DEMOCRAT WITH
CONSERVATIVE VALUES

I support the right to bear arms under the Second Amendment
I oppose same sex marriages, I oppose homosexual Boy Scout leaders
and I support voluntary prayer in schools.

- THE VALUES OF A CANDIDATE HAVE ALWAYS BEEN MORE IMPORTANT TO ME THAN THEIR CHOSEN POLITICAL PARTY.
- I WON'T BE IN "LOCKSTEP" WITH ANY POLITICAL PARTY. INSTEAD, I PLEDGE TO SUPPORT CONSERVATIVE CHRISTIAN VALUES; EVEN IF THAT MEANS AT TIMES VOTING AGAINST THE MAJORITY PARTY.
- MY PARENTS WOULD EXPECT NOTHING LESS.

ALSO, AS A DEMOCRAT, I WILL BE IN THE BEST POSITION TO HELP WARE COUNTY NOW.

- YOU CAN COUNT ON ME RECEIVING QUALITY COMMITTEE ASSIGNMENTS AS DECIDED BY OUR DEMOCRATIC LED LEADERSHIP;

- AS A MEMBER OF THE MAJORITY PARTY, I WILL HAVE THE BEST OPPORTUNITY TO HAVE MY LEGISLATION PASSED; AND

- SINCE ALL COMMITTEES ARE CHAIRED BY DEMOCRATS, I WILL HAVE THE BEST CHANCE TO EVENTUALLY CHAIR A HOUSE COMMITTEE.

A REPUBLICAN IN OUR STATE HOUSE SIMPLY WILL NOT HAVE THESE SAME OPPORTUNITIES!

Elect

MIKE BOGGS

"A conservative voice for all of Ware County"

(Ad paid for by the candidate)

ELECT

MIKE BOGGS

DEMOCRAT

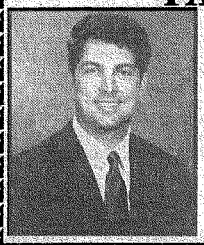
STATE REPRESENTATIVE

I'LL FIGHT TO IMPROVE EDUCATION AND TO SUPPORT OUR TEACHERS AND ADMINISTRATORS

"AS THE HUSBAND, BROTHER AND SON-IN-LAW OF WARE COUNTY PUBLIC SCHOOL TEACHERS, AND THE SON OF OUR FORMER SCHOOL BOARD PRESIDENT, I AM VITALLY INTERESTED IN IMPROVING OUR PUBLIC EDUCATION WHILE ALSO SUPPORTING OUR TEACHERS, ADMINISTRATORS AND SUPPORT PERSONNEL."

- **I'LL SUPPORT BETTER PAY RAISES FOR OUR CURRENT AND RETIRED TEACHERS.**
- **I'LL SUPPORT LOWER CLASS SIZES SO OUR CHILDREN GET THE ATTENTION THEY DESERVE.**
- **I'LL SUPPORT EFFORTS TO GET BUREAUCRACY OUT OF OUR SCHOOLS.**
- **I'LL SUPPORT EFFORTS TO INCREASE PARENTAL INVOLVEMENT.**
- **I'LL SUPPORT MORE LOCAL CONTROL ON FUTURE EDUCATION REFORM LAWS, AND I'LL SUPPORT, RATHER THAN CRITICIZE OUR TEACHERS IN FUTURE EDUCATION REFORM.**

LOWER CLASS SIZES
REDUCE BUREAUCRACY IN SCHOOLS
PARENTAL INVOLVEMENT
LOCAL CONTROL



ELECT

MIKE BOGGS

DEMOCRAT FOR STATE REPRESENTATIVE
NOVEMBER 7TH

(AD PAID FOR BY CANDIDATE)

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ol' possum. He finally went behind some shrubs out of my sight. They operate in the dark. They are just like the Devil, they don't like the light. Now, I'm not a Devil hunter, I don't look under every rock for him. But neither do I hide my head under the sand and pretend he's not around. He is not playing games for fun, he plays for keeps.

The Bible is not silent about this enemy. We are not to be afraid of him. The Bible gives us the war plan.

After the Apostle Paul gave us the instructions of how to put on the armor of God, his final words to insure us victory after we had put on the whole armor of God, was to pray in the spirit.

I hope that ol' possum found something to eat. I don't like for anything to go hungry.

The church just wants to show God's love in a practical way to the community," Watson said.

School Board Meeting Planned

The Ware County Board of Education will hold its regular monthly meeting Tuesday at 7 p.m. at the board office, 1301 Bailey St.

The board will also hold its regularly scheduled work session Monday at 7 p.m. at the same location.

The public is invited to both meetings

ne C. Pittman

ral service for Mrs. C. Pittman, 87, took day morning in the Miles-Odum Funeral the Rev. David White

was in the Hoboken The pallbearers were ling, Tracy Pittman, owling, David Pittman, n and Don Parker.

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Re-Elect
MIKE BOGGS
★ State Representative ★
Mike was selected "Outstanding Freshman Member of the General Assembly" by the Georgia Legislature Alumni Society.
WHY?
Because Mike gets things done!
PROVEN RESULTS
THE BEST REASON TO KEEP MIKE WORKING FOR US.
Vote in the Democratic Primary on August 20th!
THANK YOU
Paid for by the Committee to Elect Mike Boggs State Representative

MIKE BOGGS

A CONSERVATIVE DEMOCRAT WITH CONSERVATIVE VALUES

"My parents taught me quality conservative Christian values. You can count on me to remember these lessons as your State Representative."

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and I support voluntary prayer in schools.

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Elect

MIKE BOGGS

"A conservative voice for all of Ware County"

(Ad paid for by the candidate)

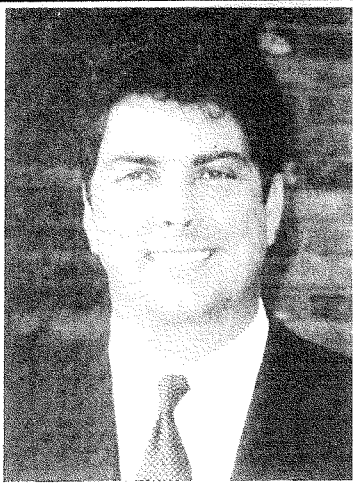
VOTE AND ELECT MIKE BOGGS

JULY 18

DISTRICT 168

★★★ STATE REPRESENTATIVE ★★★

Dedicated to a professional and aggressive approach to representing All the Citizens of Ware County.



A CLOSER LOOK AT MIKE BOGGS

Mike Boggs, a graduate of Georgia Southern University and Mercer University School of Law, practices law in Ware County. His law practice focuses primarily on family law and real estate issues. In 1999, Mike was elected as president of the Waycross Area Bar Association. Prior to law school, Mike worked for Ware County's former United States Congressman, J. Roy Rowland in his Washington, D. C. office for two years. Mike worked as a legislative assistant where he met routinely with State and Federal lobbyist, drafted laws, and attended committee hearings on matters affecting Ware County. Mike knows first hand the importance of listening to the concerns of the citizens of Ware County, and helped arrange Congressman Rowland's Town Hall meetings with the people of Ware County from 1985-1987. Mike is married to Heather Haynes, a public school teacher, daughter of Porky and Becky Haynes, and he and Heather reside in Ware County.

"IT'S TIME FOR A CONSERVATIVE, COMMON SENSE & AGGRESSIVE APPROACH TO GOVERNMENT."

"...an approach based on personal responsibility, hard work, traditional values, and community service. I have chosen to become actively involved in many varied areas of our community through volunteer community service. I believe a true leader must firstly demonstrate a commitment to his community prior to asking to represent it's citizens. I have chosen to become involved and have learned through this service the many needs of our community. An aggressive, common sense approach to resolving these needs will stimulate economic growth, improve our public education services, stimulate continued growth in our medical community, reduce crime, and result in continuing to make Ware County a wonderful place to live and raise our families."

AD PAID FOR BY THE COMMITTEE TO ELECT MIKE BOGGS • JERRY ALDERMAN, CHAIRMAN • PAT REID, TREASURER

"Well Done Is Better Than Well Said."

- Benjamin Franklin (1706-1790)

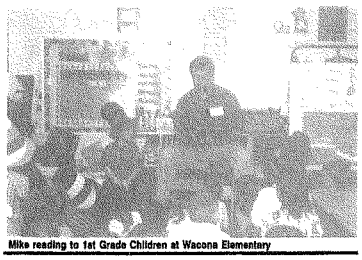
Mike discusses Concerted Services Programs with Clarence Billups

"Saying you're a leader, or that you are interested in our community means nothing. I've been fighting for years to improve many areas of our community through volunteer community service."

COMMUNITY INVOLVEMENT

- My wife and I are active members of Central Baptist Church.
- I currently serve on the Waycross College Foundation Board.
- I am President of the Waycross Bar Association.
- I was elected to the Student Government Association as Representative for my senior law school class.
- I serve as a member of the Board of Directors for the Waycross YMCA.
- I am a member of the Waycross/Ware County Chamber of Commerce.
- I am a graduate of the Chamber of Commerce "Leadership Waycross" program.
- I am a member of the Ware County Area Board of Realtors.
- I am a former volunteer in the Big Brothers-Big Sisters program.
- I have co-chaired the "Paul Azinger Charity Golf Classic" fund raiser for the benefit of the Georgia Lions Camp for the Blind in Ware County for the past two years.
- I have been Vice President of the local unit of the American Cancer Society and co-chaired the first ever Relay for Life in Ware County.
- I am a former little league football coach for the Ware County Recreation Department and grew up in the Recreation Department as a participant in all youth sports.

"I'm Mike Boggs and I'm proud to call Ware County my home. I've got a decade of community service and legal experience representing the citizens of Ware County, and I'd be honored to put that same experience to work for you and your family as your State Representative."



Mike reading to 1st Grade Children at Wacona Elementary

MIKE BOGGS
FOR STATE REPRESENTATIVE
JULY 18th

ECONOMIC DEVELOPMENT

"As a member of the Waycross-Ware County Chamber of Commerce, I well know the needs of our community in attracting quality industry to Ware County. This economic growth will provide much needed new and higher paying jobs to our community as well as provide an economic base to Ware County which will have long lasting and far reaching results. I have made it my business to educate myself on issues of economic growth. We are on the right track but need continued educated and aggressive economic recruitment."

- As your Representative, I'll fight for completion of Governor Barnes' Developmental Highways Project, including the completion of four-laning U. S. Hwy. No. 1
- I'll work for jobs by teaming with the Development Authority and State Chamber of Commerce to aggressively pursue business development that is beneficial to our community.
- I'll work for funds to support our Downtown Waycross Development Authority.
- I'll work to keep our property taxes low by working with Governor Barnes and legislators to provide more tax relief for our citizens and work to apply common sense and fairness to property tax re-evaluations.
- I'll support our professional educators and administrators while I fight for a common sense approach to future education reform aimed at our middle schools and other matters affecting our educators and staffs.
- I'll support our citizen's second amendment rights while working to make guns safer and out of the hands of our children.

Charlton County Herald

Re-Elect

MIKE BOGGS

★ State Representative ★

Proven Conservative Leadership

✔ **Mike** was selected Outstanding Freshman Member of the General Assembly by the Georgia Legislative Alumni Society.

✔ **Obtained** funding for the design of a new $12 million public health lab.

✔ **Obtained** funding for the design of a $10-15 million expansion of Okefenokee Tech.

✔ **Working** to obtain an additional $4.3 million to fund the Okefenokee Education & Research Center in Folkston.

✔ **Assisted** in obtaining funding for the visitors center and Eco-Lodge in Fargo.

✔ **Supported** Satilla Regional Medical Center s application for an open-heart surgery center, which will provide needed health care and new jobs.

✔ **Obtained** funds to help support the Waycross Chapter of the Disabled American Veterans.

PROVEN RESULTS

✔ **Sponsored** & helped pass legislation that will tighten Georgia s drug laws and protect Georgians from convicted sexual predators.

✔ **Obtained** funding for the Ware County High School Band and the Waycross Area Community Theatre.

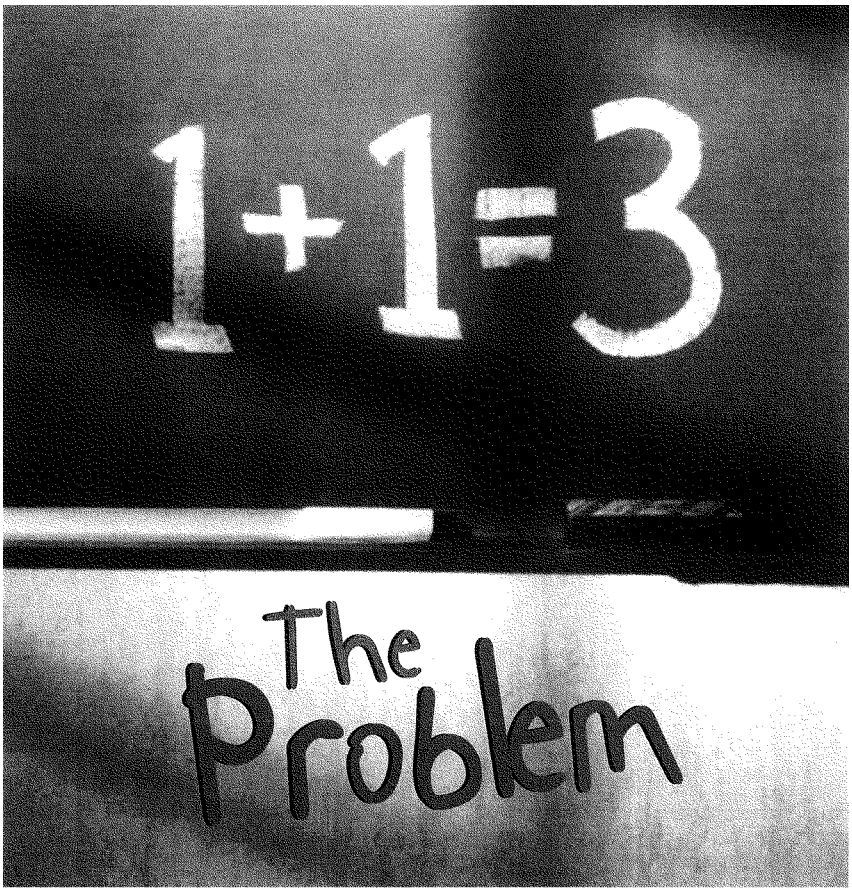
Dear Friends,
I was elected in 2000 to represent Ware County in the Georgia General Assembly. This House District was redrawn and now includes all of Ware County and parts of Charlton and Clinch Counties. As the incumbent in this new District 145, I am asking for your vote and support in the upcoming Democratic primary. If you have questions about this district or my campaign, please call me at 912-338-0350, and please...

Re-Elect **MIKE BOGGS**

★ State Representative ★

Paid for by the Committee to Elect Mike Boggs State Representative

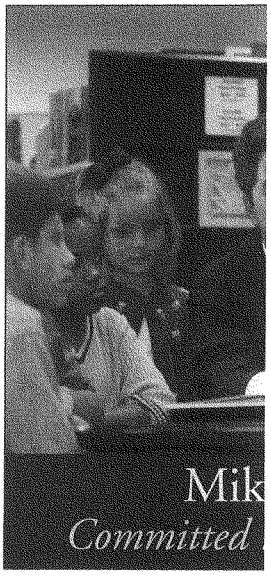
Vote in the Democratic Primary on August 20th


1+1=3
The Problem

...The S

Mike Boggs Will Fight for Parental Involvement, and Hi

Here's the problem: too many of our public school students aren't performing up to grade levels. Too many are still falling behind. Go-along, get-along politicians are like an educational death sentence for our kids. It's going to take guts and real leadership to turn our schools around.



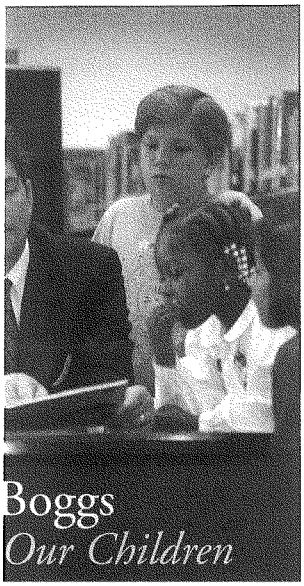
Meet Mike Boggs...the real solution for smaller class sizes in our children's schools.

A Son-in-Law of Lifetime Educators

Mike Boggs is on the board at the YMCA and his wife Heather teaches kindergarten and was "Teacher of the Year" at Ruskin Elementary. He knows firsthand how important stronger standards, smaller class sizes,

olution

Reduced Class Sizes, More her Standards in Our Schools



and more individual attention can be to our children's future. It's no secret: schools must improve. That starts with discipline and accountability. In the State House Mike will vote to involve parents in their children's education and to make it easier for teachers and principals to remove disruptive kids.

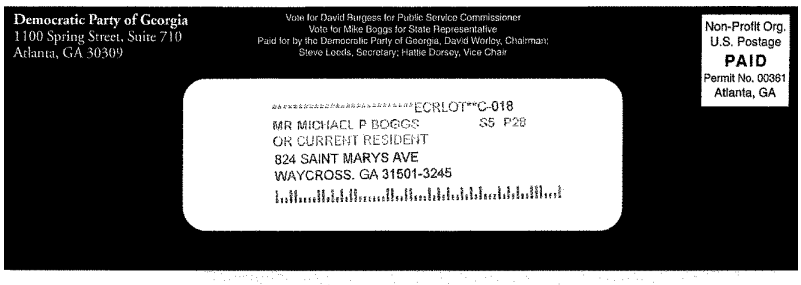
Respect & Decency

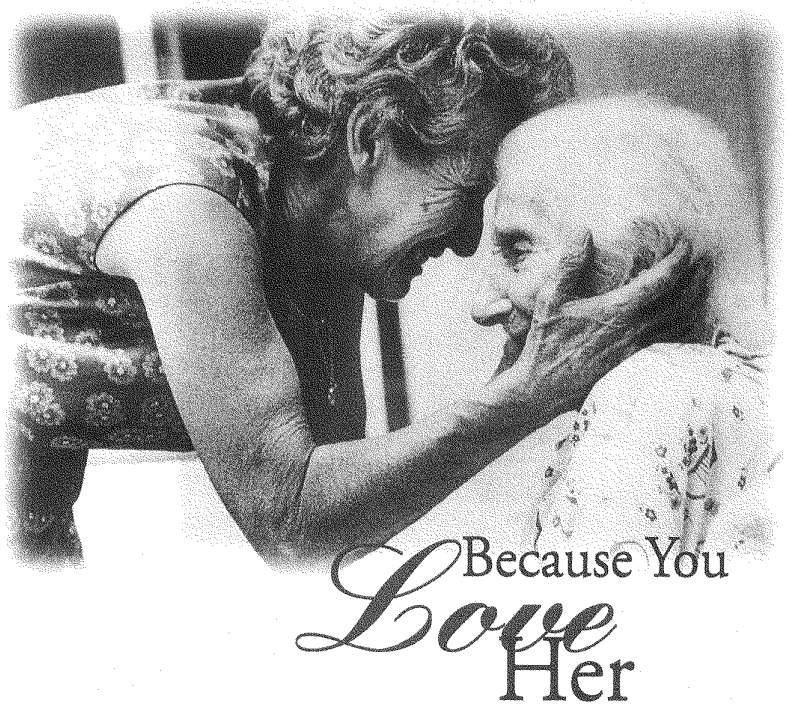
But what good is an education if it doesn't teach our children how to be better citizens? Mike will fight for legislation that gets important values like respect and decency back in the classroom. And you can bet he'll continue to protect and preserve the HOPE Scholarship and to expand the PROMISE Scholarship so more kids can afford college.

Elect Mike Boggs for State Representative on Tuesday, November 7th

Our children can't wait for better schools. Their future is now. **Mike Boggs understands. A Family Man Who's Committed to Our Children. Elect him on Tuesday, November 7th.**

ATTACHMENT FIVE, SUBMITTED BY HON. MICHAEL P. BOGGS





...What Mike Boggs Will Use to Cut Unwanted Property Taxes in the State House

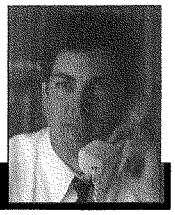
Got Unwanted growth around the house?

Better get out the weed whacker. Got high property taxes? Better call in Mike Boggs.

A Small Businessman who Meets Payrolls and Balances Budgets

Mike owns a small-town law practice. So he knows a thing or two about making a payroll and balancing the books. And he knows Georgia families aren't taxed too little...they're taxed too much. That's why you can count on Mike to vote to cut the property tax at every opportunity. He'll fight to trim the state income tax, clip the unemployment tax on businesses down to size to create more jobs, and he'll come through for seniors by always voting to increase the exclusion amount on their retirement income.

Mike knows tax cuts aren't the only way to save families money. Holding people accountable is another. Mike will back tough welfare reforms that put time limits on welfare benefits and forces recipients to work for their checks.



Elect Mike Boggs
for State Representative

On Tuesday, November 7th

Democratic Party of Georgia
1100 Spring Street, Suite 710
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Vote for Mike Borrgs for State Representative
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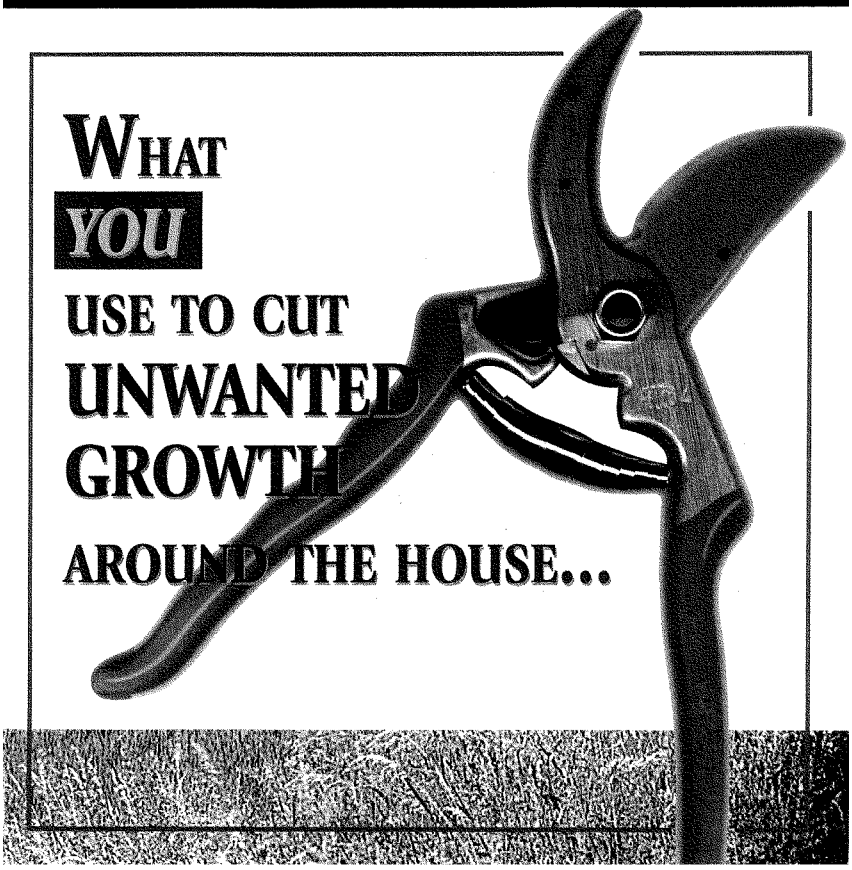

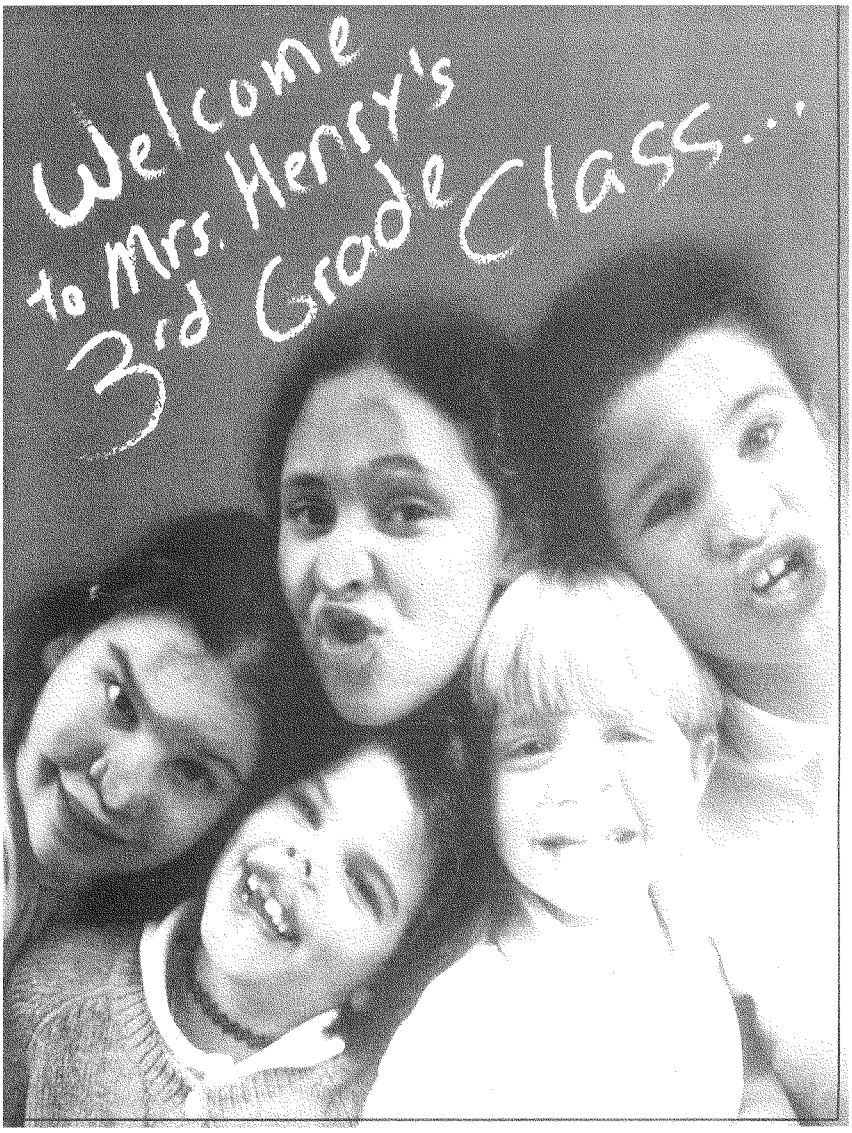
Welcome
to Mrs. Henry's
3rd Grade Class...

Mike Boggs will Fight For Parental Involvement, and

Kindergarten to 3rd grade are critical years for young students. It's their best chance to master the basics of reading and math. Learning in overcrowded classrooms puts it all at risk.

Reducing Class Sizes

As a former Big Brother volunteer, current YMCA board member, and the husband and son-in-law of lifelong educators, I can tell you first hand how important it is to reduce the number of students per classroom -- especially in kindergarten through 3rd grade when children are learning the basics of math and reading. You have my word, in the General Assembly I'll never stop fighting to see that our children are taught in uncrowded classrooms.

More Parental Involvement

Smaller class sizes are just for starters. That's why I'll go to bat for schools that make it easier -- not harder -- for parents to get involved in the education of their own child. Because the best schools in Georgia never forget that learning starts at home.

ATTACHMENT SIX, SUBMITTED BY HON. MICHAEL P. BOGGS

THIRD DIVISION
BARNES, P. J.,
BOGGS and BRANCH, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules/

December 27, 2013

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A14A0800. IN THE INTEREST OF JANE DOE.

BARNES, Presiding Judge.

Seventeen-year-old Jane Doe petitioned the juvenile court to waive the requirement pursuant to OCGA § 15-11-110 et seq., that her parents or legal guardian be notified before she undergo a procedure to terminate her pregnancy. The juvenile court issued an order denying the petition, and Jane Doe appeals. For the reasons that follow, we affirm.

Under the Georgia Parental Notification Act ("the Act"), OCGA § 15-11-110 et seq., a physician is prohibited from terminating the pregnancy of a minor unless she is accompanied by a parent or legal guardian, or her parent or guardian is notified at least 24 hours before the impending procedure either in person, by telephone, or by certified mail. OCGA § 15-11-112 (a) (1).

A minor who does not want her parents to be notified of the upcoming procedure may petition the juvenile court to waive the Act notification requirements. OCGA § 15-11-112 (b). The Act further provides that the juvenile court shall waive the notification requirement if the court finds either that the abortion minor is mature enough and well-enough informed to make the decision in consultation with her physician, regardless of her parents' wishes, or that giving notice to a parent would not be in the minor's best interests. OCGA § 15-11-114 (c). Finally, if the juvenile court denies the petition to waive the notification requirement, the minor is entitled to an expedited appeal under rules promulgated by the appellate court. OCGA § 15-11-114 (e). See also Courts of Appeals Rule 45 (b), (d), (e), (j).

"The standard by which findings of fact are reviewed is the 'any evidence' rule, under which a finding by the trial court supported by any evidence must be upheld." (Citation and punctuation omitted.) *Singh v. Hammond*, 292 Ga. 579, 581 (2) (740 SE2d 126) (2013). On appeal, "this Court will not set aside the trial court's factual findings unless they are clearly erroneous, and this Court properly gives due deference to the opportunity of the trial court to judge the credibility of the witnesses." Id.

Following a hearing in which the appellant testified, the trial court concluded that

> while the unemancipated minor can articulate general information regarding the medical procedures available to terminate her pregnancy, she is neither mature enough nor well enough informed to make the abortion decision in consultation with her physician independently of the wishes of the minor's parent(s).

It further concluded that there was "insufficient evidence to support a conclusion that providing notice to the child's parents would not be in the child's best interest."

The appellant contends on appeal that the evidence did not support the trial court's conclusion that she lacked maturity to make an informed decision in consultation with her physician or that it was not in her best interest for her parents to not be notified of the abortion. We do not agree.

The appellant testified that she and her son lived with her mother, and that she had never made a major decision without her parents' input. Further, although she testified about what she believed the abortion procedure would entail, she did not demonstrate that she was informed beyond the most cursory information provided by someone she referenced as "they." She also testified that she wanted to get the abortion without her mother being notified because her mother told her that "if I ever wanted to get an abortion, then don't tell her, or get my own money for it." "[T]he reason she did not want to tell her parents did not stem from any fear that they would

abuse or harm her if they found out about the pregnancy." *In the Interest of E. H.*, 240 Ga. App. 91, 92 (524 SE2d 2) (1999) (The fact that appellant did not want to tell her parents about the abortion insufficient to show that it was in her best interest to waive parental notification.)

Based on the evidence in the record, we cannot say that the trial court erred in denying the appellant's request for a waiver of the parental notification required by OCGA § 15-11-112 (a) (1).

Judgment affirmed. Boggs and Branch, JJ., concur.

Senator Grassley
Questions for the Record

Mark Howard Cohen
Nominee: U.S. District Judge for the Northern District of Georgia

1. **You were on the Northern District of Georgia Magistrate Judge Selection Panels for several years. What qualities did you look for when you considered potential judges and do you possess those qualities?**

   Response: The qualities that I looked for in interviewing candidates for a position as a United States Magistrate were an appropriate judicial temperament, a commitment to adhere to the rule of law and precedent, and a history of hard work and respect for both litigants and counsel. I believe that I possess those qualities.

2. **According to your questionnaire, the entirety of your legal practice has been in civil matters.**

   a. **What steps have you taken and do you plan to take to get up to speed in criminal matters?**

      Response: I clerked for a United States Magistrate for the Northern District of Georgia for two years at the beginning of my legal career, but have not had much exposure to federal criminal law or procedure since that time. After my nomination, I began to familiarize myself with the United States Sentencing Guidelines which, although no longer mandatory, still help to ensure consistency and uniformity in sentencing. I also have reviewed the Federal Rules of Criminal Procedure and the materials relating to adjudicating criminal matters that have been provided to me by the Federal Judicial Center. Finally, I have contacted several active District Court judges and observed various public criminal proceedings in an effort to get "up to speed" and will continue to utilize these jurists as a resource through my confirmation proceedings.

   b. **What do you believe is the purpose of sentencing?**

      Response: There are several potential purposes in issuing a sentence in a criminal matter. First is to punish the defendant for the specific act committed and provide an incentive to obey the law in the future. Second is deterrence, which is to discourage the defendant or other members of society from committing the same act. Third is to protect the public (if the sentence includes incarceration) from the danger of exposure to the defendant for a period of time. Fourth is rehabilitation of the offender to assist him or her in the transition back into society.

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 that I possess this attribute.

4. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge should treat each person who appears before the Court with respect and civility. A judge also should be open-minded, prepared to listen, and patient. 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: If confirmed as a district judge, I will faithfully apply the legal precedents of the Supreme Court and the Eleventh Circuit Court of Appeals to all cases which come before me regardless of whether I agree or disagree with those precedents.

6. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

   a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

      i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

         Response: Yes, I understand this statement and the majority opinion to be binding precedent.

      ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

         Response: In *Windsor*, Justice Kennedy's use of the term "lawful marriages" refers to "marriages made lawful by the State." 133 S. Ct. 2675, 2695 (2013).

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes. *See Windsor*, 133 S. Ct. at 2695 ("The class to which DOMA directs its restrictions and restraints are those persons who are joined in same-sex marriages made lawful by the State. . . . The federal statue is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity. . . . This opinion and its holding are confined to those lawful marriages.").

iv. **Are you committed to upholding this precedent?**

Response: Yes, as well as any other relevant precedent of the Supreme Court and the Eleventh Circuit Court of Appeals.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes, along with all other portions of the *Windsor* majority opinion.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes, along with all other portions of the *Windsor* majority opinion.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes, along with all other portions of the *Windsor* majority opinion.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes, along with all other portions of the *Windsor* majority opinion.

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

      Response: Yes, along with all other portions of the *Windsor* majority opinion.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

      Response: Yes, along with all other portions of the *Windsor* majority opinion.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

      Response: Yes, along with all other portions of the *Windsor* majority opinion.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

      Response: Yes, along with all other portions of the *Windsor* majority opinion.

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: In deciding cases of first impression, I would first look to the text of the applicable constitutional provision, statute, or regulation. If the text is clear and unambiguous, I would decide the case based on the plain meaning of the text. If the text is ambiguous, I would look to the rules of statutory construction established by the Supreme Court and the Eleventh Circuit to assist in interpreting the text. Although I recognize that decisions from other circuits are not binding, I also would consider as persuasive authority those precedents from other circuits that have interpreted the same or similar texts. If these sources still did not resolve the issue, and in limited circumstances, I would examine the legislative intent of the provision as may be exemplified by its legislative history.

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

   Response: A district judge is bound by the precedent of the Supreme Court and the Court of Appeals in his or her circuit. I would apply any binding Supreme Court or Eleventh Circuit precedent without regard to any personal belief.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Statutes enacted by Congress have the presumption of constitutionality, and courts must exercise judicial restraint prior to declaring a statute unconstitutional. When reviewing a statute enacted by Congress, courts should avoid constitutional issues, if possible, and endeavor to interpret the statute in a manner that upholds its constitutionality. If the court must further address the constitutional issue, it should strike down a statute only if it is clearly shown that Congress has exceeded its authority under the Constitution or acted contrary to a provision of the Constitution.

10. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

    Response: No, unless required to do so by the Supreme Court.

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: A judge's ruling should never be affected by political ideology or motivation. If confirmed as a district judge, I will be committed to rendering impartial decisions based upon an application of the rule of law to the particular facts of the cases before me. This is evidenced by those times in my career when I acted either as an administrative law judge or special master and rendered decisions on such an impartial basis.

12. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

    Response: I have been a civil litigator for more than 30 years, during which time I have represented individuals, government agencies, corporations, and small businesses. Throughout my career, I have zealously represented my clients' interests within the bounds of the law without regard to my personal beliefs. I have endeavored to maintain the highest ethical standard and to treat people with fairness and respect. 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 in accordance with my oath of office.

13. If confirmed, how do you intend to manage your caseload?

Response: In my experience as a practicing litigator, I have learned that active management of cases by district judges promotes their fair and timely resolution. If confirmed as a district judge, in accordance with the Federal Rules of Criminal and Civil Procedure as well as the Local Rules of the Northern District of Georgia, I would establish scheduling orders with firm discovery deadlines and trial dates. With the assistance of the staff of my chambers and the Clerk's office, I would consider motions and discovery disputes promptly and convene status conferences to ensure that cases move forward expeditiously. If appropriate, I also would engage the assistance of magistrate judges and encourage settlement and dispute resolution through mediation.

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. The parties always should 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, and establishing firm trial dates. I also would endeavor to decide motions promptly and efficiently resolve discovery disputes.

15. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: If confirmed, I intend to resolve legal issues based on applicable constitutional and statutory provisions, in conjunction with Supreme Court and Eleventh Circuit precedent. I am fortunate to have had substantial litigation experience in the Northern District of Georgia. However, aside from my clerkship with a United States Magistrate Judge, I have not had much experience in federal criminal matters. I will fully familiarize myself with the United States Sentencing Guidelines and thoroughly avail myself of the substantial experience of my colleagues on the district court and the material and training provided by the Federal Judicial Center to assist me in making as smooth a transition as possible.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice

bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

   Response: No.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

   Response: No.

17. **Please describe with particularity the process by which these questions were answered.**

    Response: I received these questions via email on May 20, 2014. I personally drafted responses and provided them to representatives of the Department of Justice, Office of Legal Policy, on May 21, 2014 for review. After receiving comments and putting my responses in final form, I authorized the Department of Justice to submit my responses to the Senate Judiciary Committee on my behalf.

18. **Do these answers reflect your true and personal views?**

    Response: Yes.

Questions for the Record
Senator Ted Cruz

Mark Howard Cohen
Nominee, United States District Court for the Northern District of Georgia

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 would be to handle each case with an impartial and unbiased mind. A judge should be prepared, should treat all parties with respect and patience, and should give serious consideration to the legal arguments of all parties. A district judge must apply the facts to the law as written and follow binding precedent. I have not studied philosophies of the justices of the Warren, Burger, or Rehnquist courts, but I presume that all of them embraced the practices and philosophy that I have described.

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 Supreme Court of the United States and the United States Court of Appeals for the Eleventh Circuit, including the analysis in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008), in which the Court considered the original public meaning of the text of the Second Amendment to 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 judge, I would not overrule existing precedent under any circumstance. I would be bound by the precedent of the Supreme Court and the Eleventh 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 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 I personally agree or disagree with these decisions.

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 (3)

"activities that substantially affect interstate commerce." *United States v. Lopez,* 514 U.S. 549, 558-59 (1995). In *Lopez* and *United States v. Morrison,* 529 U.S. 598, 613 (2000), the Supreme Court articulated limitations to the reach of the Commerce Clause to certain non-economic activities. *See also 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."). If confirmed as a district judge, I would follow Supreme Court and Eleventh 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 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. *Medellin v. Texas*, 552 U.S. 491, 524 (2008). 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 judge, I would follow Supreme Court and Eleventh 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), 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[.]" (internal citations omitted). If confirmed as a district judge, I would follow Supreme Court and Eleventh 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 that 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). *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985). If confirmed as a district judge, I would follow Supreme Court and Eleventh Circuit 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: I do not have sufficient information or expertise to have any personal expectation on this issue, and, even if I had one, it would play no role in any judicial decision. If confirmed as a district judge, I would follow the holding of *Grutter*, the Supreme Court's recent decision in *Fisher v.*

University of Texas at Austin, 133 S. Ct. 2411 (2013), and any other Supreme Court or Eleventh Circuit precedent concerning the use of race-conscious policies in public higher education.

Chairman Patrick Leahy
Questions for the Record
Nomination of Mark Howard Cohen
To Be U.S. District Judge for the Northern District of Georgia
May 20, 2014

1. **Since the time of your representation of the Georgia State Board of Elections in the Georgia photo ID voting law litigation, several photo ID voting laws have been struck down by state or federal courts under various constitutional or statutory provisions. Specifically, courts that heard evidence about the operation of these newly-enacted voting measures invalidated photo ID laws in Texas, Pennsylvania and Wisconsin, among others.**

   (a) In light of these rulings, do you acknowledge that certain contemporary photo ID voting laws can abridge, deny or interfere with the right to vote in violation of the law as various courts have held?

   Response: Yes. The judicial determination of whether a photo ID voting law unconstitutionally denies or interferes with the right to vote is a fact-intensive inquiry. Based upon the specific facts presented in several cases, some courts have upheld their particular state's photo ID laws but other courts have held their photo ID laws violated either federal or state constitutional provisions.

   (b) During your hearing you testified, in essence, that different outcomes in photo ID voting cases can be explained by virtue of the State, statute and differing fact circumstances at issue. In both the state court case in Pennsylvania and the federal court case in Wisconsin identify, with specificity, the legal and factual bases that le to the invalidation of the laws there at issue <u>and</u> explain how the law and facts in those cases differed from the law and facts at issue in the Georgia photo ID voting case that you litigated?

   Response: In *Applewhite v. Commonwealth*, No. 330 M.D. 2012 (Pa. Commw. Ct. Jan. 17, 2014), the Commonwealth Court of Pennsylvania concluded that the Pennsylvania photo ID law violated provisions of the Pennsylvania Constitution. In *Frank v. Walker*, No. 11-CV-01128, 2014 U.S. Dist. LEXIS 59344 (E.D. Wis. Apr. 29, 2014), the court concluded that the Wisconsin photo ID law violated the Fourteenth Amendment and Section 2 of the Voting Rights Act. Included as factual bases for those decisions was credible expert testimony concerning the number of persons who lacked a photo ID and the negative impact those states' photo ID laws had on the right to vote, as well as other evidence that supported those plaintiffs' claims. In contrast, in upholding Georgia's photo ID law against a Fourteenth Amendment challenge, the federal courts found that the proffered expert testimony failed to satisfy the relevancy and reliability requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *see Common Cause/Ga. v. Billups*, 504 F. Supp. 2d 1333, 1370-71 (N.D. Ga. 2007), the data matches relied upon by plaintiffs to establish the number of persons who lacked a valid photo ID were "incomplete and unreliable" and "contain[ed] inaccuracies," and plaintiffs "failed t

identify a single individual who would be unable to vote because of the Georgia statute . . . ." *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1354 (11th Cir. 2009). In addition, unlike the heightened strict scrutiny standard used by the Pennsylvania state court in *Applewhite* in applying provisions of the Pennsylvania Constitution, the Georgia Supreme Court used the more flexible standard of *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) in applying provisions of the Georgia Constitution. *See Democratic Party of Georgia, Inc. v. Perdue*, 288 Ga. 720, 728-29, 707 S.E.2d 67, 74-75 (2011).

2. **What are your views of the legal analysis in *Frank v. Walker*, the Wisconsin federal photo ID opinion?**

   Response: The legal analysis in *Frank v. Walker* is supported by the court's citation of the evidence as presented by the plaintiffs in that case.

3. **Was Georgia's photo ID law, as originally passed in 2005, constitutional? If so, why was Georgia's 2005 photo ID law enjoined by a federal court in 2005; and, why, in your view, did the Georgia legislature then amend the law in 2006 to provide an alternative to the financial burdens that the 2005 law imposed upon some voters seeking to obtain acceptable forms of photo ID?**

   Response: The U.S. District Court for the Northern District of Georgia enjoined the implementation of the Georgia photo ID law as originally passed in 2005 because the plaintiffs showed a substantial likelihood of succeeding on the merits of their claims that the law unduly burdened the right to vote in violation of the Fourteenth Amendment and constituted a poll tax in violation of the Twenty-Fourth Amendment. *See Common Cause/Ga. v. Billups*, 406 F. Supp. 2d 1326, 1366, 1370 (N.D. Ga. 2005). I was not involved in the enactment of any of the photo ID legislation – neither the original 2005 photo ID law nor the 2006 amendment to that law by the Georgia General Assembly – so I do not know the specific reasons why the state legislature amended the 2005 law. (Unlike the United States Congress, the Georgia legislature has no reported legislative history.) A discussion of the provisions of the 2006 amendment is contained in *Common Cause/Georgia v. Billups*, 439 F. Supp. 2d 1294, 1305-08 (N.D. Ga. 2006), and *Common Cause/Georgia v. Billups*, 504 F. Supp. 2d 1333, 1343-46 (N.D. Ga. 2007).

4. **During your hearing, you mentioned the Supreme Court's ruling in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).**

   (a) Describe your role in Georgia Secretary of State, Karen Handel's decision to file an amicus brief in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008) where you appeared as counsel of record.

   Response: The Georgia Secretary of State is a state constitutional officer who is required by Georgia law to be represented in court by the Attorney General of Georgia. After the Supreme Court granted certiorari in the *Crawford* case, the Georgia Secretary of State requested that the Attorney General of Georgia file an

amicus curiae brief in support of the respondents. Because I had been previously appointed by Georgia Attorney General Thurbert Baker to represent the Secretary of State in Georgia's photo ID litigation, Attorney General Baker directed me to prepare and file the *amicus* brief.

(b) What guidance, if any, does the ruling in *Crawford* case provide regarding photo ID cases brought under an "as applied" theory?

Response: *Crawford* concerned a facial challenge to Indiana's photo ID law. The opinion does not involve an analysis of how an "as applied" challenge to a similar law would be undertaken.

5. **What factors are relevant to consider under a Section 2 of the Voting Rights Act challenge to a photo ID measure?**

Response: Based upon *Chisom v. Roemer*, 501 U.S. 380, 394 (1991), plaintiffs can establish a Section 2 violation by "demonstrating that a challenged election practice has resulted in the denial or abridgement of the right to vote based on color or race," and proof of discriminatory intent is not required.

6. **Under the *Burdick* v. *Takushi*, 504 U.S. 428 (1992), balancing test, how much weight should be accorded to an asserted governmental interest that is largely or completely unsupported by evidence when balanced against voters' interests in avoiding new burdens on their right to vote which are supported by evidence?**

Response: The Supreme Court in *Burdick* and *Anderson v. Celebrezze*, 460 U.S. 780 (1983), set forth a balancing test to determine the level of scrutiny to apply in evaluating a constitutional challenge to a state voting law. That balancing test weighs (1) "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against (2) "the precise interests put forward by the State as justifications for the burden imposed by its rule." *Anderson*, 460 U.S. at 789, *quoted in Burdick*, 504 U.S. at 434. In applying this balancing test, a court must consider both "the legitimacy and strength of each of [the State's] interests" and "the extent to which those interests make it necessary to burden the plaintiff's rights." *Anderson*, 460 U.S. at 789, *quoted in Burdick*, 504 U.S. at 434. The interests must be "sufficiently weighty to justify the limitation." *Norman v. Reed*, 502 U.S. 279, 288-89 (1992), *quoted in Crawford v. Marion County Election Bd.*, 553 U.S. 181, 190 (2008). Voting laws which impose a "severe" burden on the right to vote must be "narrowly drawn to advance a state interest of compelling importance," *Burdick*, 504 U.S. at 434, but "reasonable, nondiscriminatory restrictions" which impose a minimal burden may be warranted by "the State's important regulatory interests," *id.* (quoting *Anderson*, 460 U.S. at 788). This is an inquiry dependent on the circumstances of each case. *See Anderson*, 460 U.S. at 789-90 (stating that "[t]he results of this evaluation will not be automatic"). As the Supreme Court has explained, "only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional." *Id.* at 789.

7. **In his Senate confirmation testimony then-Judge John Roberts testified that "...I have no basis for viewing [Section 2 of the Voting Rights Act] as constitutionally suspect and I don't." Do you agree with this view that the now-Chief Justice Roberts expressed at the time of his Supreme Court confirmation hearing?**

   Response: I am uncertain of the context of Chief Justice Roberts' statement but, if I am confirmed as a district judge, I would be bound by and would follow Supreme Court and Eleventh Circuit precedent which has applied Section 2 of the Voting Rights Act in consideration of a number of voting practices and procedures.

8. **As lead counsel in the Georgia photo ID appeal you defended the argument that you advanced in the lower court that the NAACP, and individual minority voters in Georgia, did not have legal standing to challenge the state's photo ID law in court. Had your argument prevailed, contrary to precedent and the long history of the fight for voting rights in Georgia, access to justice in a core area of constitutional rights would have been closed for organizations and individuals that defend voting rights. The Eleventh Circuit rejected your position.**

   (a) **How do you square the arguments that you advanced in that case both with the role that civil rights plaintiffs and intervenors have played over many decades enforcing voting rights in the face of discriminatory laws passed by legislatures, and with the Supreme Court and other court precedents on which the Court relied in rejecting your position?**

   Response: When Attorney General Thurbert Baker appointed me to represent the state defendants in the photo ID cases, I was instructed to assert all potential defenses. At the time responsive pleadings were filed, plaintiffs' lack of standing was raised as a viable defense. In its order upholding Georgia's photo ID law, the U.S. District Court for the Northern District of Georgia sustained this defense, finding "that Plaintiffs have failed to prove, by a preponderance of the evidence, that they have standing to pursue this action." *Common Cause/Ga. v. Billups*, 504 F. Supp. 2d 1333, 1374 (N.D. Ga. 2007). On appeal, the Eleventh Circuit concluded that the district court erred in its standing ruling but not in its ruling on the merits. *See Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1349-52 (11th Cir. 2009). If confirmed as a district judge, I would be bound by and would apply the decisions of both the Supreme Court and the Eleventh Circuit with respect to standing.

   (b) **Do you accept the analysis of the Court of Appeals for the Eleventh Circuit on its standing ruling rejecting your argument in the Georgia photo ID voting case? If so, why? If not, why?**

   Response: Yes. The analysis is binding precedent and, if confirmed as a district judge, I would be bound by and would apply the decisions of the Eleventh Circuit and the Supreme Court with respect to standing.

(c) Do you recognize the role that non-governmental actors play under the nation's civil rights laws as "private attorneys general," and, if confirmed, would you respect the laws and precedents that keep the courthouse door open to parties seeking to vindicate civil and constitutional rights?

Response: Yes. I respect and would apply existing law and the precedents of the Supreme Court and the Eleventh Circuit Court of Appeals regarding standing or any other issue that would come before me.

9. **In the past several years, the Supreme Court struck down a number of federal statutes most notably several designed to protect the civil rights of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, *Flores v. City of Boerne*, 521 U.S. 507 (1997), *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000), *Board of Trustees v. Garrett*, 531 U.S. 356 (1999), and *Coleman v. Court of Appeals of Maryland,* 132 S. Ct. 1327 (2012). The Supreme Court also struck down statutes as falling outside the authority granted to Congress by the Commerce Clause in the case of *U.S. v. Lopez*, 514 U.S. 549 (1995), and *U.S. v. Morrison*, 529 U.S. 598 (2000). Similarly, a majority of the justices of the Court determined that core provisions of the Affordable Care Act were beyond the scope of the Commerce and Spending Clauses in *Nat'l Federation of Independent Business v. Sebelius*, 567 U.S. 1 (2012), and upheld the individual mandate under the taxing power. The Court struck down other federal statutes as violations of the 10th Amendment or the 11th Amendment, and part of a landmark Voting Rights Act, without articulating any clear basis for its unconstitutionality in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). These cases rely upon an expansive view of state's rights, and have been described as shifting powers to state governments as congressional authority is diminished.**

(a) What is your view of these decisions? In your opinion, do they constitute "judicial activism"?

Response: If I am confirmed as a district judge, I would be bound to apply as precedent the decisions of the Supreme Court and the Eleventh Circuit Court of Appeals on these and other constitutional issues regardless of my personal views of these decisions.

(b) What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, the Commerce Clause, under Section 5 of the Fourteenth Amendment, and Section 2 of the Fifteenth Amendment?

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 of things in interstate commerce"; and (3) "activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). In *Lopez* and *United States v. Morrison*, 529 U.S. 598, 613 (2000), the Supreme Court articulated

limitations to the reach of the Commerce Clause to certain non-economic activities. *See also 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.").

Section 5 of the Fourteenth Amendment states that Congress shall have power to enforce by appropriate legislation "the constitutional guarantee that no State shall deprive any person of 'life, liberty or property, without due process of law,' nor deny any person 'equal protection of the laws.'" *Morrison*, 529 U.S. at 619 (quoting *City of Boerne v. Flores*, 521 U.S. 507, 517 (1997)). Section 5 includes authority to "prohibit conduct which is not itself unconstitutional and [to] intrude into 'legislative spheres of autonomy previously reserved to the States.'" *Id.* (quoting *City of Boerne*, 521 U.S. at 518); *see also Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 727 (2003). This "broad" congressional enforcement power, however, "is not unlimited." *Id.* (quoting *Oregon v. Mitchell*, 400 U.S. 112, 128); *see also Tennessee v. Lane*, 541 U.S. 509, 518 (2004). Section 5 "legislation reaching beyond the scope of § 1's actual guarantees must exhibit 'congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.'" *Bd. of Trs. v. Garrett*, 531 U.S. 356, 365 (2001) (quoting *City of Boerne*, 521 U.S. at 520).

"The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on account of race or color, and [Section 2 of that Amendment] gives Congress the power to enforce that command." *Shelby County v. Holder*, 133 S. Ct. 2612, 2629 (2013); *see Rice v. Cayetano*, 528 U.S. 495, 511-12 (2000). "Section 2 of the Fifteenth Amendment is virtually identical to § 5 of the Fourteenth Amendment," *Garrett*, 531 U.S. at 373 n.8. Accordingly, the analysis of the scope of congressional authority under Section 2 of the Fifteenth Amendment is similar to the analysis under Section 5 of the Fourteenth Amendment. *See City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 490 (1989) (citing *South Carolina v. Katzenbach*, 383 U.S. 301, 326 (1966)).

If confirmed as a district judge, I would follow Supreme Court and Eleventh Circuit precedent in deciding issues concerning the extent of congressional authority under the Commerce Clause, Section 5 of the Fourteenth Amendment, and Section 2 of the Fifteenth Amendment.

Senator Grassley
Questions for the Record

Leigh Martin May,
Nominee, U.S. District Judge for the Northern District of Georgia

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: Judges should have the highest level of integrity. This includes being fair and impartial, working hard to properly follow precedent, respecting all litigants, and running an efficient courtroom. 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 should be patient, respectful, efficient, and prepared. I meet this standard.

3. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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 the precedents of the Supreme Court and the Eleventh Circuit. I have no personal beliefs that would impair my ability to do so. The personal opinions of a judge should have no impact on a judge's decision. I would follow this standard.

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 and faced with a case of first impression, I would first turn to the text of the applicable statute, regulation or document. If the text was unambiguous, that language would control. If the text was ambiguous, I would use the canons of construction established by the Supreme Court and the Eleventh Circuit to assist me in interpreting the text. I would also consider similar cases from the Supreme Court, the Eleventh Circuit and other federal courts as persuasive authority.

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 Supreme Court and Eleventh Circuit precedent. My personal opinions would not influence my decision.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Judges should only declare a statute enacted by Congress unconstitutional when the statute in question either exceeds Congress's authority or violates a provision of the Constitution. In making such a decision, a judge should presume the statute's constitutionality and defer addressing constitutional issues unless required.

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: I would not rely on foreign law or the views of the world community in determining the meaning of the Constitution unless Supreme Court or Eleventh Circuit precedent required me to do so.

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 respect and will be bound by the separation of powers set out in the Constitution. It is not a judge's role to act on his or her own political ideology or motivation. Instead, a judge should remain true to his or her role—accurately applying precedent to the facts of a case.

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, I will decide each case on its merits and without regard to my personal views, if any. I will treat all parties with fairness and respect without regard to their class or standing. I will seriously discharge my duties as a federal district court judge with an understanding as to my proper role as a neutral decision maker.

10. **If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I will be a hands-on case manager. This would involve conducting status conferences as cases progress and using scheduling orders to keep cases moving forward. I would also take an active role in discovery, encouraging litigants to bring discovery issues to the Court by letter or telephone call when possible so that they can be resolved quickly. I plan to be available by telephone or conduct hearings when necessary to address issues as soon as practicable so that cases can proceed.

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. Please see the above answer.

12. **You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

    Response: A judge must decide matters with complete impartiality and without regard to his or her own personal views. I gained an understanding of this importance while I was a law clerk to a district court judge. If confirmed, I would apply the precedents of the Supreme Court and the Eleventh Circuit after consulting the briefing provided by the parties, considering properly admitted evidence, and conducting my own legal research. I believe the most difficult part of this transition will be getting up to speed on criminal law issues. I intend to work extremely hard to overcome my lack of experience in this area. I have already reviewed the Federal Rules of Criminal Procedure, the Federal Sentencing Guidelines and the Benchbook for U.S. District Court Judges to help prepare me for the transition.

13. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

    a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

        i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

        Response: Yes.

        ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

        Response: It is my understanding that Justice Kennedy refers to same-sex marriages that are recognized as lawful under state law.

        iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

Response: Yes.

iv. **Are you committed to upholding this precedent?**

Response: Yes.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. This portion and the entirety of the *Windsor* decision are binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. I will apply the entirety of the *Windsor* decision.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. This portion and the entirety of the *Windsor* decision are binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. I will apply the entirety of the *Windsor* decision.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. This portion and the entirety of the *Windsor* decision are binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. I will apply the entirety of the *Windsor* decision.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. This portion and the entirety of the *Windsor* decision are binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. I will apply the entirety of the *Windsor* decision.

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: Yes. After I applied for the district court in 2009, I contacted John Bowman with AAJ to inquire if he had any information as to how the Georgia selection process was proceeding. I contacted him again a year or so later to determine if he had any new

[5] *Id.* (internal citations omitted).

information. To the best of my memory, I have not had contact with anyone at AAJ in regard to my nomination in several years.

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 May 20, 2014. On May 21, 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 May 27, 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.

Senator Ted Cruz
Questions for the Record

Leigh Martin May, Nominee, United States District Judge
United States District Court for the Northern District of Georgia

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is to be fair, impartial, and accurately apply the precedent of the Supreme Court and Eleventh Circuit. Although I do not identify with a particular Supreme Court Justice's judicial philosophy, if confirmed, I will apply the Supreme Court precedent from each of these Courts.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), the Supreme Court held that the meaning of the Constitution at the time it was ratified was to be used to interpret the Constitution. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this issue and all other issues.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed, I would not overrule precedent. I would follow the precedent of the Supreme Court and the Eleventh 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, I would follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), as well as other binding Supreme Court and Eleventh Circuit precedent that limit Congress's power. Any personal opinion I may or may not have as to *Garcia* or any other Supreme Court precedent would have no role in my decision making.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), and *United States v. Morrison*, 529 U.S. 598, 608-09 (2000), the Supreme Court provided a framework for evaluating Congress's authority to enact legislation under the Commerce Clause. The Court emphasized the non-economic nature of the regulation when it invalidated the federal statutes in both cases. In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia's concurrence stated 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. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other issues.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: In *Medellin v. Texas*, 552 U.S. 491, 524-25 (2008), the Supreme Court explained the judicially enforced limits on the President's ability to issue executive orders and executive actions. In doing so, the Court applied Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), which provides a tripartite scheme for evaluating the authority for executive orders and actions. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other issues.

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), 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 "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Id.* (internal quotations and citations omitted). If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other issues.

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, 440-41 (1985), the Supreme Court explained the circumstances in which a classification should be subjected to heightened scrutiny. These circumstances include classifications by race, alienage, national origin, gender, and illegitimacy. In addition, "[s]imilar oversight by the courts is due when state laws impinge on personal rights protected by the Constitution." *Id.* at 440. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other 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: If confirmed, I would follow Supreme Court and Eleventh Circuit precedent on issues regarding racial preferences in public higher education and all other issues. Any personal opinion I may or may not have as to *Grutter* and all other Supreme Court precedent would have no role in my decision making.

Senator Grassley
Questions for the Record

Eleanor Louise Ross,
Nominee, U.S. District Judge for the Northern District of Georgia

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is integrity, an attribute that I have displayed throughout my service as a state judge and as a state and federal prosecutor prior to becoming a judge.

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: My view of the appropriate judicial temperament is one that combines patience, humility, attentiveness, and respect for the litigants as well as for the legal profession itself. Yes, I believe I meet this standard and have demonstrated it throughout my service as a state judge.

3. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: If confirmed, I would honor my commitment to follow the precedent of higher courts faithfully and give it full force and effect, without regard to any personal opinions and beliefs that I may have.

4. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: In the absence of controlling precedent on an issue presented to me, I would look to the clear and unambiguous language of the issue in question. If that language were unclear and ambiguous, I would consider related and similar language as guided by precedent from the Supreme Court and the Eleventh Circuit. I would also consider other federal appellate court decisions interpreting similar language as persuasive authority.

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 honor my commitment to follow the applicable precedent without regard to any personal opinions and beliefs that 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: If at all possible, a federal court must decide issues without addressing the constitutionality of a federal statute. If a court must address the constitutionality of a statute, the statute should be presumed constitutional. Only where Congress has clearly exceeded its authority to enact the statute or where the statute violates a provision of the Constitution is it appropriate for a federal court to declare that statute unconstitutional.

7. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No, I do not believe it is proper for judges to rely on foreign law or the views of the "world community" in determining the meaning of the U.S. Constitution. If confirmed, I would not rely on such sources.

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: The best assurance or evidence I can give that, if confirmed, my decisions will remain grounded in precedent rather than in any personal motivation, is my demonstrated record as a state judge which reflects that I have always rendered my rulings based on the text of the law without influence of any personal opinions or beliefs I may have. If confirmed, I would continue to decide issues in this same manner.

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 best assurance or evidence I can give that, if confirmed, I will put aside any personal views and be fair to all who appear before me, is my demonstrated record as a state judge of fairness, respectfulness and a showing of dignity to all litigants who have appeared before me without regard to any personal opinions or beliefs I may have. If confirmed, I would continue to display these same attributes.

10. **If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I will manage my caseload by employing many of the same tools on which I rely as a state judge. These include issuing pretrial orders with definitive deadlines, scheduling pretrial conferences, acting when necessary to help resolve discovery disputes, and promptly ruling on pretrial matters.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I do believe that judges have a major role in controlling the pace and conduct of litigation. If confirmed I would issue and abide by clear and definitive scheduling orders and hold appropriate status conferences to insure the best use of judicial economy.

12. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: As a judge, I reach decisions in cases before me by first reviewing the briefs and legal memoranda submitted by the litigants. Based on my review of these documents and any additional research I feel is necessary, I prepare my own outline of the issues along with questions I would like answered by the litigants at the scheduled hearing. I also consider requests made by either litigant to further brief certain issues within a reasonable amount of time that comports with the scheduling order. The sources to which I look for guidance are usually cases from the Georgia Supreme Court, Georgia Court of Appeals, and U.S. Supreme Court (in particular for issues related to Fourth and Fifth Amendment rights of criminal defendants). I then apply the applicable law to the facts before me.

13. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in United States v. Windsor. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

i. Do you understand this statement to be part of the holding in Windsor? If not, please explain.

Response: Yes, I understand the majority opinion in its entirety to be part of the holding and thus binding legal authority.

ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

Response: By "lawful marriages," Justice Kennedy is referring to same-sex marriages deemed lawful by the State.

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes.

iv. **Are you committed to upholding this precedent?**

Response: Yes, I am committed to upholding all precedent of the Supreme Court and the Eleventh Circuit Court of Appeals.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes, I understand the majority opinion in its entirety to be binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes, I commit to give the entirety of the majority opinion full force and effect.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes, I understand the majority opinion in its entirety to be binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes, I commit to give the entirety of the majority opinion full force and effect.

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

      Response: Yes, I understand the majority opinion in its entirety to be binding Supreme Court precedent entitled to full force and effect by the lower courts.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

      Response: Yes, I commit to give the entirety of the majority opinion full force and effect.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

      Response: Yes, I understand the majority opinion in its entirety to be binding Supreme Court precedent entitled to full force and effect by the lower courts.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

      Response: Yes, I commit to give the entirety of the majority opinion full force and effect.

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,**

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No, I have not had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group that I knew to be associated with the AAJ.

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 the questions by email from the Office of Legal Policy at the Department of Justice on May 20, 2014. I reviewed the questions, prepared my responses and then forwarded them to the Office of Legal Policy for review. After briefly discussing my responses with an attorney in the Office of Legal Policy, I finalized my responses to be forwarded to the Committee.

16. **Do these answers reflect your true and personal views?**

Response: Yes.

Questions for the Record
Senator Ted Cruz

Eleanor Ross,
Nominee: U.S. District Judge for the Northern District of Georgia

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: As a state judge, my judicial philosophy has been one which embodies impartiality and consideration for all litigants appearing before me, attentiveness to the issues presented, respect for the legal process by rendering prompt and clear rulings, and faithful application of the law to the facts. Although I am familiar with various opinions from the Warren, Burger and Rehnquist Courts, I have not studied the judicial philosophy of any U.S. Supreme Court Justice to analogize their philosophies to mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: Yes, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court employed the original public meaning model of interpretation when analyzing the Second Amendment. If confirmed I would follow *Heller, supra,* as well as other applicable 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, there are no circumstances under which I would overrule precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed, I would follow the Supreme Court's decision in *Garcia, supra,* as well as other relevant Supreme Court precedent concerning the constitutional limits on Congress' authority such as *Printz v. United States*, 521 U.S. 898 (1997) and *New York v. United States*, 505 U.S. 144 (1992).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has determined there are limitations on Congress' regulation of certain non-economic activity pursuant to the Commerce Clause. *See United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would

consider the type of activity being regulated and apply this precedent as well as other applicable precedent to the facts before me.

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 executive 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); *Medellin v. Texas*, 552 U.S. 491, 524-525 (2008). If confirmed, I would follow the precedent set forth by these cases as well as other applicable precedent.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: For purposes of the substantive due process doctrine, a right is fundamental if it is "...objectively, 'deeply rooted in this Nation's history and tradition and so rooted in the traditions 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 citations omitted). If confirmed, I would follow this standard and all applicable precedent in deciding issues relating to the determination of a fundamental right.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The United States Supreme Court has held that certain classifications such as race, gender, and national origin are subjected to heightened scrutiny under the Equal Protection Clause because such classifications are rarely relevant to the furtherance of a legitimate state interest. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). If confirmed, I would follow and apply precedent of the Supreme Court and the Eleventh Circuit Court of Appeals in identifying any classification requiring 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: If I am confirmed, I will follow all applicable precedent relating to the use of racial preferences in public higher education without regard to any personal expectations or beliefs that I may have.

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Standing Committee on the Federal Judiciary
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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 Julie E. Carnes to the United States Circuit Court for the Eleventh Circuit***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Julie E. Carnes who has been nominated for a position on the United States Circuit Court for the Eleventh Circuit. As a result of our investigation, the Committee is of the opinion that Julie E. Carnes is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Judge Carnes.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ds

cc: The Honorable Julie E. Carnes
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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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
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VIA EMAIL AND FIRST CLASS MAIL

February 16, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Jill A. Pryor
To the United States Court of Appeals for the Eleventh Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Jill A. Pryor who has been nominated for a position on the United States Court of Appeals for the Eleventh Circuit. As a result of our investigation, the Committee is of the unanimous opinion that Ms. Pryor is "Well Qualified" for this position.

A copy of this letter has been provided to Ms. Pryor.

Sincerely,

Allan J. Joseph
Chair

cc: Jill A. Pryor
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

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VIA EMAIL AND FIRST-CLASS MAIL

March 12, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: ***Nomination of Leslie Joyce Abrams to the United States District Court for the Middle District of Georgia***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Leslie Joyce Abrams who has been nominated for a position on the United States District Court for the Middle District of Georgia. A majority of the Committee is of the opinion that Ms. Abrams is Qualified for this position and a minority of the Committee is of the opinion that Ms. Abrams is Not Qualified for this position.

A copy of this letter has been provided to Ms. Abrams.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: Leslie Joyce Abrams, 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 March 12, 2014.

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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 Michael P. Boggs to the United States District Court for the Northern District of Georgia***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Michael P. Boggs who has been nominated for a position on the United States District Court for the Northern District of Georgia. A substantial majority of the Committee is of the opinion that Judge Boggs is Well Qualified and a minority of the Committee is of the opinion that Judge Boggs is Qualified for this position.

A copy of this letter has been provided to Judge Boggs.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ds

cc: The Honorable Michael P. Boggs
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.

DAVID SCOTT
13TH DISTRICT, GEORGIA

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DAVID.SCOTT@MAIL.HOUSE.GOV

COMMITTEE ON AGRICULTURE

COMMITTEE ON FINANCIAL SERVICES

Congress of the United States
House of Representatives
Washington, DC 20515–1013

January 3, 2014

Senator Patrick Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

I am writing to respectfully request the opportunity to appear and testify before the Senate Judiciary nomination hearings in regards to President Obama's nominations for federal judges for the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Northern District of Georgia.

The Democratic Congressional delegation from Georgia was shut out from any input in the selection process by the White House. Further, civil rights groups, the minority legal community, women leaders in the legal community, the LBGT legal community, and state Democratic officials were also kept in the dark about the secret list drafted by the White House. These nominations were publicly announced during an opportune time to avoid negative publicity - the Friday before Christmas. Once the names were released, I heard strong outrage from a diverse group of Georgians that these names are unrepresentative of the demographics and values of the state.

If confirmed, the federal bench in Georgia will not reflect the current demographics of the state for at least another generation. There will soon be only one active African-American district-court judge in Georgia. In addition, the views of some of these nominees reflect regressive politics of past. I want to share some very important and critical background information with the Committee before these nominations are considered. It is an abomination that these nominees for lifetime appointment were drafted in secret, not vetted by any legal groups among the President's supporters, and announced on a holiday weekend. We must not allow lifetime appointed judges to be rammed through the hearing process without sufficient input from the people who will be affected by their future judicial actions.

I understand that judicial nominations hearings before the Committee could start as soon as January 8. Therefore it is urgent that the Georgia voices shut-out by the White House be heard by the Committee as soon as possible. I deeply appreciate your consideration of my request to testify before the Committee.

Sincerely,

David Scott
Member of Congress

DS: ma

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Congressman David Scott
13th District Georgia

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January 9, 2014

Senator Patrick Leahy
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy,

Urgent. This letter is to respectfully request your permission for me to appear before the Senate Judiciary nomination hearings of President Obama's nominations for Federal judges for the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Northern District of Georgia. I want to share some very important and critical background information with the Committee. Of great concern to me are the nominees Mark Cohen and Michael Boggs as well as the remaining nominees.

The views attributed to some of these nominees reflect regressive politics of the past. It is of great concern to me that these nominees for lifetime appointment were apparently drafted without consultation with affected groups and announced on the holiday weekend, the Friday before Christmas. We must not allow lifetime appointed judges to be eased through the hearing process without sufficient input from the people who will be affected by their future judicial rulings.

The Democratic Congressional delegation from Georgia apparently was excluded from any meaningful input into the selection process by the White House. Further, civil rights groups, the minority legal community, women leaders, leaders in the legal community, the LBGT legal community, and state Democratic officials apparently were not included in the list drafted by the White House. Once the names were released, I heard strong negative reactions from a diverse group of Georgians that these Obama names do not represent the demographics and values of Georgia.

If these nominees are confirmed to the Federal bench in Georgia, they will not reflect the current demographics of the state. There will soon be only one active African-American District Court judge in Georgia. We are proudly the "Cradle of the Civil Rights Movement" where men and women fought and died to guarantee equal opportunities for all.

As a proud retired educator and a fifty-year veteran of the U.S. Women's Rights and Civil Rights movements, I spent my life dedicated to equality of opportunity for all. Of special concern now is the backlash from the Bench and in Federal and State legislative bodies against educational (Title IX), employment (Equal Pay Act), and reproductive (reproductive rights and healthcare) equity that we worked so hard to pass and implement in the 1970's and the years following.

It is urgent that the Judiciary Committee hear the Georgia voices excluded by the White House as soon as possible. I deeply appreciate your consideration of my request to testify before the Committee.

Sincerely,

Lucy Hargrett Draper

Lucy Hargrett Draper (678-428-0481, lucydraper@aol.com)

*Author of the Georgia Women's Bill of Rights.

* Advocate for the Rights of Women.

* Founder and Endower of Archives in three Public Educational Institutions to preserve the records of our nation's Women's Rights Movements.

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RECEIVED JAN 27 2014

January 10, 2014

Senator Patrick Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

On behalf of Advocacy For Action, Inc. – an organization organized under the auspices of several leading African American attorneys and African American bar associations in Georgia - we respectfully request the opportunity to appear and testify before the Senate Judiciary Committee nomination hearings against President Obama's nominations for the Northern District of Georgia and 11th circuit federal judgeships.

Despite letters, emails, public protests and press conferences condemning the secretive process used to select these nominees, the lack of diversity in the slate of the proposed nominees as well as concerns with the fitness of some of the candidates slated for confirmation to these *lifetime* positions, the President resubmitted the same names on January 6, 2014. This action by the President leaves us with no choice but to appear before the Senate to provide live testimony against the nomination of at least two of the nominees – Judge Michael P. Boggs and Attorney Mark Cohen. Judge Boggs, while sitting in the Georgia legislature, voted against removing the Confederate battle emblem from the Georgia flag (2001), against recognizing gay marriage (2004) and against respecting a woman's right to reproductive freedom (2004). These votes by Judge Boggs, who is not from the Northern District, are indicative of his position on human and civil rights issues which are not in line with those espoused by the current administration or the vast majority of the citizens of the Northern District. Further, Attorney Mark Cohen chose to represent the State of Georgia in 2010 in litigation to uphold the voter photo ID suppression law. This is the same type of law that the Department of Justice is contesting in a lawsuit against the State of Texas. These are just a few of the grave concerns with some of the candidates. We want to let the Senators know that many within the legal community and the community at large would prefer a delay filling the open seats on Atlanta's federal bench rather than accept a compromise that stacks the bench with attorneys and sitting judges who are not reflective of Georgia's rich diversity in thought and ethnicity.

We appreciate your consideration of this request and look forward to being provided an opportunity to voice our concerns with the Senate Judiciary Committee.

Sincerely,

Thelma Wyatt Moore
President – Advocacy For Action, Inc.

Bettianne Hart
Vice-President– Advocacy For Action, Inc.

Charles S. Johnson
Co-Chair – AFA Fund

Suzanne W. Ockleberry
Co-Convenor – AFA Fund

SENATOR VINCENT D. FORT
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The State Senate
Atlanta, Georgia 30334

COMMITTEES:

Appropriations:
General Government Subcommittee
Criminal Justice Subcommittee
Education and Youth:
Academic Support Subcommittee
Interstate Cooperation
Judiciary
Reapportionment and Redistricting
Urban Affairs

SPECIAL COMMITTEES:

MARTA Oversight Committee:

DEMOCRATIC WHIP

January 15, 2014

The Honorable Patrick Leahy, Chairman
Senate Judiciary Committee
437 Russell Senate Building
United States Senate
Washington, DC 20510

Re: Testimony before the Senate Judiciary Committee on Georgia Judicial Nominations

Dear Chairman Leahy:

I represent the 39th District of the Georgia State Senate and I write this letter asking for the opportunity to testify before the Senate Judiciary Committee on the upcoming nominations for federal judges in Georgia. As a State Senator for almost 18 years, I have great insight into the chosen nominees that I believe will be valuable for the nomination process.

In the opinion of many, these potential appointees do not represent the standards and diversity needed for fair and impartial decision making on the Federal Court. Amongst my constituents and community leaders there is a deep opposition that has formed to these nominees that goes across ideological lines.

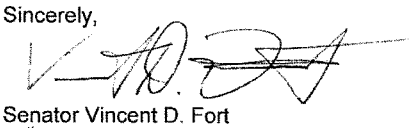
In particular, Mike Boggs as a State Representative has made the following votes. He voted against legislation stripping the Georgia flag of its confederate emblem despite wide spread support from African-Americans and others who believe the emblem supports slavery. He voted for legislation authorizing an amendment to constitutionally ban same sex marriage and lastly he sponsored legislation for parental notifications on abortions. In the same vein, nominee Mark Cohen defended of Georgia's voter identification law that by all accounts will lower the participation of racial minorities and those with fewer resources. These controversial voting records and positions show right wing ideology that does not give rise to an impartial decision making process.

We urge you to allow dissenting voices to be heard during this process who can bring important information to light on the history of these nominees in Georgia and why their appointments will not serve the best interest of the state or the federal judiciary.

Although I understand the dates for the nomination hearings have not been chosen I promise to adjust my schedule when the date and time have been confirmed. Thank you for your time and attention to this matter.

Cc: David Scott, Member of Congress, 13th District GA

Sincerely,



Senator Vincent D. Fort
39th Senatorial District

Received: May 8, 2014

Dear Senator Leahy :

My name is Dorian Murry. I have been a practicing attorney in the Northern District of Georgia for 16 years. It is my understanding that Judge Michael Boggs has received approval (the "blue slip") from Senators Chambliss and Isakson for his nomination to proceed to the Senate Judiciary Committee for confirmation as a federal judge on the Northern District Court. I am opposed to his confirmation.

As a Georgia legislator, Judge Boggs voted against changing the confederate battle flag of Georgia in the 2003 referendum. Said flag has been an instrument for hate and division in Georgia for as long as I can remember. Further, I have learned that Judge Boggs omitted 26 pages of information from the judicial questionnaire he sent to the Senate Judiciary Committee. His explanation for the omission was he "did not believe the information was responsive". That explanation lacks credibility. While he apologized for the omission, he did not apologize for his hostile position on civil rights. Judge Boggs should not be confirmed by the Senate Judiciary Committee for the Northern District Court. His views on human and civil rights and his omissions from his questionnaire raise questions about his ability to judge the diverse citizenry of the Northern District of Georgia.

Thank you for the opportunity to share my thoughts on the confirmation of Judge Michael Boggs.

If you would like to reach me for any reason, do not hesitate.

Sincerely,

Dorian Murry
dm@murrylawgroup.com
TEL (770) 450-0123
FAX (404) 581-5644

The Murry Law Group, P.C.
Attorneys at Law
5300 Memorial Drive
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HENRY C. "HANK" JOHNSON, JR.
4TH DISTRICT, GEORGIA

COMMITTEES:

JUDICIARY

ARMED SERVICES

Congress of the United States
House of Representatives
Washington, DC 20515–1004

SUBCOMMITTEES:

REGULATORY REFORM, COMMERCIAL, AND ANTITRUST LAW

COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET

SEAPOWER AND PROJECTION FORCES

INTELLIGENCE, EMERGING THREATS AND CAPABILITIES

STRATEGIC FORCES

May 20, 2014

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member, Senate Judiciary Committee
United States Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley,

I am writing to express my opposition to the confirmation of Michael P. Boggs to the United States District Court for the Northern District of Georgia. Federal judges are responsible for ensuring the integrity of the judiciary and keeping up with the pulse of society. They are charged with the impartial and unbiased administration of justice and I feel strongly that Judge Boggs' track record shows that he may be incapable of the equal application of justice.

As a member of the Georgia General Assembly, Judge Boggs demonstrated his lack of commitment to equal justice by disregarding civil rights, reproductive rights, and Lesbian, Gay, Bisexual, and Transgender (LGBT) rights. While serving in the Georgia House of Representatives, Judge Boggs voted to keep the Confederate battle flag on the Georgia state flag. While it is natural to acknowledge our history, the Confederate emblem represents division, hatred and inequality for many Georgians. Having a judge on the federal bench who does not understand the significance of such an emblem is problematic to say the least. Furthermore, his support of an amendment to Georgia's Constitution prohibiting same-sex marriage calls into question his ability to put the interests of the public before his own personal political beliefs.

Judge Boggs' cosponsorship of legislation that would make it more difficult for women to exercise their right to choose even in cases of rape, incest, and preservation of one's health is also disconcerting. He voted to strengthen Georgia's parental-involvement law by requiring a minor's parent or guardian to accompany them when getting an abortion and to have them display a photo ID. This thoughtless legislation would have disproportionately impacted low-income, elderly, and minority communities, who are less likely to have a state-issued photo ID. He also voted to endanger the lives of physicians who perform abortions by requiring them to report their activities online, an act of public humiliation that does nothing to enhance the public health.

Finally, during testimony before the Senate Judiciary Committee, Judge Boggs failed to adequately answer the questions posed by the Committee. It has been revealed that he made multiple contributions to Conservatives in Action in 2012 while he was a judicial candidate and he failed to fully acknowledge his

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actions. Judge Boggs claims he was unaware of the organization's endorsement of political candidates; however it is clear that this is one of the interests of the organization. His misleading explanation of his political activity and inability to clarify that he can separate his conservative political views from his role as a judge, are deeply troubling.

As a former magistrate judge and defense attorney, I am particularly sensitive to the need for judges to maintain the dignity of their offices with a strong sense of personal responsibility in upholding the basic tenets of this noble profession. Through his votes, his recent donations to political organizations, and his conservative views on social issues that are out of sync with public opinion, Judge Boggs has shown that he is unfit to serve as a federal judge.

Political views alone should not disqualify one from serving as a Judge. However, the public needs to be assured that the judiciary's judgment is not biased by the potential Judge's personal beliefs. That a candidate for a position in the federal judiciary would have such a misguided track record is both appalling and unacceptable, and causes me great concern about how he would conduct himself as a federal judge.

For these reasons, I urge you to oppose the confirmation of Michael Boggs to the US District Court for the Northern District of Georgia.

Sincerely,

Hank Johnson

Henry C. "Hank" Johnson
Member of Congress

Cc: The Honorable Harry Reid, U.S. Senate Majority Leader
The Honorable Charles Schumer
The Honorable Sheldon Whitehouse
The Honorable Christopher A. Coons
The Honorable Richard Blumenthal
The Honorable Orrin G. Hatch
The Honorable Lindsey Graham
The Honorable Michael S. Lee
The Honorable Jeff Flake
The Honorable Dick Durbin
The Honorable Amy Klobuchar
The Honorable Al Franken
The Honorable Mazie Hirono
The Honorable Jeff Sessions
The Honorable John Cornyn
The Honorable Ted Cruz
The Honorable Diane Feinstein

February 20, 2014

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
437 Russell Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
U.S. Senate
331 Hart Senate Office Building
Washington, DC 20510

The Honorable Charles Schumer
U.S. Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Richard Durbin
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510

The Honorable Sheldon Whitehouse
U.S. Senate
530 Hart Senate Office Building
Washington, DC 20510

The Honorable Amy Klobuchar
U.S. Senate
302 Hart Senate Office Building
Washington, DC 20510

The Honorable Al Franken
U.S. Senate
309 Hart Senate Office Building
Washington, DC 20510

The Honorable Chris Coons
U.S. Senate
127A Russell Senate Office Building
Washington, DC 20510

The Honorable Richard Blumenthal
U.S. Senate
724 Hart Senate Office Building
Washington, DC 20510

The Honorable Mazie Hirono
U.S. Senate
330 Hart Senate Office Building
Washington, DC 20510

Dear Senators:

As organizations committed to protecting reproductive and civil rights, racial justice, and equality under the law, we write to voice serious concern about the nomination of Michael Boggs to the United States District Court for the Northern District of Georgia, and to urge the Senate Judiciary Committee to reject this nomination.

During his time as a legislator in the Georgia General Assembly, Boggs demonstrated a troubling lack of concern for individuals whose experience and personal history differ from his own, creating a record that lacks a demonstrated commitment to fairness and equal justice with respect to issues of reproductive freedom, civil rights, and lesbian, gay, bisexual, and transgender (LGBT) equality.

Boggs has devoted portions of his career to opposing women's access to safe, legal reproductive-health services. For example, while serving in the Georgia House of Representatives, Boggs cosponsored legislation that would have created a "Choose Life" license-plate program to

channel funds to anti-choice organizations, including fake clinics that intentionally misinform and mislead women.[1] He also pushed legislation that would have made more severe Georgia's parental-involvement law, which already required parental notice prior to a young woman obtaining abortion care, and was so extreme that it did not include an exception for cases of rape or incest, or an adequate exception to protect a woman's health. Boggs cosponsored legislation that would have required a parent or guardian to accompany in person a young woman seeking abortion care, and display a photo ID, a mean-spirited provision that would impact disproportionately certain groups, predominately the elderly, low-income individuals, and minority communities, who are more likely to lack state-issued photo IDs.[2]

In addition to his documented hostility toward a woman's constitutional right to choose, Boggs's record on issues of racial justice and LGBT equality also raises grave concern. He voted to keep the Confederate battle emblem—a powerful symbol of oppression and intolerance—on Georgia's state flag over the vocal objection of the state's civil rights community.[3] Boggs also voted in support of a measure to amend Georgia's constitution to prohibit marriage for same-sex couples.[4]

We believe that Boggs's record on reproductive rights, civil rights, and LGBT rights is especially troubling in a nominee to the federal bench. Litigants in Georgia, and the nation as a whole, deserve a judge whose commitment to equal justice is clear.

For these reasons, we urge you to oppose the confirmation of Michael Boggs to the U.S. District Court for the Northern District of Georgia.

Thank you for your consideration.

Sincerely,

NARAL Pro-Choice America
Advocacy for Action
Advocates for Youth
Black Women's Health Imperative
Color of Change
CREDO Mobile/CREDO Action
Democracy for America
GetEQUAL Action
Human Rights Campaign
MoveOn.org Civic Action

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[1] H.B.254, 147th Gen. Assemb., Reg. Sess. (Ga. 2003); H.B.286, 147th Gen. Assemb., Reg. Sess. (Ga. 2003); H.B.630, 147th Gen. Assemb., Reg. Sess. (Ga. 2003).
[2] H.B.1597, 147th Gen. Assemb., Reg. Sess. (Ga. 2003); H.B.466, 147th Gen. Assemb., Reg. Sess. (Ga. 2004).
[3] H.B.16, 146th Gen. Assemb., Reg. Sess. (Ga. 2001).
[4] S.R.595, 147th Gen. Assemb., Reg. Sess. (Ga. 2004).

Ms. Foundation for Women
National Abortion Federation
National Asian Pacific American Women's Forum
National Center for Lesbian Rights
National Council of Jewish Women
National Gay and Lesbian Task Force Action Fund
National Latina Institute for Reproductive Health
National Network of Abortion Funds
National Organization for Women
National Partnership for Women and Families
National Women's Health Network
Planned Parenthood Federation of America
Progressive Change Campaign Committee
RH Reality Check
Sexuality Information and Education Council of the U.S. (SIECUS)
SisterSong Women of Color Reproductive Justice Collective
UltraViolet

HUMAN
RIGHTS
CAMPAIGN®

May 14, 2014

The Honorable Patrick Leahy
Chairman

The Honorable Charles Grassley
Ranking Member

Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Human Rights Campaign's (HRC) more than 1.5 million members and supporters nationwide, I write to oppose the nomination of Michael Boggs to the United States District Court for the Northern District of Georgia. Judge Boggs' record raises serious and unresolved questions about his ability to fairly administer justice to all Georgians equally.

In a hearing before the Senate Judiciary Committee yesterday, Boggs failed to adequately address his troubling record on issues of civil and reproductive rights during his time as a state legislator and as a state judicial candidate. Given the lifetime tenure of his proposed appointment, it is paramount that all questions regarding Boggs' ability to fairly serve all Georgians regardless of race, gender, sexual orientation or gender identity be resolved prior to confirmation. Yesterday's hearing failed to alleviate concerns surrounding this fundamental qualification.

As a state legislator, Judge Boggs was a vocal proponent for an amendment to the Georgia Constitution that not only prohibited the recognition of same-sex marriages, but recognition of all similar unions recognized by other states including civil unions and domestic partnerships. He described this restrictive ban that excluded lesbian, gay, bisexual and transgender (LGBT) Georgians from full constitutional citizenship as merely "common-sensical." Throughout yesterday's hearing, Judge Boggs stated that his personal views on issues like same-sex marriage would not play a role in his judicial decision-making. However, as a state judicial candidate in 2004 during a candidate forum for voters, Judge Boggs reiterated his commitment to his "common-sensical" opposition to same-sex marriage, urging voters to look to his record as a legislator to determine how he would serve as a judge. Throughout his hearing, Judge Boggs encouraged the committee to rely on his record as a judge when determining his qualifications, rather than

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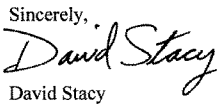
P 202-628-4160 | *F* 202-423-2861 | HRC@HRC.ORG

his public actions as a legislator. However, he failed to provide an adequate explanation for his original reliance on personal belief and legislative record as the primary indicator of his future actions as a judge.

We also raise concerns regarding Judge Boggs' forthrightness with the committee specifically pertaining to controversial areas of his record. Boggs failed to include pertinent information regarding his record as a state legislator in his January 14, 2014, questionnaire. In order to fully satisfy the questionnaire requirements, Boggs had to provide an additional 26 pages of information to the committee in April. His failure to undertake a serious review of his own record and to fully disclose critical areas of this record is troubling and suggests a lack of commitment to honesty to the judiciary. In addition to this initial hesitance regarding full disclosure of his record, we are deeply disturbed by his response to several questions at the hearing. When questioned regarding his vote in support of an amendment to a proposed Georgia state law that would publish the names of abortion providers, Judge Boggs stated that he was wholly ignorant at the time of the vote of any public safety issues that could arise from the amendment. He further insisted that he was unaware of any violence against abortion providers that took place prior to the 2001 vote – including clinic bombings and attempted murders of abortion providers. Given the high profile of these events, it is difficult to believe he was unaware. If true, his decision to support this dangerous amendment without understanding its implications is deeply troubling.

Due to this clear record of hostility towards equality in his home state as an elected official, and his continued failure to adequately address outstanding concerns regarding his ability to fairly serve all Georgians equally, HRC opposes his nomination to the federal bench. Fair-minded judges are essential in ensuring that everyone has equal access to justice, regardless of who they are or who they love.

Sincerely,



David Stacy
Government Affairs Director
Human Rights Campaign

CC: Senate Judiciary Committee

May 09, 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:

As you and your colleagues prepare for the upcoming judicial nominations hearing next week, Lambda Legal urges the members of the Senate Judiciary Committee to closely examine the past record of Michael Boggs, a nominee for a seat on the United States District Court for the Northern District of Georgia. As the nation's oldest and largest national legal organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender (LGBT) people and those with HIV, we have serious concerns about Michael Boggs's nomination.

Particularly troubling is his record as a state legislator in the Georgia General Assembly, which raises questions about his commitment to protecting individual rights, the guarantee of equal rights for all Americans, and other issues of importance to LGBT and HIV-affected people.

In 2004, while serving in the state legislature, Boggs voted to amend the Georgia Constitution to prohibit marriage for same-sex couples[1]—an amendment he considered to be "premised on good conservative Christian values."[2] This bill was introduced just months after the U.S. Supreme Court's decision in *Lawrence v Texas*,[3] in which our organization persuaded the Court that lesbians and gay men share in the Constitution's guarantee of fundamental liberty, and that state laws criminalizing private sexual activity between consenting adults violate that principle. In his speech on the floor of the Assembly in support of passage, Boggs said lawmakers had an opportunity to protect the state against the "dangers that we face with respect to activist judges" who might try to overturn Georgia's law barring same-sex marriage.[4]

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[1] S.R. 595, 147th Gen. Assemb., Reg. Sess. (Ga. 2004)
[2] R. Robin McDonald, *Conservative views make him unsuitable as Obama nominee for U.S. judge, they say*, Daily Report, Feb. 21, 2014.
[3] *Lawrence v. Texas*, 539 U.S. 558 (2003)
[4] Ernie Suggs, *House votes down gay marriage ban*, Atlanta Journal-Constitution, Feb. 25, 2004.

NATIONAL HEADQUARTERS 120 WALL STREET, 19TH FLOOR, NEW YORK, NY 10005-3919 T 212-809-8585 F 212-809-0055 WWW.LAMBDALEGAL.ORG

We recognize that ten years have passed between those statements during Michael Boggs's tenure in the Georgia General Assembly and his present nomination to the federal bench. During that time, the legal landscape has shifted considerably, particularly with respect to growing recognition of the equal rights of people who are LGBT, most notably the U.S. Supreme Court's decision in *United States v. Windsor*,[5] which struck down Section 3 of the discriminatory Defense of Marriage Act and *Glenn v Brumby*,[6] an Eleventh Circuit ruling that the government violates equal protection guarantees when it discriminates against employees based on gender identity and expression.

However, Mr. Boggs's voting record and previous criticism of "activist judges," raise serious questions about his judicial philosophy—suggesting that, in his view, it is not the role of a judge to enforce the constitutional guarantees of liberty and equality. It is therefore critical that the Committee fully vet Boggs to determine his commitment to adhering to our nation's Constitution, laws, and legal precedent when ruling on cases, including those involving LGBT people, people with HIV, and others vulnerable populations that depend on our judiciary, without bias or prejudgment. Further, his comments about grounding laws in "good Christian values" make it necessary to seek clarification and confirmation that Boggs is willing and able to interpret and apply the Constitution, laws, and precedents without allowing any particular religion, including his own, to serve as legal justification for discrimination.

In addition to his documented antipathy toward legal equality for LGBT people, Michael Boggs has exhibited a stunning lack of sensitivity when it comes to racial equality, as shown by his 2001 vote to keep the Confederate battle emblem on Georgia's state flag.[7] Boggs's failure to appreciate the offensive and harmful effects of preserving that symbol of oppression and enduring racial injustice is particularly disconcerting for a nominee to the federal judiciary because, if confirmed, he will be expected to oversee and administer justice equally to litigants of varied racial and ethnic backgrounds, and all sexual orientations and gender identities, whose right to equal access includes fair treatment without the appearance of bias or prejudice.

Finally, Michael Boggs's legislative record reflects hostility toward the constitutional right to privacy and a disturbing willingness to expand the government's ability to place restrictions on individual rights, as evidenced by his sponsorship of a bill that would have significantly expanded the state's existing parental-involvement law by requiring a parent or guardian to accompany a minor seeking abortion care, and to present a photo ID.[8]

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[5] *United States v. Windsor*, 133 S. Ct. 2675 (2013)
[6] *Glenn v Brumby*, 663 F.3d 1312 (11th Cir.2011)
[7] H.B.16, 146th Gen. Assemb. Reg. Sess. (Ga. 2001).
[8] H.B.1597, 147th Gen. Assemb., Reg. Sess. (Ga. 2003); H.B.466, 147th Gen. Assemb., Reg. Sess. (Ga. 2004).

Lambda Legal
making the case for equality

In an April 10 letter to this Committee, which accompanied a 26-page addendum to his original questionnaire, Boggs apologized for omitting information about his time as a legislator, including bills he cosponsored. These omissions make it even more important for this Committee to carefully scrutinize Michael Boggs's record and to ask – and require that he answer – questions relevant to his commitment, willingness, and ability to our nation's guarantee of access to justice under the law for all people, without allowing his personal beliefs and biases to interfere with his duty to follow legal precedent and decide cases that come before him on the basis of the Constitution, applicable law and precedents, and the relevant facts.

Very truly yours,

Kevin M. Cathcart
Executive Director

CC: Members of the Senate Committee on the Judiciary

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May 12, 2014

Dear Senator:

On behalf of the National Council of Jewish Women (NCJW), I urge you to reject the confirmation of Judge Michael P. Boggs to the US District Court for the Northern District of Georgia. NCJW has worked for over a decade through BenchMark: NCJW's Judicial Nominations Campaign to ensure the confirmation of judges with a demonstrated commitment to fundamental freedoms. Judge Boggs has not demonstrated such a commitment.

Judge Boggs himself made it clear when he ran for election to the Georgia Court of Appeals that his record as a legislator is an indication of how he would judge cases. It is that record that has led us to oppose his confirmation. Judge Boggs has consistently opposed women's access to constitutionally-protected safe and legal reproductive health services. He promoted a bill to make Georgia's existing law requiring parental notification for young women seeking abortion care more onerous and extreme. He also voted to require Georgia to create a so-called 'pro-life' license plate that would have channeled funds to anti-choice groups, including fake clinics that intentionally misinform and mislead women.

In addition to his documented hostility toward reproductive choice, he voted to keep the Confederate battle emblem – a powerful symbol of oppression and intolerance – on Georgia's state flag over the vocal objection of the state's civil rights community and voted to amend Georgia's constitution to bar marriage for same-sex couples.

Judge Boggs' record on reproductive rights, civil rights, and LGBT rights is especially troubling in a nominee for a lifetime seat on the federal bench. Georgia, and the nation as a whole, deserves a judge with a proven commitment to equal justice and constitutional rights. It is for this reason that we urge you to oppose his confirmation.

For your information, NCJW is a grassroots organization of volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. Thank you for your consideration.

Sincerely,

Nancy K. Kaufman

Nancy K. Kaufman
NCJW Chief Executive Officer

05/12/2014 2:22PM (GMT-04:00)

May 14, 2014

Dear Senator:

On behalf of the hundreds of thousands of members of People For the American Way, we write to express our strong opposition to the confirmation of Michael Boggs to be a judge on the Northern District of Georgia.

Boggs served as a state legislator from 2001-2004. In 2004 he was elected to a Superior Court (trial court) judgeship, and in 2012 he was appointed by the governor to fill a vacancy on the Georgia Court of Appeals. His record raised major concerns about his qualifications, concerns that were not assuaged during his confirmation hearing.

Unfortunately, Boggs' record makes clear that senators should not confirm him to a lifetime position as a United States judge.

Role of Legislator vs. Role of Judge

As a threshold matter, Boggs has made clear that he has a fundamentally inaccurate and dangerous idea of the role of a judge in our nation's system of law. Federal judicial nominees regularly come before the Judiciary Committee and assure senators that their personal political or ideological beliefs won't affect their decisions as a judge. Boggs himself repeatedly assured members of the Judiciary Committee of the same thing. But in 2004, when he was running for judge, Boggs assured voters that his decisions as a state judge *would* conform to his positions as a legislator.

According to the July 8, 2004, *Waycross Journal-Herald*, then-Rep. Boggs told voters at a judicial candidates' forum, "I am proud of my record. You don't have to guess where I stand – I oppose same-sex marriages. I supported and authored the Child Protection Act to protect children from predators. I have a record that tells you exactly what I stand for."

This reflects a fundamental misunderstanding of the role of the courts and of judges, a misunderstanding that goes to the heart of whether someone is qualified to be confirmed to a lifetime federal judgeship.

Boggs' linkage of his judicial role to his legislative record makes that record directly relevant to whether he should be confirmed. As discussed below, that record is deeply disturbing, showing

a disregard for gays and lesbians, African Americans, church-state separation, and constitutionally protected reproductive rights.

LGBT Equality

As a state legislator in 2004, Boggs voted in favor of a state constitutional amendment to prohibit gays and lesbians from marrying. He presented it as needed to stop "activist judges" from second-guessing the legislature's decision on who can get married. He voted to permanently lock lesbian and gay Georgians out of the right to marry.

And he did so with gusto, speaking from the House floor about how this was a rare opportunity to "stand up for things that are common-sensical, things that are premised on good conservative Christian values." And, as noted above, when he ran for judge, he highlighted his strong opposition to marriage equality as a reason for people to vote for him.

Over the past decade, millions of Americans have evolved in their positions toward marriage equality. That includes President Obama, who nominated Boggs. We do not believe that long-ago opposition to marriage equality, by itself, is necessarily a bar to the federal bench.

But Boggs' eagerness to permanently marginalize a vulnerable group in the state constitution speaks volumes about his ability to understand the basic concepts behind the Equal Protection Clause. His explanation that he was doing so in order to codify his own personal religious beliefs is also disturbing.

It is essential for a judge to be able to understand the impact of the law on other people, especially people with different backgrounds and life experiences from the judge. Boggs' record on LGBT equality suggests he lacks that fundamental ability.

Confederate Imagery in the Georgia State Flag

Boggs' record shows a similar blind spot for African Americans. In 1956, during the height of "massive resistance" to *Brown v. Board of Education*, Georgia had revised its flag to incorporate the Confederate Battle Flag. As a state legislator, Boggs voted against ultimately successful legislation to remove the offensive imagery. After the flag was changed, he voted for a bill that put another new flag, this one with Confederate imagery, up for popular vote.

The insensitivity to African Americans can hardly be overstated. He explained to the *Charlton County Herald* at the time, "It was a very difficult issue, but my constituents overwhelmingly supported keeping the flag as it was." One might wonder if the more than 25% of his constituency that was African American took that position.

At Boggs' confirmation hearing, Sen. Durbin asked if the nominee believed that the Confederate imagery in the state flag had anything to do with race. Boggs replied that there was no legislative history for the 1956 decision, and that some say it wasn't motivated by racism and opposition to *Brown v. Board of Education.*

The Confederate Battle flag represents the enslavement of generations of African Americans, and a system of government premised upon the state's right to protect and promote slavery. It represents a region's willingness to go to war and leave the United States over the "right" to enslave their African American population. It represents the use of violence for 100 years after the Civil War to keep African Americans in a state of constant fear and subjugation. Its presence on the flag should not have been a "very difficult issue" for Boggs, regardless of what he claims his constituents wanted.

Reproductive Rights

In the Georgia House in 2001, Boggs voted for an amendment to pending legislation that would have added information about the number of abortions performed by a doctor to profiles maintained by the state and available to anyone asking. No other specific procedure would have had to be listed. This was at a time of rising concern about violence against doctors who provide abortions.

Boggs assured senators at his confirmation hearing that he now thinks this was an ill-conceived proposal that he regrets voting for, but that he hadn't known that there was a risk of violence inherent in the amendment. Sen. Franken called it "incredible" that Boggs was unaware of the history of violence against abortion providers and the obvious threat the legislation posed to the lives of doctors.

Rep. Boggs also cosponsored legislation to make the state's parental-involvement law for minors seeking abortions more restrictive, as well as legislation to create "choose life" license plates to fund often-deceptive anti-choice "crisis pregnancy centers."

His record shows a commitment to anti-choice ideology. His stated willingness to let his personal beliefs shape his judicial decisions makes his confirmation a threat to constitutionally protected reproductive rights.

Government Promotion of Religion

As a state representative, Boggs cosponsored bills indicating his zeal to use government to promote religion, raising constitutional concerns about church-state separation. One bill would

have required all public schools and government buildings to prominently display the national motto "In God We Trust." There is a vast difference between the appearance of the motto on coins and dollar bills, on the one hand, and in public schools, on the other. When these words are directed at captive audiences of young, impressionable school children by their schools, they send an impermissible message of government endorsement of religion.

He also cosponsored legislation to mandate the creation by the state of a lesson for display in public buildings on how religion has shaped American law, featuring public displays of the Ten Commandments, the Mayflower Compact, and the Declaration Independence. Under the bill, counties would be specifically authorized to post this particular display and the state would protect them in court from lawsuits over the constitutionality of the display. The nominee's willingness to use the institutions of government as a tool to promote particular religious views is disturbing.

Boggs' Judicial Record and Experience

Boggs claims his record as a state judge shows that he does not allow his decisions to be shaped by his personal ideology. However, the public record is devoid of cases where he had any opportunity to rule on the issues of concern. So his judicial record, in fact, does not show that he has departed from his stated commitment to use the courts to impose his personal political views.

At his committee hearing, Boggs said he would no longer consider a judicial opinion recognizing a constitutional right for gays to marry as "judicial activism," as he had charged in 2004. He said that his decade of experience as a judge had taught him that judges decide cases based on the facts before them, and that his previous attacks on the judiciary were unfounded.

Yet nearly eight years into his decade of experience as a judge, his 2011 application to the Georgia Judicial Nominating Commission to be recommended to the state's Court of Appeals stated:

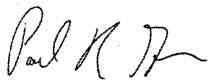
> The judiciary continues to endure criticism, fairly earned in some cases, of abrogating their constitutionally created authority by issuing decisions that venture into policy making. Partisan political campaigns are increasingly politicizing our judiciary in part, because of judicial decisions that have ignored and violated the basic tenets of the judiciary, that policy making is the sole province of a duly elected citizen legislature.

Since this seems to be coded language for results-based judicial decisionmaking along the lines he promised in 2004, Senator Coons asked Boggs to give some examples of cases he had in mind when he wrote this. The nominee was unable to do so. And Boggs' statement to Sen. Coons that

"the concept of activist judge that I held as a legislator is no longer prevalent in my mindset" seems belied by his 2011 statement to the Georgia Judicial Nominating Commission.

Conclusion

Unfortunately, based on the record presented to the Senate, we do not believe Michael Boggs has demonstrated that he would be able to bring to his service as a lifetime judge on the federal courts the requisite impartiality necessary for such a position. People For the American Way opposes the nomination and urges the Senate not to confirm him.



Marge Baker
Executive Vice President for Policy and Program
People For the American Way

Paul R. Gordon
Senior Legislative Counsel
People For the American Way

The Leadership Conference on Civil and Human Rights

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Judith L. Lichtman
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NAACP
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Terry O'Neill
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Priscilla Ouchida
Japanese American Citizens League
Mark Perriello
American Association of People with Disabilities
Anthony Romero
American Civil Liberties Union
David Saperstein
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

May 12, 2014

The Confirmation of Michael P. Boggs Raises Serious Concerns for the Civil and Human Rights Community

Dear Senators,

On behalf of The Leadership Conference on Civil and Human Rights, the nation's oldest, largest and most diverse civil and human rights coalition, we write to express our serious concerns with the confirmation of Michael P. Boggs for the position of U.S. District Court Judge for the Northern District of Georgia. During his confirmation hearing tomorrow, and in any written questions, we hope to have clarification of his views regarding civil rights—including employment discrimination, voting rights, access to public accommodations, school desegregation, and same-sex marriage.

The Leadership Conference believes Judge Boggs' elevation to the federal bench raises significant concerns for a broad range of constituencies and the future of civil rights jurisprudence in the Northern District Court of Georgia. When seeking a state court judgeship, Judge Boggs noted that his record in the Georgia State Legislature demonstrated his views on issues of concern to the civil and human rights community.[i] We find his conservative record deeply troubling, particularly when it comes to issues of race and same-sex marriage.

Michael P. Boggs was in the Georgia Legislature between 2001–2004, when one of the most contentious civil rights battles in recent history occurred.. After decades of unsuccessful attempts, the Legislature finally decided to remove the Confederate battle symbol from its flag, which it had adopted in 1956 as a sign of resistance to the Supreme Court's decision in *Brown v. Board of Education*. As the Atlanta Journal-Constitution editorialized at the time: "The shame of having a symbol of white supremacy on our state flag—and the insult it delivers to black Georgians—is magnified because that symbol was placed on the flag not despite its racist connotation, but because of it."[ii] Boggs voted against repeal of the Confederate flag several times, and even after it was banished, he supported legislation that could allow it to fly again.[iii] Boggs' votes to support the most notorious symbol of racial inequality were cast just a little more than a decade ago. Boggs' votes are all the more troubling considering that almost 30 percent of his constituents were African American.

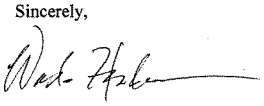
Boggs' record in the legislature on issues of same-sex marriage also raises serious concern. While in the Georgia state legislature, Boggs voted in favor of a constitutional amendment banning same-sex marriage.[iv] Further, during his campaign for a seat on the Georgia Superior Court (trial court), Boggs was quoted in the press based on statements at a campaign forum, stating in part: "I am proud of my record. You don't have to guess where I

stand – I oppose same-sex marriages…I have a record that tells you exactly what I stand for..."[v]

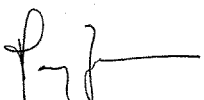
The Senate Judiciary Committee must carefully scrutinize Michael P. Boggs' views on race discrimination. Mr. Boggs should be asked what the Confederate battle flag symbolizes to him and to African Americans and why he believes that flag should have continued to fly over Georgia nearly 50 years after *Brown v. Board of Education*. His views on all forms of discrimination should be explored. It is not sufficient to say that his record as a judge does not raise concerns about civil rights. As a state court judge in Georgia, Michael P. Boggs has had little opportunity to develop a record on civil rights, largely due to weak or nonexistent state civil rights laws. In stark contrast, as a federal district court judge in Atlanta, Boggs would be called upon to decide a host of civil rights issues, involving voting rights, employment discrimination, fair housing, public accommodations, and school desegregation.

Boggs' public statements and legislative record implies, that he has pre-judged certain issues and if confirmed to a lifetime position on the federal bench, that he would not rule fairly or impartially on a broad range of issues. Before being confirmed to an important seat on a federal court, Mr. Boggs should be questioned extensively about these issues and what his conservative judicial philosophy means when it comes to civil rights. For these reasons, we urge you to very carefully consider the confirmation of Michael P. Boggs to the U.S. District Court for the Northern District of Georgia. If you have any questions, please feel free to contact Sakira Cook, Senior Policy Associate at cook@civilrights.org or (202) 263-2894 or Nancy Zirkin, Executive Vice President at Zirkin@civilrights.org or (202) 466-2880.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President

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[i] *Candidates Give Answers at Forum,* Waycross Journal-Herald at 1 (July 8, 2004)
[ii] Editorial Georgia House's Conscience Scores Victory, Atlanta J.-Const. (Jan.25, 2001).
[iii] *See Boggs Pushes to Get New Health Lab Here,* WAYCROSS JOURNAL-HERALD at 28 (Jan. 22, 2001) ("There are a number of issues that are more important that need to be addressed at this time. Right here, jobs, roads, and education are important issues. From everything I hear, a vote to change won't make it out of committee, and even if it does, there are not enough votes to change it. In '93, there were not enough votes, and if you consider public sentiment, the people simply do not want the flag changed.").
[iv] *Boggs Stands Solidly Behind a Homosexual Marriage Ban*, WAYCROSS JOURNAL-HERALD at 1 (Mar. 8, 2004).
[v] *Candidates Give Answers at Forum,* Waycross Journal-Herald at 1 (July 8, 2004)

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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 Mark Howard Cohen to the United States District Court for the Northern District of Georgia***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Mark Howard Cohen who has been nominated for a position on the United States District Court for the Northern District of Georgia. As a result of our investigation, a majority of the Committee is of the opinion that Mr. Cohen is Qualified and a minority is of the opinion that he is Well Qualified for this position.

A copy of this letter has been provided to Mr. Cohen.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ds

cc: Mark Howard Cohen, 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.

KILPATRICK TOWNSEND
ATTORNEYS AT LAW

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RECEIVED MAR 31 2014

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March 20, 2014

The Honorable Patrick J. Leahy
Senator
437 Russell Senate Building
United States Senate
Washington, DC 20510

Re: Mark Cohen, Esq.
Nominee U.S. District Court
Northern District of Georgia

Dear Senator Leahy, Pat

I am writing in support of the nomination of Mark Cohen to the U.S. District Court for the Northern District of Georgia.

I have known Mark personally for many years and am familiar with his professional work. Mark is a person of good character and exceptional legal ability who is highly qualified to serve in the judicial position for which he has been nominated.

I understand from press accounts that some persons object to his appointment because he represented the State of Georgia as special counsel in defending in court Georgia's Photo ID Voter Law because those persons believe that the photo ID law discriminates against African Americans.

I think it is outrageous to object to a lawyer's qualification for judicial office because of his representation of a client. That practice could have devastating effects on our judicial system if lawyers are judged by the client or issues they represent. You recently saw the dangers of that type of thinking in your committee with the rejection of a nominee for Assistant Attorney-General for Civil Rights in part because of the hostility towards a client he represented regardless of his qualifications for that office.

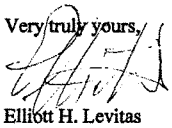
That problem is highlighted in the case of Mark's appointment because he undertook the representation of Georgia in this voter ID case at the request of Georgia's African American Attorney-General. I know that Mark, a life-long Democrat, is totally without any racial, ethnic, gender or other prejudices. To deny this appointment by President Obama

because some people disapprove of his client's issue is a travesty and an outrage that is not only unfair to Mark – a good man and lawyer – but is a threat to our legal system.

I urge you to proceed to confirm Mark Cohen without further delay.

With my best personal wishes for your continued success, I am,

Very truly yours,



Elliott H. Levitas

EHL:bp

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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 Leigh Martin May to the United States District Court for the Northern District of Georgia***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Leigh Martin May who has been nominated for a position on the United States District Court for the Northern District of Georgia. As a result of our investigation, the Committee is of the opinion that Leigh Martin May is Unanimously Qualified for this position.

A copy of this letter has been provided to Ms. May.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ds

cc: Leigh Martin May, 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 Eleanor Louise Ross to the United States District Court for the Northern District of Georgia***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Eleanor Louise Ross who has been nominated for a position on the United States District Court for the Northern District of Georgia. A majority of the Committee is of the opinion that Judge Ross is Qualified and a minority is of the opinion that Judge Ross is Not Qualified for this position.

A copy of this letter has been provided to Judge Ross.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ds

cc: The Honorable Eleanor Louise Ross
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 ANDRÉ BIROTTE, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA; JOHN W. deGRAVELLES, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF LOUISIANA; RANDOLPH D. MOSS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA; HON. ROBIN L. ROSENBERG, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA; AND HON. RONNIE L. WHITE, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI

TUESDAY, MAY 20, 2014

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

The Committee met, pursuant to notice, at 10 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Dick Durbin presiding. Members present: Senators Feinstein, Durbin, and Grassley.

Also present: Senators Landrieu, McCaskill, and Nelson, and Delegate Holmes.

OPENING STATEMENT OF HON. DICK DURBIN, A U.S. SENATOR FROM ILLINOIS

Senator DURBIN. This hearing of the Senate Judiciary Committee will come to order. Today we will consider five highly qualified nominees to the Federal bench, including André Birotte, who has been nominated to be District Judge of the Central District of California; John deGravelles, nominated to the Middle District of Louisiana; Randolph Moss, nominated to the District Court for the District of Columbia; Robin Rosenberg, nominated to the Southern District of Florida; Ronnie White, nominated to the Eastern District of Missouri.

At these hearings it is traditional for nominees to be introduced before the Committee by Senators from their home States. For Mr. Moss's nomination, Congresswoman Eleanor Holmes Norton will provide an introduction, upon her arrival.

And unless the Ranking Member has any opening remarks, we will allow the Senatorial introductions to commence.

Senator GRASSLEY. I am going to put my statement in the record.

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

Senator DURBIN. Thank you very much, Senator Grassley.

Senator Landrieu, do you have a time problem with another hearing coming up?

Senator LANDRIEU. I do, Senator, thank you. I am chairing a hearing in 15 minutes, if I could proceed.

Senator DURBIN. If you will beg the indulgence of your fellow colleagues sitting at the table.

Senator LANDRIEU. With the courtesies of my colleagues, thank you.

Senator DURBIN. Senator Landrieu.

PRESENTATION OF JOHN WHEADON deGRAVELLES, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF LOUISIANA, BY HON. MARY LANDRIEU, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator LANDRIEU. Thank you so much, Mr. Chairman, and I appreciate the courtesies of my colleagues to introduce Mr. John Wheadon deGravelles, a nominee for Article 3 Judge on the U.S. Middle Court in Louisiana.

I was so pleased to recommend this nominee to President Obama, and I am very happy and proud to introduce him to you all today.

He is affectionately known as Johnny. He is joined by his loving wife of many years, Jan deGravelles; his two children, Neale and Kate, who are both lawyers; his sister, Ann Norton, and close family friends who are here with him today.

Johnny has earned the support of the President of the United States and both of his home-state Senators on the basis of his impressive legal career over a long period of time.

Decades of Federal Court experience have brought him to this Committee with an unquestionably even and fair handed temperament recognized by all.

Johnny was born in Lafayette, although he is a current resident of Baton Rouge. When he graduated with his degree from LSU, he graduated with top honors. For 24 years he has practiced at an extraordinary law firm, of which he helped to found and continues in that today.

In addition to all of that work, Mr. Chairman and Ranking Member Grassley, I wanted to call to your attention, he has always come to my attention over many years, but particularly after Katrina, Johnny really stepped up as a leader in the legal community to help all of the many lawyers that were dislocated from their homes, from their practices, during that great disaster which we are still recovering from along the Gulf Coast.

He was a Fulbright Scholar; he has been recognized for outstanding professional excellence by the Louisiana Trial Lawyers Association and the Council for a Better Louisiana. He has written numerous articles and publications. His civic engagement is really extraordinary.

And I think, for the good humor of this Committee, and we always like to have well-rounded nominees, please let the record reflect that he is a legendary guitar player. And he plays blues, gospel, country and rock and roll. He once opened for the legendary Aaron Neville at a band concert in Angola Penitentiary, an experience he describes as going to rock and roll heaven.

So anyway, he is a wonderful guy with a great sense of humor, with a terrific background in law. And I could not be more proud to present him to this Committee for your consideration today.

And thank you so much, Senator Durbin and Senator Grassley.

Senator DURBIN. Thank you, Senator Landrieu.

Senator McCaskill.

PRESENTATION OF HON. RONNIE L. WHITE, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI, BY HON. CLAIRE McCASKILL, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator MCCASKILL. Thank you, Mr. Chairman. I am here today to introduce my friend and highly respected jurist and attorney in the State of Missouri.

Judge Ronnie White earned his political science degree from St. Louis University in St. Louis, and then graduated from the University of Missouri Law School. During law school, he actually interned in the Jackson County Prosecutor's Office, where I began my legal career.

He went on to return to St. Louis and worked at the Department of Defense Mapping Agency and also served as a trial attorney in the Public Defender's Office in both the City and County of St. Louis. In 1987, he entered private practice and during this period of time he was elected to the Missouri Legislature and served three terms in Jefferson City.

He served as Chairman of the House Judiciary Committee, the House Ethics Committee and the Committee on Civil and Criminal Justice during his time in Jefferson City.

In 1993, he was appointed to the position of City Counselor for the city of St. Louis. While serving as City Counselor, he argued a case before the Supreme Court of Missouri. One month later, he was appointed to the Missouri Court of Appeals, Eastern District.

And then later, Judge White was appointed by Governor Mel Carnahan to be the first African-American to serve on the Missouri Supreme Court, in October 1995. He went on to be selected and serve as Chief Justice of the Missouri Supreme Court between 2003 and 2005.

He also currently serves as an adjunct faculty member teaching trial practice and procedure at Washington University School of Law in St. Louis, Missouri. I will not take the time to cite all the community boards and commissions that Judge White has served on during his incredible career of public service in our State, and I will not go through all of the awards he has gotten, honorary degrees and other recognition.

He currently is in the private practice of law, but continues to be a shining star to thousands of Missourians because of his career, which has really been emblematic of hard work, courage, dedication and service to public before self.

He has never forgotten that his job as a successful attorney, lawyer and judge is about the community he serves, and not about him.

Now, that is all the resume stuff. He is just a really good guy. He is probably the gold standard for ethical conduct as a sitting member of the bench in our State. And because he was a first, he had a lot of pressure on him in various ways. He has withstood that pressure and done his job without fear or favor.

I can think of no one in the State of Missouri—and I mean that literally—no one in the State of Missouri that is more deserving of this appointment to the Federal bench than my friend, Ronnie White.

Thank you, Mr. Chairman.

Senator DURBIN. Thank you, Senator McCaskill.

Senator Nelson.

PRESENTATION OF HON. ROBIN L. ROSENBERG, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA, BY HON. BILL NELSON, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator NELSON. Mr. Chairman, I cannot help but reflect here, since I have been in front of this Committee many times, that this is a process that works. And it is a process that sets us, the United States, apart from so many other judiciaries around the world. As a result, we get the best, the testimony that you have just heard about the two other judges.

And I want to commend Senator Grassley. When he had doubts about a recommendation from the Senators from Florida on a previous nominee, Senator Grassley was kind enough and he was judicious enough to go in and do a thorough examination and to listen to the arguments. So it is a process that works.

We in Florida try to make it work even better by taking the politics out of the selection, as Senator Rubio and I have this Judicial Nominating Commission that does all the interviewing and that picks three. And then the President agrees that he will pick from among the three for the Federal District judges.

Now, sometimes the process takes a long time, as it has been in the case of Judge Rosenberg today, whereas we had had starts and stops on different vacancies. But the process works.

And so I am bringing to you, on behalf of Senator Rubio and me today, a State judge—we call them Circuit Judges—where she has served since 2007. And prior to that, was the partner in a law firm. She started her legal career, as so many of our judges do for the excellent training, as a law clerk. And in this case, it was a Federal District judge. Prior to that, an assistant city attorney, trial attorney in the Civil Rights Division of the Justice Department, capping off an education of a J.D. and an M.A. from Duke and Princeton. Judge Robin Rosenberg is joined by her husband, Michael McAuliffe, and their three children. Where are the children? There you are. And her dad, whom I know personally, Dr. Marvin Rosenberg. And so I bring you an extremely qualified nominee—and thank you all for making this system work.

Senator DURBIN. Thank you very much, Senator Nelson.

Now, from the District of Columbia, Delegate Eleanor Holmes Norton.

PRESENTATION OF RANDOLPH D. MOSS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, BY HON. ELEANOR HOLMES NORTON, A DELEGATE FROM THE DISTRICT OF COLUMBIA

Delegate NORTON. Thank you very much, Mr. Chairman.

My Judicial Nominating Commission had several well-qualified candidates before them. They forwarded them all to me, but Randolph Moss, whom I introduce today, stood out for his exceptionally well-qualified background.

Randolph Moss is a partner today in the law firm of Wilmer, Cutler, Pickering, Hale and Dorr. He served for 5 years with the Office of Legal Counsel before President Clinton recommended him and the Senate confirmed him to be the an Assistant Attorney for Legal Counsel in the Office of Legal Counsel.

After his service, he returned to Wilmer, Hale as a partner where today he chairs the firm's Regulatory and Government Affairs Department, is a member of its Business Trial Group and its Litigation Controversy Department.

Mr. Chairman, Mr. Moss has the kind of background that regularly comes before the United States District Court here, particularly in administrative and constitutional law involving corporate and environmental law, anti-trust, national security, patent law, False Claims Act, contracts and commercial disputes. In his pro bono capacity, he has represented indigent individuals in criminal and civil matters.

Mr. Moss is highly regarded in the legal profession, has been recognized by the Chambers USA and Best Lawyers of America, among others.

He clerked for U.S. Supreme Court Justice John Paul Stevens. Before that, for Judge Pierre Leval at U.S. District Court for the Southern District of New York. Randolph Moss is a graduate of Hamilton College summa cum laude and Phi Beta Kappa, and of the Yale Law School, where he served as an editor of the Law Review.

Mr. Chairman, I think you will agree when you hear from him why his brilliant legal work and distinguished background and reputation led me to recommend him to the President, as I do to you this morning.

Senator DURBIN. Thank you very much, Delegate Norton. We appreciate your coming over to our side of the Rotunda.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Before I introduce André Birotte, whom I recommended to President Obama, let me first welcome Ronnie White back to the Committee. As I said in 2001, Justice White, I deeply regret what happened with respect to your nomination in the late 1990s. So I just want to say welcome, and to tell you that you have my support. I very much hope that you will be confirmed.

PRESENTATION OF ANDRÉ BIROTTE, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Let me now introduce André Birotte, who has earned the ABA's highest rating of Well Qualified. He is here with his wife, Rebecca, and his 7-year-old daughter, Yanick, and his two sons, André III and Jean-Pierre. And I know he is a proud family man. We discussed it earlier in his career, and he has just done fine in handling both.

He was raised in New Jersey. He earned his bachelor's degree from Tufts in 1987 and his law degree from Pepperdine in 1991. From 1991 to 1994, he served in the Los Angeles County Public Defender's Office, where he represented indigent defendants in more than 30 trials.

From 1995 to 1999, he served as an Assistant U.S. Attorney in Los Angeles. From 1999 to 2001, he worked as an associate at the private law firm Quinn Emanuel. In 2001, he became Assistant Inspector General for the Los Angeles Police Department, rising to the position of Inspector General in 2003.

Now, the creation of an Inspector General's Office for the Police Commission was one of the recommendations of the Christopher Commission, which was led by late Secretary of State Warren Christopher, and reviewed the performance of the Los Angeles Police Department following the beating of Rodney King in 1991.

As Inspector General, Birotte built a strong reputation for fairness, and earned the respect of all sides, including the law enforcement community. In 2009, then-Los Angeles Police Chief Bill Bratton, who is deeply respected on both sides of this Committee, wrote to me to express his, quote, "strongest endorsement and support," end quote, for Birotte.

As Chief Bratton said, in the approximately 6 years that I have known André, "Our working relationship has been one of transparency, cooperation, trust and respect," end quote. Bratton praised Birotte's judgment as principled and said he had done a commendable job as Inspector General.

In 2009, on my recommendation, Birotte was nominated to serve as U.S. Attorney for the Central District of California. He was confirmed on February 11th, 2010. His tenure as U.S. Attorney, candidly, has been a great success.

Let me start with national security. As Chairman of the Intelligence Committee, I know that efforts by the U.S. Attorney's Office in this arena often occur behind the scenes, but some of them do result in notable criminal convictions.

In one case, Birotte's office secured a conviction and 25-year sentence for a defendant charged with several crimes, including a conspiracy to import surface-to-air missiles. In another case, a pharmacist was convicted of providing money to terrorists with the intent that the money be used to attack U.S. personnel overseas, military personnel overseas.

I am very pleased that André Birotte, like many U.S. Attorneys, has made national security a top priority. Mr. Birotte's office has also focused on gangs and organized crime. In fact, during Mr. Birotte's tenure, the Office has secured lengthy sentences against

members and leaders of several major gang and organized crime organizations all across Southern California.

In one case, for example, a street vendor was targeted in a gang shooting which severely wounded the vendor and resulted in the death of a 23-day-old infant. One defendant, a member of the 18th Street Gang, was sentenced to life in prison on racketeering charges.

Recent LAPD statistics show a decrease in gang-related crime of 35.5 percent in Los Angeles since 2010. Obviously, this is due to the combined efforts of State, local and Federal law enforcement. Many deserve credit for it, but it is a significant decrease during Mr. Birotte's tenure as United States Attorney.

Birotte's office has also been active in protecting Californians against sex crimes and human trafficking. For example, a grand jury indicted eight people, four of which were alleged gang members, quote, "on charges related to the sex trafficking of teenage girls who were recruited and groomed to work as prostitutes across Southern California," end quote.

One of those defendants was sentenced to 30 years in prison. He was a gang member who admitted, quote, that he "used force, fraud and coercion to cause teenage girls to work as prostitutes across Southern California," end quote.

Prosecutors alleged that he not only used his fists, a cane, a shoe and other objects against the females, but that, quote, "He also pepper-sprayed one of the victims in her face," end quote, and, quote, "put a gun to the head of one of the victims."

In another case, Birotte's office secured a 25-year sentence against a man who molested children, photographed the abuse and traded images on the abuse on the Internet. His office also secured a 9-year sentence on a civil rights charge against a police officer who, following a traffic stop, forced a woman into an isolated parking lot and sexually assaulted her.

Birotte also created the Public Corruption and Civil Rights Unit of the U.S. Attorney's Office in Los Angeles. Since then, several cases have been brought against local officials alleged to have taken bribes. One major case is pending, I'm sorry to say, against a Democratic California State Senator who is alleged to have taken 100,000 in bribes from a businessman and from people he believed were associated with a Hollywood film studio.

Another major and very important case alleges serious misconduct and obstruction of justice by officers in the Los Angeles County jail system. This case is ongoing.

Americans rightly hold the law enforcement community and the rule of law in high esteem. In my view, this requires making sure that misconduct, when it does occur, is brought to light and action.

I take the time to outline this because I truly believe that André Birotte is one of the most outstanding United States Attorneys in this Nation and will be a fine judge.

Throughout his career, he has shown a profound commitment to fairness, to the rule of law and to making every decision on the merits. And this has earned him, in a big and often conflicted city, deep respect from communities from all sides of these questions. It is truly amazing.

He is supported not only by State and Federal law enforcement, but by the Central District's Federal Public Defender, Sean Kennedy. Kennedy told my selection committee that Birotte has, quote, "incredible judgment," end quote, and would make a, quote, "wonderful Federal judge."

I agree. I think he is a 10 who will bring exceptional skill, reputation and integrity to the Federal bench in the Central District. I hope his children are very proud of him, and I urge my colleagues to support him.

Thank you, Mr. Chairman.

Senator DURBIN. Thank you, Senator Feinstein.

I would now like to ask the nominees to please come to the witness table and, if they would remain standing for a moment, I will administer the customary oath.

Please raise your right hand. Do you affirm the testimony you are about to give before the Committee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. BIROTTE. Yes.

Mr. DEGRAVELLES. Yes.

Mr. MOSS. Yes.

Judge ROSENBERG. Yes.

Judge WHITE. Yes.

Senator DURBIN. Thank you.

Let the record reflect that the nominees have all answered in the affirmative.

I will now give each of you a chance to introduce your families and friends who have joined with you today, perhaps give a few words of opening remarks and then submit yourself to a questioning process.

Mr. Birotte.

STATEMENT OF ANDRÉ BIROTTE, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Mr. BIROTTE. All right. Thank you, Senator Durbin.

Senator Durbin and Ranking Member Grassley, I want to thank you and the entire Committee for convening this hearing this morning. I certainly want to thank our home-state Senators, Senator Boxer and Senator Feinstein.

Senator Feinstein, I want to thank you for the kind remarks this morning, and I want to thank you, your Judicial Advisory Committee, your statewide chair, David Casey, for not only this nomination here today, but for your support and your trust and confidence in me in your nomination of me as United States Attorney.

I certainly want to thank the President, President Obama, for this honor, an honor that my family and I will be eternally grateful for.

Speaking of family, I want to introduce, if I may, my family that is here today. My wife, Rebecca. I feel very fortunate that our paths crossed many years ago, because she has brought me joy from that day to the present. My lovely children, André III, who is nine; Yanick——

Senator FEINSTEIN. Stand up so we all can see you.

Mr. BIROTTE. André, can you stand?

My daughter, Yanick, who is seven, and my baby boy, Jean-Pierre. With three children, it is never a dull moment, as one might imagine, including getting them ready to be here this morning. But they bring immense joy to me and in many ways inspire me to be the best that I can be each and every day.

I want to also introduce some good friends that are present here today. My very close friend, Lamont Jones, who is present. Lamont and I were associates at Quinn, Emanuel. We have been best of friends ever since. In fact, he is the godfather of Jean-Pierre, and so this trip had the added benefit of reconnecting them.

My good friend Henry Kerner, who is here. Henry, he currently serves on the Permanent Subcommittee of Investigations for Senator John McCain. He and I met when we were both baby lawyers, he as a deputy district attorney and myself as a deputy public defender. And despite being on other sides of the aisle and trying cases for over a year, we became and remain best friends to this day, some 20 years later.

My brother, Edwin Birotte, in Florida, and my other brother, Patrick Birotte and his wife and my nephew and niece, Chloe and Patrick, couldn't be here, but they are watching via Webcast. And I have a number of friends and relatives that are also watching from the West Coast who got up early this morning, before their workday started, to watch this. And if I could, just want to mention a few names.

Certainly my mother-in-law and father-in-law, Ernie and—North. My sister-in-law, Ashley, and Pete Mejia, Rene and Rachel Cornejo, as well as good friends Chris and Karen Watson, as well as Jim and Jessica Dabney. I also have a number of high school friends and colleagues that are also watching via the Webcast, and I want to thank them all for doing so here today.

Certainly last but not least, I want to thank the two people without whom I would not be here, my parents, Dr. André Birotte and Graciane Birotte. I am the proud son of these two Haitian immigrants. My parents came over to this country by way of leaving Port-au-Prince to Mexico City, where my parents learned the language there and my father went to medical school there. From there, they went to, of all places, Newark, New Jersey, where my father started and built a successful medical practice and my mother got her teaching credential and started a nursery school that is running to this day.

My father, he passed away in 1998, although he was present to witness a personal dream of mine to become an assistant United States Attorney. And my mother, unfortunately passed away unexpectedly from a heart attack in October 2011, but she was there beaming with pride as I was sworn in as the United States Attorney.

They are the two individuals that taught me everything I know about hard work, counting your blessings, the importance of an education and giving back to your community. They are in every way, shape and form my role models.

So with that, I want to thank you all again, and I am ready to answer any questions you may have.

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

Senator DURBIN. Mr. deGravelles.

STATEMENT OF JOHN WHEADON deGRAVELLES, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF LOUISIANA

Mr. DEGRAVELLES. Good morning, Senator Durbin, Ranking Member Grassley, other Members of the Committee. I want to thank you very much for having this hearing and giving me the opportunity to answer any questions that you may have of me.

I want to especially thank Senator Landrieu for her very kind remarks, and both Senator Landrieu and Senator Vitter for their support in this process.

I want to thank President Obama for this extreme honor of being nominated and, hopefully, if fortunate enough to be confirmed, to have the opportunity to serve in the Middle District of Louisiana.

I have family members here also, Members of the Committee, which I would like to introduce, and some who are not here which I would also like to mention.

First and foremost is my wife and the love of my life for 44 years, Jan, who is here with me and without whom, whose support I would simply not be before you today.

I have my two children, both of whom are proud members of the legal profession, Neale and Kate. I also want to recognize my three grandsons: Rainier, who is age seven; Emmett, who is age four; and Rhodes, who just turned 1 year old.

With me today who flew in from San Francisco is my sister, Ann McBride Norton. Could not be with me is my sister, Claire Cloninger, and my twin brother, Charlie deGravelles.

I want to especially also recognize my mother, who is 98 years old and going strong. She is back in Lafayette, looking at this proceeding live. Hi, Mom. [Laughter.] And when we had Mother's Day recently, I told her that she inspires me every day, and she truly does.

My father died several years ago. He was also a tremendous inspiration to me, and I know he would be very excited to be here if he were alive, and I know he is also with us in spirit.

I have very, very good friends here with me today. Charlie McBride and his wife, Peggy Debell, who have been great friends and of lots of support during this process.

Finally, I would like to thank my law firm family back in Baton Rouge, my law partners and the wonderful and talented and hard-working people who help us in our law firm. So thank you all.

And thank you, Senators, for this opportunity.

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

Senator DURBIN. Thank you.

Mr. MOSS.

STATEMENT OF RANDOLPH D. MOSS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Mr. MOSS. Good morning. Thank you, Chairman Durbin. Thank you, Ranking Member Grassley. I would like to thank the Committee for holding the hearing today, I thank Chairman Leahy and Ranking Member Grassley for scheduling this hearing and Senator

Durbin for chairing it today. I thank Senator Feinstein for attending as well.

I would like to thank Congresswoman Eleanor Holmes Norton for her very, very kind remarks, as well as for recommending me to the President, and would like to thank the President for the honor of this nomination.

I would like to take a minute to introduce the members of my family. My mother, Adrienne Moss, is here today. I am someone who could not be more blessed to have such a wonderful mother, and I appreciate it every day. I am equally blessed by my wonderful wife, Liza, who is here. She is a lawyer at the Department of Justice, serves in the Criminal Appellate section.

Unfortunately, my daughter Emily could not be here today; she is 21 years old and studying abroad, and having the time of her life. My son, Will, is here. Will is missing one of the last 3 days of high school to attend today.

The last time I was before this Committee, Will was 3 years old. And to my great fortune and, I think, the great fortune of all of us, Will fell asleep in his mother's lap just as the hearing was beginning. But Will has assured me that that will not happen today.

My sister, Cindy, is here. She is a neuroscientist, studies echolocation in bats. My brother, Eric could not attend today. He is a lawyer, Senator Durbin, who lives in Chicago. And I would also like to just take a moment to recognize my father, who passed away three and a half years ago. There is not a day that goes by in which we all do not miss my father terribly. I know he would have very much enjoyed being here, and I am very sorry that he is not.

And I would just take a minute, just to thank my many friends and colleagues who have taken the time out of their days as well to attend today. So thank you.

Thank you, Ranking Member Grassley. Thank you, Senator Durbin.

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

Senator DURBIN. Thank you.

Ms. Rosenberg.

STATEMENT OF HON. ROBIN L. ROSENBERG, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA

Judge ROSENBERG. Good morning, Senator Durbin and good morning, Senator Grassley. I am so honored to be here today as a nominee for a U.S. District Court judgeship in the Southern District of Florida, which is my hometown where I grew up and began my career as a lawyer, clerking for a Federal judge right in the U.S. District Court of the Southern District of Florida.

I want to thank Senator Nelson and Senator Rubio for their support of me, and I want to particularly thank Senator Nelson for his remarks and acknowledge the long friendship that we have shared, that my family has shared with him over the years. And, of course, I want to thank President Obama for nominating me.

I want to thank all of the Members of the Judiciary Committee for holding this hearing.

I want to acknowledge some very important people who are here today, and I do not think I would be here without them. It is why I am who I am, I think, and how I got to where I am. So I would be remiss in not acknowledging them.

First and foremost, as Senator Nelson had pointed out, my parents are here from Florida, Dr. Marvin and Baylie Rosenberg. They have, throughout their life, at every juncture and every stage, instilled in me a hard-work ethic, a commitment to public service and a drive to do better, and never made me feel that there was something that I could not attain, and I always knew their support was with me.

And so it is why I believe I have been able to pursue the things I have in life and to give it 100 percent of who I am and what I have to give. And so I want to thank my parents for being here and for everything they have done for me.

Second, with great pride I acknowledge my husband, who is behind me, Michael McAuliffe. We have been married for over 20 years. He has supported me in all of my endeavors.

We met here in Washington, DC, at the Department of Justice. He is my rock and sets the standard high for me and my family. He is a well-regarded attorney. He has been a Federal prosecutor. He has been an elected State attorney in Palm Beach County, and he currently is a general counsel in the private sector.

Not surprisingly, I have to brag about my children as well. I have three wonderful children, all of whom are here from their various activities and places that they came in from. My oldest is Sydney McAuliffe, who just graduated on Friday from high school, from the Dreyfoos School of the Arts, and will be attending Duke University as a Robertson Scholar next fall. Duke is my alma mater from law school and a graduate degree in public policy.

Adin McAuliffe is a sixth grader, 12 years old, who is thrilled that Sydney is going to Duke, because he is an avid lacrosse player and has been enjoying watching the national champions return to the NCAA tournament this year.

And Madison McAuliffe, who is a ninth grader at Phillips Academy Andover, also my alma mater, brings such great pride and lights the world on fire with her smile and her intelligence and her athleticism.

I also want to acknowledge some friends who have been able to be with—well, I have other family members who could not be here, and want to just acknowledge them as well. I have two younger brothers, Gary Rosenberg, who is a doctor in California, and Jamie Rosenberg, who began Adopt a Classroom, the national program, who is in Miami. They each have three lovely children and together with my family, we are a very close and loving family.

Others in the audience who I would like to recognize, long-time friend Richard Ugelow. I began my career at the Department of Justice working with and under Richard in the Civil Rights Division. And Phil Yore [phonetic] is here, and I worked with Phil as well, and I am so delighted that he is here.

Other special friends are Eva and Sarah Abraham, who flew in from Florida to be with me.

Last, I would like to acknowledge and thank my colleagues in the 15th Judicial Circuit in Palm Beach County, where I do sit as a

State Court judge. I want to thank them for their friendship and their support, and all of the other friends and extended family members who could not be here today.

I welcome any questions, and I thank you for conducting this hearing and for considering my nomination.

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

Senator DURBIN. Thank you very much.

Mr. White.

STATEMENT OF HON. RONNIE L. WHITE, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI

Judge WHITE. Thank you, Senator Durbin and Ranking Member Grassley.

Senator DURBIN. Would you turn on your microphone there? There you are.

Judge WHITE. Thank you, Senator Durbin and Ranking Member Grassley, for holding this hearing this morning and providing us with the opportunity to appear before you.

I would like to thank Senator Claire McCaskill for the kind remarks and for recommending me to the President. And I would also like to thank Senator Roy Blunt for his participation in this process.

My son, Ronnie White II, graduated from law school on Sunday afternoon and is attending bar prep in St. Louis this morning, so he could not be here with me.

My wife, Sylvia, of 33 years, is at home waiting on the movers to bring back all of those things that left our home 3 years ago when Ronnie went away to school. So she is watching on the Webcast and could not be here.

I also would like to say that my law partners are watching on the Web, and a host of friends from Missouri, and they are all excited about my opportunity to appear before this Committee.

Thank you.

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

Senator DURBIN. Thank you very much, Mr. White.

Senator GRASSLEY. Could I ask questions——

Senator DURBIN. Oh. Senator Grassley has a schedule issue, so please proceed.

Senator GRASSLEY. I only wanted to ask Justice White questions. I will submit other questions for answers in writing, because I have to be on the floor at 10:45, so I am not even going to be able to go very deep with you, Justice White.

But history turned out that you were right in the controversial decision you were involved in the previous time you were before us. I am not going to go through the history of the Roper case, but it does bring up the issue of what you think about precedent of the Supreme Court.

And now the Supreme Court has ruled that the execution of younger people is a violation of the Eighth Amendment. So I am going to have two questions and one statement.

Before you answer the first question, let me go to the second one. I would like to have you explain your rationale for joining the Mis-

souri Supreme Court majority in Roper, even though binding precedent from the U.S. Supreme Court at that time contradicted the holding of the Missouri Court.

And then a statement I would make, that when you joined the majority in Roper, I assume that you were aware the U.S. Supreme Court had denied habeas corpus petition in several cases, in 2002 and 2003, that raised the same arguments that you and the majority of the State Court supported.

And then my second question is, given your support for the Missouri Court's decision in Roper, what can you do to assure the Members of this Committee that you are serious about respecting the binding precedence of the U.S. Supreme Court?

Judge WHITE. Ranking Member Grassley, regarding the Roper decision, there was a decision handed down by the Supreme Court in Atkins versus Virginia that had ruled that the States would no longer execute people who are mentally retarded and that were found guilty of murder.

So we applied that rationale to the Roper case, to say that maybe the national consensus had evolved to a point where they would no longer kill juveniles under the age of 18.

Senator GRASSLEY. Well then, the Stanford decision was binding at that particular time, was it not, in addition to the Aiken [phonetic] case? And so I am speaking about the Stanford precedent.

Judge WHITE. Yes, it was, sir.

Senator GRASSLEY. All right. So then would you summarize for us what you can do to assure the Members of the Committee that you are serious about respecting binding precedence of the Supreme Court? Or, I suppose, what you just told me; you were respecting it at that particular time?

Judge WHITE. At that particular time. Senator——

Senator GRASSLEY. Go ahead.

Judge WHITE. Senator Grassley, if I am fortunate enough to be confirmed by this Committee, by the Senate, I would follow all binding precedent from the Supreme Court and the Eighth Circuit Court of Appeals, and that would be my role as District Court judge.

Senator GRASSLEY. All right, thank you.

Thank you, Mr. Chairman. I have to go.

Senator DURBIN. Thank you very much, Senator Grassley.

I will have a question of each of the nominees, and then other written questions may be sent your way. And if you will respond to them in a timely fashion, we would certainly appreciate it.

Justice White, it is not often that the Senate gets a do-over. And in your case, it is long overdue.

Judge WHITE. Thank you.

Senator DURBIN. I was new to the Committee when you were first nominated to serve on the Federal District Court, and I can remember in vivid detail your experience. I do not want to dwell on the past. I want to look forward to the future and look forward to supporting you again for the Federal District Court bench.

I want to commend Senator McCaskill for nominating you, sending your nomination our way through the President, and also to Senator Blunt, who, as you have noted, participated in bringing you before this Committee.

It is a rule of the Committee that a blue slip needs to be signed by both Senators before a person can come before us, and Senator Blunt signed that slip. So at this point, you are here today, at least with the tacit approval of Senator Blunt to move forward in the process.

When you were nominated before, the issue that was raised during your nomination related to the support of law enforcement for your nomination to the Federal bench. I note that Chairman Leahy has received a letter on May 13th from the president of the Fraternal Order of Police, Missouri State Lodge, in relation to your nomination. And without objection, it will be placed in the record.

I would like to quote from that letter. And it reads, "From the Missouri Fraternal Order of Police. As the elected representative of over 5,400 law enforcement officers across the State of Missouri, I am urging your Committee to vote out the nomination of Ronnie White for the open judicial seat in the U.S. District Court for the Eastern District of Missouri. We would then be hopeful the Senate confirms his nomination.

"We do not take such stances lightly. As front-line law enforcement officers, we recognize the importance, the need to have jurists such as Ronnie White, who have shown themselves to be tough on crime, yet fair and impartial. As a former Justice of the Missouri Court of Appeals and as a Chief Justice of the Missouri Supreme Court, Ronnie White has proven that he has the experience and requisite attributes to be a quality addition to the U.S. District Court. We can think of no finer or more worthy nominee."

Judge White, this is a compelling letter from what may be the largest law enforcement organization in your State.

Would you please reflect, as an attorney, a judge, a justice on Missouri's Supreme Court and someone with life experience, on the appropriate role of a judge when it comes to dealing with issues of justice, dealing with law enforcement and the protections of our Constitution?

Judge WHITE. I believe the role of the judge, Senator, is to apply the law to the facts and to exclude any other personal opinions or prejudices he or she may have, and make the judgment based on what is before them, nothing more, nothing less.

Senator DURBIN. Would you comment specifically on the issue of the death penalty, which was raised in your previous nomination hearing?

Judge WHITE. Senator, during my term as a Supreme Court judge in Missouri, I have written opinions affirming the death sentence. I have concurred in opinions that affirmed the death sentence, and I have also signed the appropriate letters to carry out executions.

And I would follow the precedent of the Supreme Court in the Eighth Circuit as it relates to the death penalty.

Senator DURBIN. I thank you for that.

Mr. Birotte, I cannot recall a more positive introduction by a Senator of a nominee than Senator Feinstein's introduction of your nomination.

You have served on both sides of the table in the courtroom. There are many people who, walking into a court, look up at that judge and think, "I do not have a chance. This system is rigged

against me. I am poor; I am a minority; I do not have the best attorney; I do not have any wealth." What is your message to that defendant looking up to the potential of a Judge Birotte?

Mr. BIROTTE. Thank you, Senator Durbin.

I think the message that I would hope, if I were fortunate enough to be confirmed, is that I would provide a courtroom that was a forum where anyone, regardless of background, ethnicity, wealth, what have you, would receive a fair and full hearing in the courtroom, with a well-reasoned, well-researched decision. And so for any individual, I would hope that they would feel that they would get a fair hearing.

Having served on both sides of the aisle, if you will, as a defense lawyer, prosecutor, civil practitioner and then as inspector general, I like to think that that background and experience would prepare me well for an opportunity to serve on the bench and would afford individuals the sense that I would be completely fair and they would get a fully hearing.

Senator DURBIN. One of the things you undoubtedly experienced, as many of us who practice have experienced, is that some judges with lifetime appointments become imperial and believe they are beyond reach of ordinary human beings.

How do you maintain the dignity of the bench and yet the approachability of a system of justice?

Mr. BIROTTE. Well, I like to think that my background and my reputation would speak to that issue. I have always maintained the view that while I am certainly fortunate to have the positions that I had, I am a human being and I am no different than any other individual that I deal with.

I may have a title, per se, but I have a background and experience that helps me relate to other human beings. And so I would like to think that if I were fortunate enough to be confirmed as a District Court judge, that would always remain with me.

Those experiences representing individuals, indigent defendants, prosecuting individuals, working within the Los Angeles City and dealing with the various communities throughout that very large city, I think would help keep me grounded, if I were fortunate enough to be confirmed.

Senator DURBIN. Thank you.

Mr. deGravelles—did I pronounce that correctly?

Mr. DEGRAVELLES. Yes, Senator.

Senator DURBIN. After 6 years of French, I ought to get something right.

[Laughter.]

I find it amazing in your background that you have taken 45 cases to trial by jury and participated in hundreds, overall. You are truly a trial attorney, which is a rarity these days. Most trial attorneys seldom have a trial, and you have had many in the course of your life. You are engaged in litigation now, as you approach this nomination.

And you have been before many judges and juries. What is your observation on the role of the judge and the best judge in that circumstance?

Mr. DEGRAVELLES. Well, there is certainly a fundamental difference, as you know, Senator, from the role of the advocate versus

the role of the judge. The advocate has to zealously put forth his client's position.

Bit when you become a judge, it is an entirely different matter. You are there to serve everyone in the courtroom, both sides of the courtroom. And I believe that integrity best describes what a judge should be.

And by that, I mean not just fairness and not just honesty, but approaching every issue, every case, with an open mind, no preconceived agenda, no preconceived idea of who should win or lose, and simply applying the binding precedent to the facts in the case.

Senator DURBIN. Would you say that most of your work in the trial court has been as a plaintiff's attorney?

Mr. BIROTTE. Yes, it has, Senator.

Senator DURBIN. And I note that you are currently involved in litigation related to the 2010 Deepwater Horizon oil rig fire that led to 11 deaths in the oil spill in the Gulf of Mexico.

This litigation involves thousands of claimants seeking compensation for injury, property damage and economic loss.

You have also represented the family, I believe, of one of the men who was killed on the rig.

Mr. BIROTTE. Yes, sir.

Senator DURBIN. Could you give us kind of a background or a discussion on this case and your involvement?

Mr. BIROTTE. A very, very tragic case, of course, Senator. It is the largest natural environmental disaster in the history of this country, and it has led to, I think, one of the largest pieces of litigation in trials in the history of our country.

So it is a tragedy, but out of that tragedy I think that the United States District Court for the Eastern District of Louisiana has done a magnificent job of taking an incredibly complicated case, lots of different kinds of laws—as you just mentioned, really hundreds of thousands of claimants, legions of lawyers and so all sorts of issues, and has done a magnificent job of being able to marshal all of that in a way which I think is progressing forward

This particular judge vowed at the beginning of this case that he was not going to allow this to be the Exxon Valdez, which took some 20 years to get finally to the end of the resolution.

So while this case is not close to being over yet, I think it is really a model in terms of complex litigation and how a judge can and should handle an extremely difficult and complicated case.

Senator DURBIN. Thanks.

Mr. Moss, you have got quite a background. But one of the things in your background stands out, as you might expect, representing the great city of Chicago, and that is your clerkship for Supreme Court Justice John Paul Stevens.

Could you comment on that experience and what you learned?

Mr. MOSS. Thanks for the question, Senator. It was an absolutely wonderful experience, and I have to say that I have been extremely fortunate in both of the clerkships that I had. It is hard to imagine sort of a better path.

I was able to actually clerk on the District Court for Pierre Leval, who was one of the great, at that time, District Court judges in the country—he is currently on the Court of Appeals—and got

to see how the District Court worked, and learned about that process from a real master in the process.

And then had the privilege to go on from having clerked on the District Court and clerking for the Supreme Court for Justice Stevens.

And I often tell people the story when I went down to interview with Justice Stevens and I convinced myself going into the interview that there was no way I was going to get the job because it was the easiest way to deal with the stress.

And I remember going back on the train back to New York afterwards and thinking to myself, "I am really disappointed I am not going to get this job, because I liked him so much. He was such a decent human being."

And I think that one of the things that I very much learned from Justice Stevens that I think is very important just in judges in general is the sense of humility, and that he is a public servant, was a public servant, somebody who approached every case and gave it his absolute best, not only to reach the right decision in each case, but to explain why he reached that decision in the case.

So it is hard to imagine someone who has been as lucky to have clerked for two such wonderful judges.

Senator DURBIN. Mr. Moss, last year you signed on to an amicus brief in the case of U.S. versus Windsor. This was a case in which the Supreme Court struck down the Defense of Marriage Act.

Your brief, which was joined by several former solicitors general and White House counsels, as well as other former senior Department of Justice officials, argued that it was proper for the Court to exercise jurisdiction to resolve a case in which the executive branch enforces a law but refuses to defend the law in court.

Since this was such an anomaly, this is so rare in our history, tell us about that brief and your decision to sign it.

Mr. MOSS. Thank you, Senator Durbin.

It is rare, where the executive branch decides to enforce a law but not defend it. And it is appropriately rare in the overwhelming majority of cases the Department of Justice does decide to defend cases and will make whatever reasonable arguments it can in defense of the constitutionality of a statute.

The point that we were making in the brief, and as you noted, it was a bipartisan group that signed on to the brief, was that the Court should exercise jurisdiction in a case like that. Because if the Court did not exercise jurisdiction, then it left it to the executive branch alone to decide on the constitutionality of the statute.

In our view, it was preferable to have a world in which it was the courts that would ultimately have the authority, and the Supreme Court that would ultimately have the authority, to decide on the constitutionality of the statute.

Senator DURBIN. Thank you.

Judge Rosenberg, you too have had an amazing career in the practice of law. And I will not read through all of the things that you have done, but I will note that while you were working in private practice at several major law firms, at one point before assuming the bench in Florida, you served as a mediator.

There seems to be a growing trend in American jurisprudence toward mediation and arbitration as an alternative to litigation.

What does that say about our system of justice, and those who would like to avail themselves of it but think there are better alternatives?

Judge ROSENBERG. Sure. Thank you, Senator Durbin, for the question and thank you for asking me about a topic, actually, that I feel so strongly about.

Not only was I a certified mediator, but actually began a mediation company in Palm Beach County that had about 25 or 28 mediators who worked as independent contractors—many of whom, by the way, were retired judges who were serving as mediators. And that also is a common trend. Many judges then go on to mediate.

In the State of Florida, mediation is a requirement, so no case actually can go to trial in the State before it goes to mediation. And that too has become a growing trend throughout the country.

It does not speak less of our judicial system, but what it does show is that there are meaningful alternative ways to resolve disputes. I think anyone who has been in a courtroom, whether as a judge or as a seasoned trial attorney or U.S. attorney, knows the stresses, the burdens, the length of time, the cost, the toll that litigation can take on individuals and entities.

And to have an alternative like mediation where parties can come together, where communication channels are open that otherwise perhaps have not been opened when litigation becomes very adversarial, is a very, very important process and oftentimes leads to resolution with less cost, with less stress, with less burden on the courts.

Certain cases can only be resolved in court. And if we can find a way in which more cases can be resolved through mediation—which is a voluntary process, so the parties have to want to do it; they have to go to mediation, but no one is compelling them to resolve—but they begin to see things about their case in ways that perhaps they had not thought about before. And they begin to communicate with the other side, whether directly or through the mediator; that is a very, very important component of the entire litigation process, and I firmly believe in it.

Senator DURBIN. So let me ask you about the other side of that coin, the arbitration process, where many people may not even realize that they have signed away, in many contractual relationships, their right to go to court.

And obviously there are some who believe that it is to their advantage not to put a question before a judge or a jury. What do you think of that aspect?

Judge ROSENBERG. I think that that is a very good question, and I thank you for that.

I have been in the position, both in my practice of law as an employment lawyer, many contracts that are entered into have arbitration provisions. So I am well familiar with how a provision is put into a contract and to whose advantage one might perceive that to be.

And also there has been a lot of litigation, even in State court, on the enforceability of arbitration provisions. And many times arbitration provisions are not upheld, because they are found to be unconscionable. They are either substantively or procedurally found to be deficient.

And so there are checks and balances, I believe, in place to ensure that there is an equal playing field so that when one enters into a contractual provision to sign away, if you will, their important rights to have a day in court—and that is everyone's right—that they do so knowingly, voluntarily and intelligently.

Senator DURBIN. Justice White, many lawyers are critical of judges for taking way too long to reach a decision, and that is what leads them to alternatives, in looking for mediation or some other approach.

I do not know if that reflects the caseload. Maybe it does, in some cases that the judges face, the nature of the judge's decision process, or just fear of taking on something controversial. What has been your experience?

Judge WHITE. It——

Judge ROSENBERG. Oh, I am sorry. Was that directed to me?

Senator DURBIN. Judge—I will come back to you, but Justice White. And then I will come back to you, Judge Rosenberg.

Judge ROSENBERG. All right.

Judge WHITE. My experience, Senator, has been all of the items you just listed go into the factoring of why judges take so long to rule.

But it would appear to me that if a judge is actively involved in the case early on, it could lessen some of that at the end, because they would have monitored the process of the case throughout the time it was in their court docket system.

So I think if a judge is actively involved, has rule 16 hearings, watch out for what is happening on case management, roll up his or her sleeves and decide motions immediately or shortly after they are filed, that those cases can proceed and get through to trial or some kind of resolution.

Senator DURBIN. Judge Rosenberg?

Judge ROSENBERG. Sorry for jumping in.

I think that access to courts is so vitally important. And encompassed in access to court is the timeliness of a court's ruling. A judge is there to not only make the substantive ruling, but to manage a docket and to ensure that cases move along.

In the State court, our caseload is very high. So I have been in a civil division in Florida that has had upwards of 900 cases; a foreclosure division that has had 15,000 cases; and now a criminal division that has about 900 cases, with 200 new cases coming in every single week.

And so managing the caseload is a very, very important job, I believe, of a judge. And a judge needs to know his or her cases. And you can do that in many ways, calling case management conferences, issuing a scheduling order.

Being involved in the case and knowing that the case needs to move along in a timely fashion is, I think, very, very important so that people who need to have their matters heard do have them heard within a reasonable time period.

Senator DURBIN. Mr. Birotte, it was about 30 years ago that the Congress and President decided to impose mandatory minimums in the sentencing process in Federal courts. And one could argue that as a result of that, the Federal prison population has increased 500 percent in the last 30 years, leading to the point where the United

States has more people in prison per capita than any nation on Earth.

We are reviewing that now. In fact, this Judiciary Committee recently took up a bill that I have worked on with my Republican colleagues on the issue of mandatory minimums.

You faced this issue as a defense attorney in some fashion, but you certainly faced it as a U.S. Attorney and now may face it as a member of the Court. What are your thoughts?

Mr. BIROTTE. Well, obviously, as you mentioned, you have been proactive in this. The Attorney General has spoken on this issue. As an employee of the Department of Justice, our job is to enforce and act out the will of the Attorney General.

As a District Court judge, my role would be to follow the precedent, whatever the rule of law is at the time. If the sentencing guidelines change or if there is a reduction in those, I would apply those and I would make sure that I stay consistent in that regard.

Senator DURBIN. So I am asking you to reflect on your experience as U.S. Attorney, because you were at a different point in the process, and you had mandatory minimums on your side as a prosecutor.

We have in Illinois something known as the Illinois Innocence Project, which has successfully found many cases where people were wrongly convicted. And many times they pled to crimes that they did not commit. They feared going in to a courtroom, sometimes a black defendant facing an all-white jury, sometimes facing a mandatory minimum that was awful in terms of its length and duration.

Reflect on that as U.S. Attorney in how you view that issue.

Mr. BIROTTE. As U.S. Attorney, we have been very proactive in looking precisely at that issue. That is why the Attorney General has issued his Smart on Crime Initiative. In his remarks outlining the Initiative, he points to a program that we have in our district.

It is called the Conviction and Sentencing Alternative Program, where we look at individual cases, individual defendants and their individual circumstances and, where appropriate, we determine if there were some other outlying circumstances that led them to this path.

So, for example, if someone has a drug or narcotics or alcohol addiction, we can get them into a program that will help deal with those issues and perhaps, if they complete the program, will either rid of that conviction or reduce the sentence in that program.

In fact, I just spoke at our fourth graduation of that program. It is something that I have been committed to as U.S. Attorney, and I have always thought that it is important to look at our sentencing system to make sure that we are utilizing it in cases that have the biggest impact on the most deserving defendants.

Senator DURBIN. Mr. Moss, one of the things we are finding, more at the State level than Federal, are special courts—veterans' courts, drug courts. And what they are basically trying to do is to find some other avenue of justice that has a better outcome and really gives a person a better chance than they might have in the ordinary criminal justice system as we know it.

What are your thoughts on that?

Mr. MOSS. Thank you, Senator.

That is not an issue that I have focused on in the past. I do think that it is important that, really more as a matter of policy than as a judge, that people analyze how best to dispense justice and look for the opportunities to do so.

As a judge, though, of course, the obligation will be to simply decide the cases that fall within your jurisdiction, as has been defined by the Congress. And if I am fortunate enough to be confirmed, that is what I would do.

Senator DURBIN. Thank you.

Mr. deGravelles, I want to return to that issue of mediation and arbitration, because I think that might be something of interest in your practice.

Mr. DEGRAVELLES. Yes, it is, Senator. All experienced trial lawyers have seen, over the years, an evolution in the mediation realm. And when I started practicing law, it was the old-fashioned way of writing a letter to the adjustor, picking up the phone and negotiations went on and on and on endlessly.

So while I am a trial lawyer, I also recognize the value of mediations. And in the context of a United States District Court judge, I think some of these judges have been very wise to assign to the magistrates in their courts the duty to encourage settlement, to involve the parties in settlement discussions and mediations. Because in terms of case management, that is oftentimes a very fair and a very efficient way to resolve cases.

So I think mediation is very much in vogue and, I think, rightly so.

Senator DURBIN. The last question I will have relates to community service and pro bono work.

As a profession, lawyers, I think, have a special responsibility in that regard. And I would like each of you, if you would reflect for just a moment on something that you have been involved in, a case or a cause involving pro bono work in your career.

Mr. White.

Judge WHITE. Over the course of my career, I have been involved in a number of pro bono actions. Right now, I am a member of the Guardian Angels Settlement Association Board in St. Louis, which is a social service agency that helps underprivileged children get started in life with housing, education and food and stuff like that.

I have also participated as a coach of Little League baseball, football, soccer, and I think that is important.

So that is what I have done in my career.

Senator DURBIN. Judge Rosenberg.

Judge ROSENBERG. I, for the past seven or 8 years, have not been able to sit on boards and to be active in the community in the same ways that I was before I became a judge, because of the ethical constraints placed on a judge.

Prior to becoming a judge, some of the endeavors that I was most interested and active in were a program called the Children in Crisis, to help children in need of services. The Cystic Fibrosis Foundation, a very close friend of mine has died of Cystic Fibrosis and I have devoted a great deal of my time, before I became a judge, to starting an organization in memory of him. So those are some of the activities prior to becoming a judge that have been important

to me in my community, as well as my children's schools and their activities as well, of course.

Senator DURBIN. Mr. Moss.

Mr. MOSS. Thank you, Senator Durbin.

Over the course of my career, I have been involved in a broad range of pro bono matters, both involving civil law as well as criminal law.

One of the observations I would have about pro bono, if it is someone who is practicing in a law firm, is that it is not only of a great service to the community, but it actually is a great service to the younger lawyers in the law firm, to give them the opportunity to obtain experiences that they might not be able to obtain in very large, complex, paying cases. So I think that is another important aspect of pro bono work.

Senator DURBIN. Mr. deGravelles.

Mr. DEGRAVELLES. Yes, Senator, as Senator Landrieu mentioned in the introduction, following Katrina, Hurricane Katrina, we had many, many lawyers whose homes were destroyed, whose offices were destroyed, whose files were destroyed. They were entirely displaced and looking really to survive professionally.

And so I headed a committee at the Louisiana Association of Justice to assist in finding places for these folks to live, finding places for them to practice and helping to rebuild their practices and, really, in the circumstance of their lives as well.

In addition, I volunteered to be a pro bono attorney in a post-conviction proceeding for a death row inmate at Angola, Allen Robertson, and for six or 7 years participated actively in his post-conviction proceedings. In fact, we were encouraged to do it as civil lawyers because there was a lack of public defender-type resources to really do the kind of job that these folks deserved.

Senator DURBIN. I might just add, before I ask Mr. Birotte the same question, we recently had a hearing on segregation and solitary confinement. One of the witnesses had been on death row at Angola for 15 years before he was released and exonerated for the charges.

He would not be alive today, were it not for his attorney, who begged him not to give up at the very end. And now he is back leading a life. So it can make a significant difference.

Mr. Birotte.

Mr. BIROTTE. Senator Durbin, as Inspector General and as United States Attorney, I have been limited somewhat in their traditional pro bono activities. But what we have tried to do, certainly in my time as U.S. Attorney, is to make sure and translate that, if you will, to a very extensive community outreach campaign.

We have hosted a host of summits and seminars to educate the residents of our district on the various crimes, scams, et cetera, to educate them.

But one program that I think was innovative in our office that we did to connect with our community is our participation in what is known as a Summer Night Lights program. Every summer the Los Angeles Unified School District—or the city of Los Angeles, I should say—opens parks.

The statistics have shown that crime spikes during the summer months between Thursdays and Sundays, and the city took a lead-

ership role in opening parks from 6 p.m. till midnight on those days to provide a forum where the community could engage and have a safe venue.

I participated in that program and got our office to participate in that program over the last several years, and we have adopted a park in South Los Angeles where Assistant United States Attorneys and the staff of our office go out there every Thursday night, cook hamburgers, hot dogs, engage in reading circles, face painting.

In fact, this past summer we started a tennis clinic, and it was so successful that every Thursday evening we had lines of more than 30 or so young folks and adults wanting to learn how to play tennis. And it allowed us an opportunity to connect with the community in a way that they were not used to.

In fact, I often tell the story of being out there during the summer months and speaking with individuals. And we do not really fly the flag, if you will, and tell folks what we do. But someone asked, "What do you do?" And I said, "I am a lawyer." "Where do you work?" "At the Department of Justice." And his reaction was, "I thought all you all do is put us in jail." And my response was, "We do do that, and we do it well." [Laughter.] "But we also believe in the importance of engaging in our community so that they see us in a different light."

Senator DURBIN. Thanks.

Thanks to the nominees and your family and friends in attendance today. We will keep the record open for a week. You may have a question come your way, and if you have any other additional letters or statements and such, they will be entered in the record during that period.

I thank you all for being here today, and this Committee will stand adjourned.

[Whereupon, at 11:12 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, May 20, 2014
Dirksen Senate Office Building, Room 226
10:00 a.m.

André Birotte, Jr., to be a United States District Judge for the Central District of California

John W. deGravelles, to be a United States District Judge for the Middle District of Louisiana

Randolph D. Moss, to be a United States District Judge for the District of Columbia

Robin L. Rosenberg, to be a United States District Judge for the Southern District of Florida

Ronnie L. White, to be a United States District Judge for the Eastern District of Missouri

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   André Birotte, Jr.

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

   United States District Judge for the Central District of California

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

   United States Attorney's Office
   312 North Spring Street
   12th Floor
   Los Angeles, California 90012

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

   1966; Newark, 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.

   1988 – 1991, Pepperdine University School of Law; J.D., 1991
   1983 – 1987, Tufts University; 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.

   2010 – Present
   United States Attorney's Office for the Central District of California
   312 North Spring Street
   12th Floor
   Los Angeles, California 90012

United States Attorney

2003 – 2010
Los Angeles Police Commission
201 North Figueroa Street
Los Angeles, California 90012
Inspector General

2003 – 2004
University of Southern California
Gould School of Law
699 Exposition Boulevard
Los Angeles, California 90080
Adjunct Professor

2001 – 2003
Los Angeles Police Commission
201 North Figueroa Street
Los Angeles, California 90012
Assistant Inspector General

1999 – 2001
Quinn Emanuel Urquhart & Sullivan
865 South Figueroa Street
Tenth Floor
Los Angeles, California 90017
Associate

1995 – 1999
United States Attorney's Office for the Central District of California
312 North Spring Street
Los Angeles, California 90012
Assistant United States Attorney

1991 – 1994
Los Angeles County Public Defender's Office
210 West Temple Street
Los Angeles, California 90012
Deputy Public Defender

January – April 1991
United States Attorney's Office for the Central District of California
312 North Spring Street
Los Angeles, California 90012
Volunteer Law Clerk

May – August 1990
San Diego County Public Defender's Office
233 A Street
San Diego, California 92101
Legal Intern

June – September 1989
Kohrs & Fiske
3250 Ocean Park Boulevard
Santa Monica, California 90405
Law Clerk

1987 – 1988
Bross, Strickland, Cary & Grossman
17 Academy Street
Newark, New Jersey 07105
Law Clerk

Other affiliations (uncompensated):

2007 – 2010
National Association of Civilian Oversight of Law Enforcement
Post Office Box 1737
Indianapolis, Indiana 46206
President (2010 until resigning upon becoming U.S. Attorney)
President-Elect (2009)
Board of Directors (2007 – 2009)

1992 – 2003
Langston Bar Association
Post Office Box 811985
Los Angeles, California 90081
Board of Directors
Board of Directors (1992 – 2003)
Treasurer (2001 – 2003)

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

   I have not served in the United States Military. I have 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.

Service Appreciation Award, California Narcotics Officer Association (2013)
Champion of Justice Award, Black Prosecutors of Los Angeles (2013)

Leadership Award, Gamma Zeta Boule Foundation (2012)

Certificate of Appreciation, Environmental Protection Agency (2012)

Humane Law Enforcement Award, Humane Society (2012)

Prosecutor of the Year, Los Angeles County Bar Association (2011)

Loren Miller Lawyer of the Year, California Association of Black Lawyers (2011)

Honorary Membership Award, Shomrim Society (2011)

Trailblazer for Justice Award, All People's Community Church (2011)

Community Achievement Award, Orange County Korean American Bar Association (2011)

Appreciation Award, Armenian Bar Association (2011)

Distinguished Alumnus Award, Pepperdine University School of Law (2010)

Service Appreciation Award, Federal Bureau of Investigation (2010)

Distinguished Service Medal, Los Angeles Police Commission (2010)

City Resolution, Mayor and City Council of Los Angeles (2010)

Appreciation Award, International Anti-Counterfeiting Coalition (2010)

Wind Beneath My Wings Award, The National Association of Black Law Enforcement Executives (2008)

Award of Appreciation, International Law Enforcement Auditors Association and Los Angeles Police Department's Audit Division (2007)

Community Service Award, Edelbrock Motorcycle Performance (2005)

Award of Appreciation, Urban Issues Breakfast Forum of Greater Los Angeles (2004)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the

titles and dates of any offices which you have held in such groups.

Attorney General's Advisory Committee (2014)

Attorney General's Advisory Committee Subcommittees and Working Groups
- Terrorism and National Security Subcommittee
  - Co-Chair (2013 – Present)
- Financial Fraud Enforcement Task Force Consumer Protection Working Group
  - Co-Chair (2012 – Present)
- Civil Rights Subcommittee (2010 – Present)
- Violent and Organized Crime Subcommittee (2010 – Present)
- Cyber and Intellectual Property Subcommittee (2010 – Present)
- Border and Immigration Law Enforcement Subcommittee (2010 – Present)
- White Collar/Fraud Subcommittee (2010 – Present)
- Resource Allocation Working Group (2012 – 2013)

Langston Bar Association
- Board of Directors (1992 – 2003)
- Treasurer (2001 – 2003)

Los Angeles County Bar Association
- Judicial Appointments Committee (2002 – 2008)
- Criminal Law Executive Committee (2002 – 2010)
- Temporary Judge Program (1996 – 2010)
- Criminal Law Section (1991 – 2010)

10. **Bar and Court Admission**:

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

California, 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 Court of Appeals for the Ninth Circuit, 1995
United States District Court for the Central District of California, 1991
California State 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.

Countrywide Criminal Justice Coordination Committee (2011 – Present)

Inter-Agency Council on Child Abuse and Neglect (2011 – Present)

National Association of Civilian Oversight of Law Enforcement (2005 – 2010)
President (2010 until resigning upon becoming U.S. Attorney)
President-Elect (2009)
Board of Directors (2007 – 2009)
Finance Committee Chair (2007 – 2008)
Working Group on National Guidelines for Police Monitors (2008)

Omega Psi Phi Fraternity Incorporated (1987 – Present)

Sigma Pi Phi Fraternity (2010 – 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.

I believe that Omega Psi Phi and Sigma Pi Phi Fraternity limit their membership to men. Otherwise, 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.

Message from the United States Attorney, Website for the United States Attorney's Office for the Central District of California. Copy supplied.

Prosecution of "Sextortionist Luis Mijangos," Website for Department of Justice, Office of the United States Attorneys. Copy supplied.

The Eagle Task Force: Prosecuting Export Violations in the Central District of California, Website for Department of Justice, Office of the United States Attorneys. Copy supplied.

Unsung Heroes of the Ocean, Santa Barbara Independent, June 2011. Copy supplied.

Protecting Civil Liberties: A Vital Goal, Los Angeles Daily News, May 2011. Copy supplied.

In May 2010, Police Chief Magazine published the article *Developing Effective Interactions* which I co-authored with two members of the Los Angeles Police Department. Copy supplied.

Letter to the Editor, Los Angeles Magazine, September 2007. Copy supplied.

The Reorganization of the Office of the Inspector General, Los Angeles Police: The Beat, August 2005. Copy supplied.

Categorical Uses of Force and the Office of the Inspector General, Los Angeles Police: The Beat, August 2004. 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.

Along with Stuart F. Delery, the Principal Deputy Assistant Attorney General for the Civil Division, I have been the co-chair of the Consumer Protection Working Group on the Attorney General's Advisory Committee since 2012. In that capacity, I helped to review the *United States Attorney Toolkit for Military Consumer Fraud Enforcement*, which was published in March 2013. Copy supplied.

From 2003 to 2010, I served as Inspector General of the Los Angeles Police Commission. In that capacity, the office was responsible for investigating and reviewing investigations regarding the conduct of members of the Los Angeles Police Department ("LAPD") with respect to allegations of misconduct. The office also performed audits of various LAPD operations and reviewed LAPD internal investigations and audits to ensure compliance with both LAPD policies

and mandates from a Federal Consent Decree. A majority of the work resulted in public reports and recommendations that were submitted to the Commission for consideration. The Commission met on a weekly basis in a public forum to discuss, among other things, these reports and any recommendations made by the office. Copies supplied where available.

In 2008, I participated in a working group as part of my involvement in the National Association of Civilian Oversight of Law Enforcement. The conveners of the working group produced a report entitled "National Guidelines for Police Monitors." 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 14, 2010: Memorandum submitted to the California State Bar from United States Attorney André Birotte Jr (CDCA), United States Attorney Laura E. Duffy (SDCA), United States Attorney Joseph P. Russoniello (NDCA) and United States Attorney Benjamin B. Wagner (EDCA) regarding the Proposed California Rules of Professional Conduct 1.11, 3.8(g) and (h), 8.4(c) and 8.5(b). Memorandum and exhibit supplied.

As Inspector General from 2003 to 2010, I regularly attended Police Commission meetings. Minutes supplied where available.

On June 30, 2004, I made a presentation before Mayor Hahn's Monitoring Committee. I have been unable to locate any 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.

I have to the best of my ability listed all of the remarks, speeches, lectures, and conference discussions that I have participated in. In my capacity as U.S. Attorney, I have participated in numerous panels and provided remarks and speeches at numerous events typically centering on subjects such as the work of the Central District of California, law enforcement initiatives, and community outreach and engagement as it relates to the Central District of California. I have thoroughly searched my records and my files as well as my time records at the

United States Attorney's Office, conducted a search of the files of my communications staff at the United States Attorney's Office and also conducted an Internet search. I have compiled a list that reflects my records and the records of my staff and supplied copies wherever possible. In many instances, the copy I have provided is only a working draft for my remarks and my public remarks may have deviated in some respects from my working drafts.

March 14, 2014: Speaker, U.S. Attorney Awards, U.S. Attorney's Office for the Central District of California, Los Angeles, CA. I provided brief, informal welcoming remarks at the annual presentation of awards made by the U.S. Attorney's Office to selected federal, state and local investigators. I emphasized the importance of partnership between investigators and prosecutors and thanked all involved in organizing the Ceremony. I have no notes, transcript or recording. The address for the U.S. Attorney's Office is 312 North Spring Street, 12th Floor Los Angeles, California 90012.

February 28, 2014: Speaker, African American Heritage Month Celebration, United States District Court for the Central District of California, Los Angeles, CA. I made informal welcoming remarks at the annual Central District of California Celebration of African American History Month co-hosted by the U.S. Attorney's Office and the Federal Public Defender's Office. I emphasized the importance of diversity to the federal court system and thanked all the attendees and participants in the Ceremony. I have no notes, transcript or recording. The address for the U.S. Attorney's Office is 312 North Spring Street, 12th Floor Los Angeles, California 90012.

February 27, 2014: Speaker, Black History Month, White & Case Law Firm, Los Angeles, CA. Outline supplied.

February 25, 2014: Guest Lecturer, Corporate Fraud Class, USC Gould School of Law, Los Angeles, CA. Along with the U.S. Attorney for the Northern District of California, I participated in a question-and-answer session. The subjects addressed included the role of our U.S. Attorney and federal prosecutors in the criminal justice system, the hiring practices of the U.S. Attorney's Offices, and how U.S. Attorney's Offices investigate and prosecute corporate and white-collar criminal cases. I have no notes, transcript or recording. The address for the USC Gould School of Law is 699 Exposition Boulevard, Los Angeles, California 90082.

February 22, 2014: Panelist, The Roadmap to Breaking Barriers, Achieving Success and Making a Difference, Langston Bar Association, Los Angeles, CA. I participated with other local African-American leaders on a panel that focused on the leadership roles of African-Americans in public service. The panel was a question-and-answer format and the subjects discussed included the individual panelists' career paths and management methods, as well as the importance of public service. I have no notes, transcript or recording. The address for the John

M. Langston Bar Association is Post Office Box 811985, Los Angeles, California 90081.

February 7, 2014: Speaker, Investiture of the Hon. Dorothy Kim of the Los Angeles Superior Court, Los Angeles, CA. Outline supplied.

January 24, 2014: Speaker, Career Day, The Pingry School, Martinsville, NJ. Outline supplied.

January 17, 2014: Speaker, Retirement Dinner of the Hon. John V. Meigs of the Los Angeles Superior Court, Los Angeles, CA. Outline supplied.

January 11, 2014: Speaker, FBI Regional Human Trafficking Summit, Los Angeles, CA. Outline supplied.

January 8, 2014: Speaker, Investiture of United States Magistrate Judge Alka Sagar, United States District Court for the Central District of California, Los Angeles, CA. Outline supplied.

January 8, 2014: Speaker, International Law Enforcement Auditors Association (ILEAA) Conference, The California Endowment, Los Angeles CA. Outline supplied.

November 22, 2013: Panelist, "Enforcement Developments," Los Angeles County Bar Association Annual Securities Regulation Seminar, Los Angeles, CA. Outline supplied.

November 21, 2013: Moderator, Reflections on the Challenges Facing Public Defender's Offices, Inland Empire Chapter of the Federal Bar Association. I moderated a lunch hour panel on the challenges facing the administration of Public Defender's Office in the Inland Empire. I have no notes, transcript or recording, but press coverage is supplied. The address for the sponsoring organization is 1220 North Fillmore Street, Suite 444 Arlington, VA 22201.

November 19, 2013: Panelist, Taken Straight from the Headlines: Top Law Enforcement Cases that BSA/AML Officers Should Understand, American Bankers Association Conference, Washington, DC. Outline supplied.

November 14, 2013: Speaker, Chief Special Agents Association, Montebello, CA. Outline supplied.

November 13, 2013: Speaker, Verbum Dei High School, Los Angeles, CA Outline supplied.

November 7, 2013: Speaker, USC Gould School of Law – USC Government Law Association, Los Angeles, CA. Outline supplied.

November 6, 2013: Speaker, Consumer Protection for Military Service members Summit, Los Angeles, CA. Outline supplied.

October 30, 2013: Speaker, American Bar Association Women in White Collar Defense Association, Los Angeles, CA. Outline supplied.

October 29, 2013: Speaker, Institute of Internal Auditors, Los Angeles, CA. Outline supplied.

October 28, 2013: Panelist, Privilege Issues, Association of Corporate Counsel, Los Angeles, CA. Outline supplied.

October 23, 2013: Speaker, Honoring Hispanic Heritage Month, United States Attorney's Office Diversity Committee, Los Angeles, CA. Outline supplied.

October 17, 2013: Speaker, Anti-Bullying Conference, Los Angeles, CA. Outline supplied.

October 10, 2013: Speaker, Technolink President's Club Forum, Los Angeles, CA. Outline supplied.

October 5, 2013: Speaker, Network of Arab American Professionals, Anaheim, CA. Outline supplied.

October 3, 2013: Speaker, Pepperdine University School of Law, Malibu, CA. Outline supplied.

September 25, 2013: Panelist, Civil and Criminal Trade Secrets, California Minority Counsel Program, Los Angeles, CA. Outline supplied.

September 24, 2013: Speaker, Farewell Reception for Commissioner of the Los Angeles Police Department John Mack, Los Angeles, CA. Video is available at: http://www.youtube.com/watch?v=4zghxAwf4Yg.

September 22, 2013: Speaker, Consumer Protection Workshop, Rowland Heights, CA. Outline supplied.

September 20, 2013: Speaker, Investiture of the Hon. Rupa Goswami of the Los Angeles Superior Court, Los Angeles, CA. Outline supplied.

September 17, 2013: Speaker (taped remarks), Cyber Crime Prevention Symposium, Los Angeles, CA. Video supplied.

September 12, 2013: Speaker, Introducing the Hon. Nicole Bershon, Women Lawyers Association of Los Angeles, Los Angeles, CA. Outline supplied.

September 9, 2013: Speaker, Anti-Human Trafficking Rally, Orange County District Attorney's Office, Orange County, CA. Outline supplied.

September 4, 2013: Guest Speaker, Fundamentals of Public Interest Lawyering, Loyola Law School, Los Angeles, CA. Outline supplied.

August 23, 2013: Speaker, Investiture of the Hon. Curtis Kin of the Los Angeles Superior Court, Los Angeles, CA. Outline supplied.

August 15, 2013: Speaker, Hon. Beverly Bourne Judicial Celebration, Pasadena, CA. Outline supplied.

July 23, 2013: Speaker, Summer Associate Research Program Closing Reception, Anti-Defamation League, Los Angeles, CA. Outline supplied.

July 20, 2013: Speaker, Black Journalists Association of Southern California (BJASC), Los Angeles, CA. I participated in a roundtable, which focused on the priorities and goals of the United States Attorney's Office. The roundtable was a question-and-answer format, and the subjects discussed included financial and white collar crime, cybercrime, gang crime, civil rights, public corruption, and national security. We also discussed how the United States Attorney's Office works with its law enforcement counterparts at the local District Attorney's Office and the California Attorney General's Office. I have no notes, transcript or recording, but press coverage is supplied. The address for the BJASC is Post Office Box 75129, Los Angeles, California 90075.

July 19, 2013: Speaker, Combating Human Trafficking in the Central District, Riverside District Attorney's Office, Riverside, CA. Outline supplied.

July 18, 2013: Speaker, State Bar of California, Los Angeles, CA. Outline supplied.

July 13, 2013: Speaker, Georgia Hanif Memorial Service, Pacific Palisades, CA. Outline supplied.

July 9, 2013: Speaker, California Gang Investigators Association, Anaheim, CA. Outline supplied.

June 28, 2013: Speaker, Diversity & Inclusion Attorney Network, Marina Del Rey, CA. Outline supplied.

June 24, 2013: Speaker, Miracle Mile Safety Summit, Los Angeles, CA. Outline supplied.

June 23, 2013: Commencement Speaker, University of West Los Angeles School of Law, Los Angeles, CA. Outline supplied.

June 22, 2013: Speaker, Islamic Center of San Gabriel Valley (ICSGV), Rowland Heights, CA. I delivered impromptu welcoming remarks at the dedication of the new Learning Center and Mosque in Rowland Heights, California. My remarks included a general description of the work done at the United States Attorney's Office for the Central District of California, with a specific focus on the civil rights work we do in both our Criminal and Civil Divisions. I also talked about the importance of community outreach to building good relationships between law enforcement and the community. I have no notes, transcript or recording. The address for the ICSGV is 19164 East Walnut Drive, Rowland Heights, California 91748.

June 20, 2013: Speaker, LGBTQ Diversity Month Event, United States District Court for the Central District of California, Los Angeles, CA. Outline supplied.

June 13, 2013: Speaker, Al Jenkins Scholarship Program, Los Angeles, CA. Outline supplied.

June 13, 2013: Speaker, ABA Criminal Litigation Committee, Los Angeles, CA. Outline supplied.

June 11, 2013: Panelist, Skills Needed for a Successful Legal Career, African American Attorneys in Downtown Firms (AAADF), Los Angeles, CA. Outline supplied.

June 11, 2013: Speaker, Judicial Intern Orientation Program (JIOP), Los Angeles, CA. Outline supplied. I delivered informal remarks at the annual brown bag orientation lunch for the federal district court judicial summer interns and externs at the U.S. Courthouse. I provided a general overview of the work we do at the U.S. Attorney's Office and talked about the various career paths law students and lawyers can follow to become an AUSA. I also took questions from the summer interns and externs which largely centered on how a person can become an AUSA and how being an AUSA differs from other legal jobs. I have no notes, transcript or recording. JIOP is sponsored by the American Bar Association. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

May 18, 2013: Speaker, High School Police Academy Graduation Ceremony, Reseda High School, Reseda, CA. Outline supplied.

May 17, 2013: Speaker, Asian American Pacific Islander Heritage Appreciation, Los Angeles, CA. Outline supplied.

May 17 2013: Speaker, Project Lead Graduation, United States District Court for the Central District of California, Los Angeles, CA. I offered congratulations to the graduating class and handed out graduation certificates to the students. I have no notes, transcript, or recording. The address for the U.S. District Courthouse is 312 North Spring Street, Los Angeles, California 90012.

May 16, 2013: Speaker, DIRECTV Legal Department's Annual Meeting, Santa Monica, CA. Outline supplied.

May 15, 2013: Speaker, International Association of Financial Crimes Investigators, Downey, CA. Outline supplied.

May 10, 2013: Speaker, Black Law Students' Association, Southwestern School of Law, Los Angeles, CA. Outline supplied.

April 27, 2013: Speaker, California Association of Black Lawyers (CABL) Convention, Los Angeles, CA. Outline supplied.

April 26, 2013: Speaker, "State of the District," Fidler Institute, Loyola Law School, Los Angeles, CA. Outline supplied.

April 24, 2013: Panelist, Federal Partners Panel, Los Angeles County Police Chiefs' Spring Conference, Palm Springs, CA. Outline supplied.

April 23, 2013: Speaker, Los Angeles County Department of Consumer Affairs Regional Healthcare Fraud Summit, Los Angeles, CA. Outline supplied.

April 13, 2013: Panelist, Military Consumer Protection, Central District of California Judicial Conference, Dana Point, CA. Outline supplied.

April 6, 2013: Speaker, Gertrude E. Rush Awards Dinner, National Bar Association, Dana Point, CA. Outline supplied.

April 4, 2013: Speaker, Leadership in the 21st Century, Los Angeles Police Department Leadership School, Los Angeles, CA. Outline supplied.

March 27, 2013: Speaker, FBI Society of Former Special Agents, Los Angeles, CA. Outline supplied.

March 21, 2013: Speaker, Substance Abuse Treatment and Reentry (STAR) Drug Court Graduation, Los Angeles, CA. Outline supplied.

March 15, 2013: Speaker, Philippine American Bar Association, Los Angeles, CA. Outline supplied.

March 15, 2013: Speaker, Federal Bar Power Lunch, Los Angeles, CA. Outline supplied.

March 7, 2013: Panelist, Money Laundering & Asset Forfeiture, American Bar Association, Las Vegas, NV. Outline supplied.

February 28, 2013: Speaker, African American Heritage Celebration, U.S. Attorney's Office and Federal Public Defender's Office, Los Angeles, CA. Outline supplied.

February 27, 2013: Speaker, California Narcotics Officers' Association, Montebello, CA. Outline supplied.

February 20, 2013: Speaker, Muslim Community Leaders Roundtable, FBI Los Angeles Field Division, Los Angeles, CA. Along with the FBI Assistant Director, I delivered discussed the work our respective offices do with a focus on the work we do to enforce and protect civil rights, including a question-and-answer session. I have no notes, transcript or recording. The address for the Islamic Society of Orange County is 9752 West 13th Street, Garden Grove, California 92844.

February 11, 2013: Speaker, Public Interest Law Class, Loyola Law School, Los Angeles, CA. Outline supplied.

January 31, 2013: Speaker, Pacifica Institute Luncheon, Los Angeles, CA. Outline supplied.

January 23, 2013: Speaker, Human Trafficking Symposium, Westchester, CA. Outline supplied.

January 20, 2013: Speaker, Racial Tolerance Event, Hands Across Azusa, Azusa, CA. Outline supplied.

January 11, 2013: Speaker, South Asian Diversity Event, U.S. Attorney's Office Diversity Committee, Los Angeles, CA. Outline supplied.

December 7, 2012: Speaker, Introducing Assistant Attorney General Tony West, Indian Affairs Conference, Palm Springs, CA. Outline supplied.

December 5, 2012: Speaker, Los Angeles County Mock Trial Championship, Constitutional Rights Foundation, Los Angeles, CA. Outline supplied.

December 4, 2012: Speaker, Securities Fraud Enforcement in the District, White Collar Crime Committee of the American Bar Association, Los Angeles, CA. Outline supplied.

December 3, 2012: Speaker, Induction of Los Angeles District Attorney Jackie Lacey, Los Angeles, CA. Outline supplied.

November 30, 2012: Speaker, Service Member Subcommittee, Consumer Protection Working Group, Washington, DC. Outline supplied.

November 29, 2012: Speaker, Los Angeles Area Community Engagement Roundtable, Department of Homeland Security and City of Los Angeles Human Relations Commission, Los Angeles, CA. Outline supplied.

November 15, 2012: Speaker, Los Angeles County Chiefs' Association, Montebello, CA. Outline supplied.

November 13, 2012: Speaker, Elder Financial Fraud, Bet Tzedek, Los Angeles, CA. Outline supplied.

November 8, 2012: Speaker, DEA Citizens Academy, DEA, Los Angeles, CA. Outline supplied.

November 8, 2012: Speaker, Government Law Organization, USC Gould School of Law, Los Angeles, CA. Outline supplied.

November 7, 2012: Speaker, Inland Empire Federal Bar Association, Riverside, CA. Outline supplied.

November 7, 2012: Speaker, Inland Empire Mortgage Fraud and Consumer Protection Summit, Riverside, CA. Outline supplied.

November 5, 2012: Speaker, Cyber Crime Prevention Symposium, Los Angeles, CA. Outline supplied.

November 3, 2012: Speaker, Conviction and Sentencing Alternatives (CASA) program, Eastern District of CA Conference, Napa, CA. Outline supplied.

October 29, 2012: Speaker, California Consumer Affairs Association Annual Conference, Long Beach, CA. Outline supplied.

October 26, 2012: Panelist, Enforcement Developments, Security Regulation Seminar, Los Angeles County Bar Association, Los Angeles, CA. Outline supplied.

October 24, 2012: Speaker, Dedication of Riverside Conference Room to John Rayburn, U.S. Attorney's Office, Riverside, CA. Outline supplied.

October 19, 2012: Speaker, U.S. Attorney's Awards, U.S. Attorney's Office for the Central District, Los Angeles, CA. Outline supplied.

October 10, 2012: Speaker, Hispanic Heritage Month Event, District Court, Los Angeles, CA. Outline supplied.

October 10, 2012: Speaker, Tax SAUSA Appreciation Day, United States Attorney's Office, Los Angeles CA. Outline supplied.

October 9, 2012: Speaker, Investor Fraud Conference, Walnut Creek, CA. Outline supplied.

October 4, 2012: Speaker, Central City Association – Executive Committee meeting, Los Angeles, CA. Outline supplied.

September 22, 2012: Speaker, "Scam Jam" Consumer Resource Fair, Los Angeles, CA. Outline supplied.

September 15, 2012: Speaker, Gamma Zeta Boulé Mentor Program, Pasadena, CA. Outline supplied.

September 13, 2012: Speaker, Foreign Corrupt Practices Act Conference, Continuing Legal Education (CLE) International, Los Angeles, CA. Outline supplied.

September 6, 2012: Speaker, Black Law Students Association, Pepperdine School of Law, Malibu, CA. Outline supplied.

September 5, 2012: Panelist, Starting and Advancing Your Legal Career, Loyola Law School, Los Angeles, CA. I participated in a panel for law students addressing how to start and advance their legal careers. I have no notes, transcript, or recording. The address of Loyola Law School is 919 Albany Street, Los Angeles, California 90015.

August 24, 2012: Speaker, LA 5 Rotary Club, Los Angeles, CA. Outline supplied.

August 15, 2012: Panelist, Public Corruption Seminar, National Advocacy Center, Columbia, South Carolina. Outline supplied.

August 11, 2012: Speaker, Criminal Law Conference, Korean Prosecutors Association, Los Angeles, CA. Outline supplied.

July 27, 2012: Speaker, District Court Extern Program, Los Angeles, CA. I delivered informal remarks for the federal district court judicial summer externs at the U.S. Courthouse. I provided a general overview of the work we do at the U.S. Attorney's Office and talked about the various career paths law students and lawyers can follow to become an AUSA. I also took questions from the summer

interns and externs about the role and function of the U.S. Attorney's Office. I have no notes, transcript, or recording. The address for the United States District Courthouse is 312 North Spring Street, Los Angeles, California 90012.

July 26, 2012: Speaker, Firm Lunch, Law Firm of Jeffer Mangels Butler & Mitchell, Los Angeles, CA. Outline supplied.

July 26, 2012: Speaker, Regional and National Enforcement Priorities, SEC, Los Angeles, CA. Outline supplied.

July 10, 2012: Speaker, California Gang Investigators Association, Anaheim, CA. Outline supplied.

June 26, 2012: Speaker, Mortgage Fraud Summit, U.S. Attorney's Office, Los Angeles, CA. Outline supplied.

June 13, 2012: Speaker, Project Lead Graduation, United States District Court for the Central District of California, Los Angeles, CA. I offered congratulations to the graduating class and handed out graduation certificates to the students. I have no notes, transcript or recording. The address for the U.S. District Courthouse is 312 North Spring Street, Los Angeles, California 90012.

June 11, 2012: Speaker, High School Commencement Address, Le Lycee Francais School, Los Angeles, CA. Outline supplied.

June 5, 2012: Speaker, Judicial Intern Opportunity Program, District Court, Los Angeles, CA. Outline supplied.

June 3, 2012: Speaker, Gamma Zeta Boulé of Sigma Pi Phi, Pasadena, CA. Outline supplied.

May 22, 2012: Speaker, Asian American and Pacific Islander Heritage Month, District Court, Los Angeles, CA. Outline supplied.

May 17, 2012: Speaker, Muslim Roundtable, Omar Al Khattab Mosque, FBI Los Angeles Field Division, Los Angeles, CA. I discussed the work that the U.S. Attorney's Office does with a focus on the work we do to enforce and protect civil rights, including a question-and-answer session with the audience. I have no notes, transcript or recording. The address for the Omar Al Khattab Mosque is 1025 West Exposition Boulevard, Los Angeles, California 90007.

May 16, 2012: Speaker, Association of Inspectors General, Anaheim, CA. Outline supplied.

April 28, 2012: Speaker, Consumer Protection Summit, Los Angeles, CA. Outline supplied.

April 27, 2012: Speaker, Victims' Rights March and Rally, Orange County District Attorney's Office, Santa Ana, CA. Outline supplied.

April 25, 2012: Speaker, Victim's Week Awards Ceremony, United States Attorney's Office, Los Angeles, CA. Outline supplied.

April 24, 2012: Speaker, Partners Monthly Luncheon, O'Melveny & Myers, Los Angeles, CA. Outline supplied.

April 12, 2012: Speaker, Racially Motivated Hate Crime Forum, Los Angeles, CA. Outline supplied.

April 12, 2012: Speaker, Criminal Justice Section, California State University Long Beach, Long Beach, CA. Outline supplied.

April 5, 2012: Commencement Speaker, Los Angeles Police Department Leadership Academy, Los Angeles, CA. Outline supplied.

April 3, 2012: Speaker, Protecting Civil Rights and Civil Liberties in 21st Century Los Angeles, USC School of Policy, Planning and Development, Los Angeles, CA. Outline supplied and video is available at: http://www.youtube.com/watch?v=XiUfrfA30f0.

April 2, 2012: Speaker, Fraud Awareness Seminar, Los Angeles Police Department Internal Audits and Inspections Division, Los Angeles, CA. Outline supplied.

March 9, 2012: Speaker, Financial Fraud Enforcement Task Force, Consumer Protection Summit, Washington, DC. Outline supplied and video is available at: http://www.c-span.org/video/?304838-1/consumer-protection-summit.

March 9, 2012: Panelist, "Business Opportunity Scams" Panel, Consumer Protection Summit, Department of Justice, Washington DC. Video is available at: http://www.c-span.org/video/?304838-4/business-opportunity-scams.

March 1, 2012: Panelist, Securities Fraud Panel, American Bar Association White Collar Crime Conference, Miami, Florida. Outline supplied.

February 24, 2012: Speaker, African American History Month Event, District Court, Los Angeles, CA. Outline supplied.

February 21, 2012: Speaker, Prosecutorial Functions, The Politics of (Local) Criminal Justice, USC Department of Political Science, Los Angeles, CA. Outline supplied.

February 19, 2012: Speaker, Town Hall Meeting, Council of Pakistani American Affairs, Garden Grove, CA. Outline supplied.

February 16, 2012: Speaker, Honoring Magistrate Judge Jean Rosenbluth, Federal Bar Association reception, Santa Ana, CA. Outline supplied.

January 28, 2012: Speaker, Islamic Center of Reseda, Reseda, CA. Outline supplied.

January 25, 2012: Speaker, American Association of Exporters and Importers (AAEI) Western Regional Seminar, Torrance, CA. Outline supplied.

January 20, 2012: Panelist, Challenges of Modern Policing-Part 1, Civil Rights Symposium, University of La Verne College of Law, Ontario, CA. Outline supplied.

January 17, 2012: Speaker, International Anti-Counterfeiting Coalition (IACC), West Coast Law Enforcement Roundtable, Lakewood, CA. Because the materials used at this event are law enforcement sensitive, they are not supplied. The address for the IACC is 1730 M Street NW, Suite 1020, Washington, D.C. 20036.

January 14, 2012: Speaker, LAPD's Martin Luther King Jr. Breakfast, Los Angeles, CA. Outline supplied.

January 10, 2012: Speaker, Junior Statesmen Foundation Alumni Dinner, Los Angeles, CA. Outline supplied.

December 7, 2011: Speaker, Century City Bar Association, Beverly Hills, CA. Outline supplied.

November 17, 2011: Speaker, Award of Excellence, The Thurgood Marshall College Fund, Los Angeles, CA. Outline supplied.

November 16, 2011: Speaker, Government Law Organization, USC Gould School of Law, Los Angeles, CA. Outline supplied.

November 15, 2011: Speaker, Anti-Bullying Campaign, Reseda, CA. Outline supplied.

November 14, 2011: Speaker, Munger, Tolles & Olson, Los Angeles, CA. Outline supplied.

November 10, 2011: Speaker, Police Community Partnership Luncheon, Studio City, CA. Outline supplied.

November 9, 2011: Panelist, Inland Empire Federal Bar Association, Riverside, CA. Outline supplied.

November 3, 2011: Speaker, Iranian American Bar Association, Los Angeles, CA. Outline supplied.

November 2, 2011: Speaker, Community Achievement Award, Orange County Korean American Bar Association, Irvine, CA. Outline supplied.

November 2011: Panelist, Federal Bar Association, Orange County Chapter, Orange County, CA. I participated on a panel regarding federal criminal justice issues. I have no notes, transcript, or recording. The address for the Federal Bar Association is Orange County Chapter, Post Office Box 6130, Newport Beach, California 92658.

October 18, 2011: Panelist, Muslim Community Forum, Los Angeles Police Department, Islamic Center of Reseda, Los Angeles, CA. I participated as a panelist along with other representatives of law enforcement and made informal remarks providing an overview of the role of the U. S. Attorney and the work of the U.S. Attorney's Office and how we work with our local law enforcement partners like the LAPD. I have no notes, transcript, or recording. The address for Los Angeles Police Department is 100 West First Street, Los Angeles, California 90012.

October 6, 2011: Speaker, All Peoples Inspiration Award, Los Angeles, CA. Outline supplied.

September 30, 2011: Speaker, Cybercrime Prevention Symposium, Los Angeles, CA. Outline supplied.

September 15, 2011: Panelist, "Flesh The Movie," a documentary about sex trafficking, Los Angeles Police Department, Los Angeles, CA. Outline supplied.

September 11, 2011: Speaker, Commemoration of Tenth Anniversary of 9/11, Miracle Mile Civic Coalition, Los Angeles, CA. Outline supplied.

September 11, 2011: Speaker, Los Angeles Fire Department 9/11 Memorial, Los Angeles Fire Department, Los Angeles, CA. Outline supplied.

September 8, 2011: Speaker, United States Attorney's Office Law Enforcement Officers Safety Initiative Training, Los Angeles, CA. Because the materials used at this event are law enforcement sensitive, they are not supplied. The address for the U.S. Attorney's Office is 312 North Spring Street, 12th Floor Los Angeles, California 90012.

September 7, 2011: Speaker, Investiture of Nicole Bershon as Superior Court Judge, Los Angeles, CA. Outline supplied.

September 3, 2011: Speaker, Summer Night Lights Closing Ceremonies, Los Angeles, CA. Outline supplied.

August 29, 2011: Speaker, Role of the Prosecutor, White Collar Crime Class, Pepperdine University School of Law, Malibu, CA. Outline supplied.

August 25, 2011: Speaker, Real Estate Fraud, Police Officers Association of Los Angeles County, Los Angeles, CA. Outline supplied.

August 4, 2011: Panelist, Brown v. Board of Education, John G. Gabbert Historic Oral Argument and Lecture Series, Riverside, CA. Outline supplied.

July 27, 2011: Speaker, Judicial Extern Brown Bag Lunch, United States District Court for the Central District of California, Central District of California, Los Angeles, CA. I delivered informal remarks at the annual brown bag lunch for the federal district court judicial summer interns and externs at the U.S. Courthouse. I provided a general overview of the work we do at the U.S. Attorney's Office and talked about the various career paths law students and lawyers can follow to become an AUSA. I also took questions from the summer interns and externs which focused on the role of the U.S. Attorney's Office and the work we do at the Office. I have no notes, transcript or recording. The address for the United States District Courthouse is 312 North Spring Street, Los Angeles, California 90012.

July 26, 2011: Speaker, Women Graduates Breakfast, FBI National Academy Association's Annual Training Conference, Long Beach, CA. Outline supplied.

July 20, 2011: Speaker, Hate Crime Forum, FBI and U.S. Attorney's Office, Los Angeles, CA. Outline supplied.

July 20, 2011: Speaker, West Side Oasis Class, Dr. Earl Ofari Hutchinson, Los Angeles, CA. I spoke at a senior citizen's continuing education class on the subject of fraud and cyber-crime prevention, including an overview of recent fraud cases brought by the Office and suggestions for avoiding scams. Then I took questions from the audience. I have no notes, transcript, or recording. The sponsorship organization has no physical address.

July 19, 2011: Speaker, Firm Luncheon, Irell and Manella LLP, Los Angeles, CA. Outline supplied.

July 12, 2011: Speaker, Firm Luncheon, Latham & Watkins, Los Angeles, CA. Outline supplied.

July 7, 2011: Speaker, 25th Annual Joint Regulatory Conference, U.S. Securities and Exchange Commission, Los Angeles, CA. Outline supplied.

June 28, 2011: Speaker, United States Attorney's Office Law Enforcement Officers Safety Initiative, Los Angeles, CA. Because the materials used at this event are law enforcement sensitive, they are not supplied. The address for the U.S. Attorney's Office is 312 North Spring Street, 12th Floor Los Angeles, California 90012.

June 26, 2011: Commencement Speaker, Antioch University, Los Angeles, CA. Outline supplied and video is available at: http://www.youtube.com/watch?v=PsXOvalt0fI.

May 20, 2011: Commencement Speaker, Chapman University School of Law, Orange, CA. Outline supplied.

May 14, 2011: Speaker, The Association of Black Law Enforcement Executives, Los Angeles, CA. Outline supplied.

May 10, 2011: Speaker, Los Angeles County Bar Association-Criminal Justice Section, Los Angeles, CA. Outline supplied.

May 7, 2011: Speaker, American Muslim Women's Empowerment Conference, Monterey Park, CA. Outline supplied.

April 30, 2011: Speaker, Loren D. Miller Lawyer of the Year Award, California Association of Black Lawyers, Los Angeles, CA. Outline supplied.

April 27, 2011: Speaker, South East Bar Association, Downey, CA. Outline supplied.

April 20, 2011: Speaker, Los Angeles International Counter Terrorism Conference, Los Angeles Police Department, Los Angeles, CA. Outline supplied.

April 14, 2011: Speaker, USC Black Law Students Association, Los Angeles, CA. Outline supplied.

April 14, 2011: Orange County Victim's Rights Rally & March, Santa Ana CA. Outline supplied.

April 13, 2011: Speaker, California Narcotic Officers' Association Region III, Montebello, CA. Outline supplied.

April 12, 2011: Speaker, 12th Annual Housing Rights Summit, Los Angeles, CA. Outline supplied.

April 9, 2011: Moot Court Judge, Trial Advocacy Competition, Southwestern Law School, Los Angeles, CA. I was a judge for the finals of the Southwestern Law School 2011 Trial Advocacy Intramural Competition. I have no notes, transcript, or recording. The address of Southwestern Law School 3050 Wilshire Boulevard, Los Angeles, California 90010.

April 8, 2011: Speaker, Priorities in this Economic Climate, Fidler Institute for Criminal Justice Symposium, Los Angeles, CA. Outline supplied.

April 7, 2011: Speaker, Advancing the Cause, UCLA Black Law Students Association, Los Angeles, CA. Outline supplied.

April 1, 2011: Speaker, Introduction of Wes Hsu, Southern California Chinese Lawyers Association, Los Angeles, CA. Outline supplied.

March 31, 2011: Speaker, Shomrim Society of Southern California, Los Angeles, CA. Outline supplied.

March 24, 2011: Speaker, Best Practices in the Federal Court, Asian Pacific American Bar Association, Los Angeles, CA. Outline supplied.

March 17, 2011: Speaker, Irish American Bar Association, Los Angeles, CA. Outline supplied.

March 5, 2011: Speaker, 34th Annual School of Law Dinner, Pepperdine University School of Law, Beverly Hills, CA. Outline supplied.

March 4, 2011: Panelist, Witness Discovery and Witness Preparation in WCC Cases-At What Cost Winning, American Bar Association White Collar Crime Conference, San Diego, CA. I participated in a panel with the U.S. Attorney for the Northern District, and several criminal defense practitioners. The panel focused on recent developments with regard to Department of Justice policy regarding discovery training for AUSAs as well as recent developments with regard to the handling and production of *Brady* material. There was also discussion of the importance of integrity and judgment to the criminal justice system and that federal prosecutors must always put the pursuit of justice before winning in every case they handle. I have no notes, transcript or recording, but press coverage is supplied. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

March 1, 2011: Panelist, Civil Rights Roundtable, U.S. Attorney's Office for the Central District of California, Los Angeles, CA. The roundtable was held to discuss ongoing efforts at DOJ and the U.S. Attorney's Office to protect civil rights throughout our diverse communities. I introduced Deputy Attorney General Thomas Perez. I have no notes, transcript, or recording. The address for

the U.S. Attorney's Office is United States Attorney's Office for the Central District of California, 312 North Spring Street, Los Angeles, California 90012.

February 24, 2011: Speaker, Armenian Bar Association, Glendale, CA. Outline supplied.

February 10, 2011: Speaker, Los Angeles City Attorneys' Annual African American History Month, Los Angeles, CA. I delivered brief impromptu remarks, thanking the audience and discussing the importance of the relationship between the City Attorney's Office and this U.S. Attorney's Office and about how both offices have been leaders in promoting diversity in the legal profession. I have no notes, transcript or recording. The event was sponsored by the Association of Black City Attorneys. This organization has no physical address.

January 25, 2011: Speaker, Organized Crime Drug Enforcement Task Force (OCDETF) Southwest Regional Conference, U.S. Attorney's Office, Los Angeles, CA. Outline supplied.

January 11, 2011: Speaker, Inland Empire Violence Prevention and Intervention Resource Conference and Graduation, California State University San Bernardino, CA. Although I did not attend the meeting, I had videotaped welcoming remarks. I do not have a copy of the videotape but I have supplied an outline.

January 6, 2011: Speaker, Chancery Club, Los Angeles, CA. Outline supplied.

November 22, 2010: Speaker, Dedication of the U.S. Attorney's Office's 12th Floor Conference to Assistant United States Attorney Daniel S. Goodman, U.S. Attorney's Office for the Central District of California, Los Angeles, CA. I made brief informal remarks dedication the conference room to a recently deceased Assistant United States Attorney. I have no notes, transcript, or recording. The address for the U.S. Attorney's Office is United States Attorney's Office for the Central District of California, 312 North Spring Street, Los Angeles, California 90012.

November 6, 2010: Speaker, Earl B. Gillman Bar Association, La Jolla, CA. Outline supplied.

October 23, 2010: Speaker, 17th Annual Youth Leadership Conference and Mentorship Program, Compton College, Los Angeles, CA. Outline supplied.

October 21, 2010: Speaker, City Attorney's Association of Los Angeles County, Los Angeles, CA. Outline supplied.

October 20, 2010: Speaker, University of California, Irvine, School of Law, Irvine, CA. I gave informal remarks to law students describing the U.S.

Attorney's Office, the role of the U.S. Attorney in the criminal justice system and the public safety priorities of the office, including fighting financial fraud, preventing gang violence and national security. I also engaged in an informal question-and-answer session with the students. I have no notes, transcript, or recording. The address for the University of California, Irvine, School of Law is 401 East Peltason Drive, Irvine, California 92012.

October 18, 2010: Panelist, Trends in Criminal and Regulatory Enforcement Actions, Money Launder Enforcement Conference, American Bar Association and the American Bankers Association, Washington, DC. I participated as a panelist along with the Executive Director for the Financial Fraud Enforcement Task Force at the U.S. Department of Justice, as well as two criminal law practitioners. The panel focused on criminal and civil enforcement of the anti-money laundering laws with a special emphasis on money laundering cases involving Ponzi schemes and fraud. The panelists discussed best practices and recent developments in the law. I have no notes, transcript or recording. The address for the American Bankers Association is 1120 Connecticut Avenue, NW, Washington, D.C. 20036.

October 7, 2010: Speaker, Introduction of Justice Carlos Moreno, Hispanic Heritage Month Event, United States District Court for the Central District of California, Los Angeles CA. Outline supplied.

October 7, 2010: Speaker, Central City Association of Los Angeles, Los Angeles, CA. Outline supplied.

September 29, 2010: Speaker, Police Officers Association of Los Angeles County (POALAC), Montebello, CA. Outline supplied.

September 29, 2010: Speaker, Cyber Crime Prevention Symposium, Los Angeles, CA. Outline supplied.

September 28, 2010: Speaker, Beverly Hills Bar Association Conference, Beverly Hills, CA. Outline supplied.

September 25, 2010: Panelist, Criminal Justice Act (CJA) Conference, Southwestern School of Law, Los Angeles, CA. Outline supplied.

September 21, 2010: Speaker, Dan Goodman Memorial, U.S. Attorney's Office, Los Angeles, CA. Outline supplied.

September 18, 2010: Speaker, Black Journalist Association of Southern California, Los Angeles, CA. Outline supplied.

September 15, 2010: Speaker, District Court Judges, Central District Court, Los Angeles, CA. Outline supplied.

August 28, 2010: Speaker, Wiley Manuel Bar Association, Sacramento, CA. Outline supplied.

August 26, 2010: Speaker, Los Angeles Health Care Fraud Prevention Summit, Los Angeles City College, Los Angeles, California. Outline supplied and video is available at: http://www.c-span.org/video/?295201-1/regional-health-care-fraud-prevention-summit.

July 19, 2010: Speaker, National Black Prosecutors Association, San Francisco, CA. Outline supplied.

July 8, 2010: Speaker, 12th Annual Summer Associate Mixer, Southern California Chinese Lawyers Association, Los Angeles, CA. Outline supplied.

July 2010: Speaker, John M. Langston Bar Association Reception, Los Angeles, California. I made brief, informal remarks thanking the Langston Bar Association and its officers for hosting a reception to mark my appointment as United States Attorney. I have no notes, transcript, or recording. The address for the John M. Langston Bar Association is Post Office Box 811985, Los Angeles, California 90081.

June 29, 2010: Speaker, California Gang Investigators Association, Anaheim, CA. Outline supplied.

June 10, 2010: Speaker, American Civil Liberties Union (ACLU) Law Luncheon, Los Angeles, CA. I provided keynote remarks at the ACLU of Southern California's 16th annual law luncheon held in Los Angeles, California. I spoke generally about the importance of civilian oversight to effective policing and about the Department of Justice's and the U.S. Attorney's Office's long-running commitment to the enforcement of civil rights and the observation of civil liberties. I have no notes, transcript or recording. The address for the ACLU of Southern California is 1313 West Eighth Street #200, Los Angeles, California 90017.

May 28, 2010: Speaker, FBI Memorial, Los Angeles, CA. I provided brief, informal remarks at the annual FBI memorial held to commemorate FBI personal who had died in the line of duty. I emphasized the importance of recognizing and honoring the sacrifice of our sworn law enforcement personnel both at the FBI and throughout law enforcement. I have no notes, transcript or recording.

May 26, 2010: Speaker, White Collar Crime Committee, American Bar Association, Los Angeles, CA. Outline supplied.

May 21 2010: Speaker, Pepperdine University School of Law, Malibu, CA. Outline supplied.

May 20, 2010: Speaker, POALAC Installation, Los Angeles, CA. Outline supplied.

April 29, 2010: Speaker, Center for Asian Americans United for Self-Empowerment (CAUSE) Award, Los Angeles, CA. Outline supplied.

April 20, 2010: Speaker, Intellectual Property Rights Conference, Los Angeles, CA. I provided brief informal welcoming remarks for the Intellectual Property Rights Conference held in Los Angeles, California. My remarks consisted of a brief introduction of myself and my office to the audience of legal practitioners from both the criminal and civil fields. My focus was on describing the work of the AUSAs of the Cyber and Intellectual Property Section of my office. I generally described some of their recent work in court. I have no notes, transcript or recording.

April 9, 2010: Speaker, Fidler Institute, Loyola Law School, Los Angeles, CA. Outline supplied.

March 31, 2010: Speaker, Jeff Rawitz memorial, Jones Day law firm, Los Angeles, CA. Outline supplied.

March 2010: Panelist, Pi Alpha Alpha Career Panel, California State University Dominguez Hills, Carson, CA. I participated in a career day panel. I have no notes, transcript, or recording. The address of California State Dominguez Hills is 1000 East Victoria Street, Carson, California 90747.

February 17, 2010: Speaker, Reception held by United States Senator Dianne Feinstein to mark my confirmation as United States Attorney. I made brief, informal remarks thanking Senator Feinstein and the guests for the reception. I have no notes, transcript, or recording. The address of Senator Feinstein's Senate Office is 331 Hart Building Washington, DC 20510.

2007 – 2010: In my capacity as a member of the Board of Directors for the National Association of Civilian Oversight of Law Enforcement (NACOLE), I helped to organize NACOLE conferences and may have given brief introductions for speakers or given presentations at times, although I do not recall all of the individual events. I have provided those that I could locate below:

> October 31, 2009: Panelist, National Guidelines for Civilian Oversight Professionals, Annual Conference of NACOLE, Austin, TX. Along with my co-panelists, I discussed the National Guidelines for Police Monitors, which has been previously supplied in response to 12b.
>
> September 2007: Panelist, Use of Force Investigations, Annual Conference of NACOLE, San Jose, CA. Along with my co-panelists, I

discussed investigations of uses of force. I have no notes, transcript or recording. The address for NACOLE is Post Office Box 1737, Indianapolis, Indiana 46206.

During the course of my tenure as Inspector General, I spoke at various community forums, colleges, high schools and other question-and-answer sessions to discuss the role and responsibility of the Office of the Inspector General, hear concerns, answer questions from the audience and offer assistance when appropriate. In most, if not all instances, I did not speak from a prepared text but rather from general notes about my office, which I have supplied. At this point, even after a laborious and time-consuming search, I am not able to provide exact dates and locations of every such presentation. However, I can provide general dates of the talks that I recall below:

Summer 2008: Speaker, African American Attorneys in Downtown Firms (AAADF), Summer Associates Dinner, Los Angeles, CA. I provided general comments regarding the LAPD and the role and responsibility of the Office of the Inspector General along with general career observations and advice. AAADF is an affiliate of the John M. Langston Bar Association. I have no notes, transcript, or recording. The address for the John M. Langston Bar Association is Post Office Box 811985, Los Angeles, California 90081.

August 2007: Speaker, International Law Enforcement Auditors Association (ILEAA), Los Angeles, CA. I provided general remarks regarding the role and responsibility of the Office of the Inspector General with an emphasis of the importance of performance audits on a law enforcement organization. I have no notes, transcript, or recording. The address for ILEAA is 302 Washington Street #150, San Diego, California 92103.

April 2007: Speaker, Association of Government Accountants, Los Angeles Chapter, Los Angeles, CA. I provided general remarks regarding the LAPD and the role and responsibility of the Office of the Inspector General. I used the same outline supplied provided for the April 2006 event.

April 2006: Speaker, Association of Government Accountants, Los Angeles Chapter, Los Angeles, CA. I provided general remarks regarding the LAPD and the role and responsibility of the Office of the Inspector General. Outline supplied.

May 2004: Speaker, Urban Issues Breakfast Forum, General Discussion regarding the LAPD and the role and responsibility of the Office of the Inspector General, Los Angeles, CA. I have no notes, transcript, or recording. The sponsorship organization has no physical address.

February 2004: Speaker, UCLA School of Law Government Day, I provided general remarks regarding the LAPD and the role and responsibility of the Office of the Inspector General, Los Angeles, CA. I have no notes, transcript, or recording. The address for the UCLA School of Law is Post Office Box 951476, Los Angeles, California 90095.

February 2004: Panelist, Days of Dialogue, Los Angeles, CA. In the wake of a high-profile use of force, I, along with various representatives of the LAPD, the Los Angeles Human Relations Commission, community members and elected officials participated in a series of forums where participants were encouraged to express their concerns and engage in dialogue with all concerned stakeholders. I have no notes, transcript, or recording. The address for Days of Dialogue is 1000 North Alameda Avenue, Suite 240, Los Angeles, California 90012.

Summer 2003: Panelist, Days of Dialogue, Los Angeles, CA. In the wake of a high-profile use of force, I, along with various representatives of the LAPD, the Los Angeles Human Relations Commission, community members and elected officials participated in a series of forums where participants were encouraged to express their concerns and engage in dialogue with all concerned stakeholders. I have no notes, transcript, or recording. The address for Days of Dialogue is 1000 North Alameda Avenue, Suite 240, Los Angeles, California 90012.

November 2002: Speaker, UCLA School of Law Government Day, Los Angeles, CA. I provided general remarks regarding the LAPD and the role and responsibility of the Office of the Inspector General. I have no notes, transcript, or recording. The address for the UCLA School of Law is UCLA School of Law, Box 951476, Los Angeles, California 90095.

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 to the best of my ability identified all items called for in the question, including conducting a thorough review of my files and records, the files and records of my communication staff, and searches of publically available electronic databases. In my official capacity as U.S. Attorney, I periodically give interviews to local radio, television and print media centering on particular cases my office has prosecuted during my term, law enforcement initiatives, community outreach, and Justice Department initiatives as they relate to the Central District of California. In my prior capacity as Inspector General, I occasionally gave interviews or made public statements to media. I have done my best to identify all such interviews, but there may be interviews that I cannot recall or could not

locate in my search. I have located the following interviews, press conferences, and press releases listed below.

Interviews and Related News Articles:

Steve Chawkins, *Robert L. Brosio, Retired Federal Prosecutor, Dies at 77*, Los Angeles Times, April 1, 2014. Copy supplied.

Press release, *DOI Commissioner Announces Nationally Recognized Police Accountability Expert as NYC's First Inspector General for the NYPD*, City of New York Department of Investigation, March 28, 2014. Copy supplied.

Patt Morrison, *André Birotte Jr., Driven By Justice,* Los Angeles Times, March 12, 2014. Copy supplied.

Kenneth Miller and Jennifer Bihm, *Langston Celebrates Legal Eagles at Loyola Law School*, Los Angeles Sentinel, February 27, 2014. Copy supplied.

Doug McIntyre, *McIntyre in the Morning, California State Senator Indicted*, KABC Radio, February 24, 2014. Audio supplied.

Bill Carroll, *KFI AM 640 Radio with Bill Carroll,* February 21, 2014. I have been unable to obtain a transcript or recording of this interview.

David Ono, *Further Indictments Forthcoming In Federal Investigation of LA County Jails*, ABC LA, January 24, 2014. Video available at: http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=9406856.

Henry Meier, *Central District Federal Public Defender To Step Down For Position at Loyola Law School,* California Daily Journal, January 17, 2014. Copy supplied.

Henry Meier, Sheriff's *Deputy Charges Signal New Era for Central District U.S. Attorney's Office*, California Daily Journal, January 8, 2014. Copy supplied.

Alumni: Andre Birotte Jr., Annual Pepperdine Law Viewbook, 2013-2014. Copy supplied.

Katie Lucia, *Chief of Riverside U.S. Attorney Branch Entering Private Practice*, Los Angeles Daily Journal, December 23, 2013. Copy supplied.

Bill Carroll, *KFI AM 640 Radio with Bill Carroll,* December 9, 2013. I have been unable to obtain a transcript or recording of this interview.

Lori Craig, *U.S. Attorney Shares Outlook, Advice*, USC Gould School of Law News, November 15, 2013. Copy supplied.

Jill Cowan, *Alternative Program Gives Federal Defendants A Second Chance*, Los Angeles Times, October 22, 2013. Copy supplied.

Justice's Wheels Slowed as Shutdown Hits Court, USA Today, October 14, 2013. Copy supplied.

John Roemer and Hadley Robinson, *Government Shutdown Threatens To Close Federal Courts*, Los Angeles Daily Journal, October 9, 2013. Copy supplied.

Attorney General Calls For Drug Crime Changes, NBC LA, August 13, 2013. Video available at: http://www.nbclosangeles.com/video/#!/on-air/as-seen-on/Attorney-General-Calls-For-Drug-Crime-Changes/219411261.

Adolfo Guzman-Lopez, "Los Angeles's 'Days of Dialogue' Tackles Trayvon Martin Killing," 89.3 KPCC, August 3, 2013. I discovered this article while performing an Internet search to ensure that my responses to this question were complete. Although I attended the Days of Dialogue event and participated in an informal breakout session along with the other attendees, I was not a speaker or a panelist. I do not recall participating in any interviews or giving any remarks to the press, and indeed I believe that the description of my remarks in the article is inaccurate. Copy supplied.

Adrienne Alpert, *ABC Newsmakers,* KABC Los Angeles, July 28, 2013. Video supplied.

APABA Congratulates Rupa Goswami on Her Historic Appointment to the Los Angeles County Superior Court, Asian Pacific American Bar Association, July 25, 2013

Steve Edwards, *Good Day LA,* KTTV Fox 11 Los Angeles, July 22, 2013. Video supplied.

Xavier Higgs, *Criminal Justice Leaders Harris, Birotte, Brown and Lacey Honored,* Los Angeles Sentinel, June 20, 2013. Copy supplied.

Ole Alemoru, *U.S. Attorney André Birotte Has the Right Stuff*, The Wave, June 18, 2013. Copy supplied.

Larry Mantle, *Air Talk,* KPCC Radio, Los Angeles, June 7, 2013. Audio available at: http://www.scpr.org/programs/airtalk/2013/06/07/32140/andre-birotte-on-the-patriot-act-secret-surveillan/.

Steve Edwards, *Good Day LA,* KTTV Fox 11 Los Angeles, May 7, 2013. Video supplied.

Liz Claman, *Fox Business News: After the Bell with David Asman and Liz Claman*, April 12, 2013. Video available at: http://video.foxbusiness.com/v/2296772463001/former-kpmg-partner-facing-up-to-5-years-in-prison/#sp=show-clips.

Nina Gregory, *Ex-KPMG Partner Accused Of Insider Trading,* National Public Radio, April 12, 2013. Audio available at: http://www.npr.org/2013/04/12/176992089/ex-kpmg-partner-accused-of-insider-trading.

Maria Bartiromo and Jane Wells, *CNBC Business: Money Central*, April 11, 2013. Video available at: http://www.bing.com/videos/watch/video/government-prosecutor-on-kpmg-scandal/3xetdgot?cpkey=619135cd-1023-454e-b3e5-960c7802d207%257c%257c%257c%257c.

Henry Meier, *Central District's Number Two Prosecutor Tapped to Oversee S&P Litigation*, Los Angeles Daily Journal, March 27, 2013. Copy supplied.

Katie Lucia, *Inland Empire Sees Boost In Federal Court Stature*, Los Angeles Daily Journal, March 22, 2013. Copy supplied.

Henry Meier, *Federal Prosecutor Jumps to LA Litigation Boutique,* Los Angeles Daily Journal, March 13, 2013. Copy supplied.

Jeffrey Thomas DeSocio, *Andre Birotte Jr: We'll Deal with Crimes Against Our Children,* My Fox LA, March 5, 2013. Video available at: http://www.myfoxla.com/story/20503745/andre-birotte-jr-we-will-deal-with-crimes-against-our-children.

Dr. Earl Ofari Hutchinson, *The Hutchinson Report,* February 15, 2013. Audio is available at: http://www.blogtalkradio.com/hutchinsonnewsmakershow/2013/02/17/us-attorney-andre-birotte-jr.

Matthew DeBord, *Pamela Anderson Unwittingly Helps Bilk Investors Out of $30 Million,* KPCC Radio, February 14, 2013. Audio and video available at: http://www.scpr.org/blogs/economy/2013/02/14/12563/pamela-anderson-and-eric-roberts-unwittingly-pitch/.

Henry Meier, *US Attorney Defends Approach*, Los Angeles Daily Journal, February 7, 2013. Copy supplied.

Steve Edwards *Good Day LA* KTTV Fox 11 Los Angeles, January 4, 2013. Video supplied.

Yussuf J. Simmonds, *Los Angeles County District Attorney Jackie Lacey,* Los Angeles Sentinel, December 6, 2012. Copy supplied.

Kelsey Schreiberg, *Chance Encounters and Crossing Color Lines,* USC Gould School of Law News, November 13, 2012. Copy supplied.

Katie Lucia, *Federal, State Agencies Coordinate Inland Empire Mortgage Fraud Crackdown*, Los Angeles Daily Journal, November 9, 2012. Copy supplied.

Steve Edwards *Good Day LA,* KTTV Fox 11, October 10, 2012. Video supplied.

Jeffrey Thomas DeSocio, *U.S. Attorney Andre Birotte Jr. Discusses "Scam Jam 2012,"* My Fox LA, October 10, 2012. Video available at: http://www.myfoxla.com/story/19604788/us-attorney-andre-birotte-jr-discusses-scam-jam-2012.

Jeffrey Thomas DeSocio, *U.S. Attorney André Birotte Jr. Discusses the Results of Homeowner Scam Probe*, My Fox LA, October 10, 2012. Video available at: http://www.myfoxla.com/story/19783668/us-attorney-andre-birotte-jr-discusses-the-results-of-homeowner-scam-probe.

Steve Edwards, *Good Day LA,* KTTV Fox 11, September 21, 2012. Video supplied.

Jeffrey Thomas DeSocio, *U.S. Attorney André Birotte Jr. and the Mortgage Fraud Summit*, My Fox LA, September 21, 2012. Video available at: http://www.myfoxla.com/story/18893064/us-attorney-andre-birotte-jr-and-the-mortagage-fraud-summit.

U.S. Attorney André Birotte (J.D. '91) Meets with Pepperdine Students, Pepperdine Law School Journal, Fall 2012. Copy supplied.

Steve Edwards, *Good Day LA,* KTTV Fox 11, June 27, 2012. Video supplied.

Butch Grimes, *Scams & Frauds Discussed with U.S. Attorney André Birotte Jr.*, June 25, 2012. Audio available at: http://www.butchgrimes.com/scams-fraud-discussed-with-us-attorney-andre-birotte-jr/.

Tom Girardi, *Champions of Justice Radio Program,* June 23, 2012. I have been unable to obtain a transcript or recording of this interview.

Yussuf J. Simmonds, *Blair Taylor Leaves Urban League*, Los Angeles Sentinel, May 31, 2012. Copy supplied.

Yussuf J. Simmonds, *Protecting the Consumer,* Los Angeles Sentinel, May 10, 2012. Copy supplied.

Colleen Williams, KNBC, May 3, 2012. Video available at: http://www.bing.com/videos/watch/video/medicare-fraud-crackdown-bogus-medicare-claims-totaled-dollar-452-million/1d2a4cdzb?cpkey=619135cd-1023-454e-b3e5-960c7802d207%257c%257c%257c%257c.

Henry Meier, *U.S. and State Officials Launch Consumer Fraud Outreach Effort,* Los Angeles Daily Journal, May 1, 2012. Copy supplied.

Larry Mantle, *Air Talk,* KPCC Radio Los Angeles, April 27, 2012. Audio available at: http://www.scpr.org/programs/airtalk/2012/04/27/26223/la-riot/.

Yussuf J. Sommonds, *Race and Rage: L.A. Civil Unrest Twenty Years Later*, Los Angeles Sentinel, April 26, 2012. Copy supplied.

Rob McMillan, *Heroin Ring in Redlands Shut Down by Authorities; 15 Arrested,* ABC LA, April 10, 2012, Video available at: http://abclocal.go.com/kabc/story?section=news/local/inland_empire&id=8616355.

Craig Feniger and Bill French, *20 Indicted in Inland Empire Heroin Bust*, NBC LA, April 10, 2012. Video available at: http://www.nbclosangeles.com/news/local/IE-Heroin-Ring-Shut-Down-146907305.html.

Lita Herron, *Gang Talk,* KTYM AM 1460, Los Angeles, February 23, 2012. I have been unable to obtain a recording or transcript, but sample questions are supplied.

Francis Taylor, *Children of Haiti Visit,* Los Angeles Sentinel, January 18, 2012. Copy supplied.

Kelsey Schreiberg, *U.S. Attorney Speaks with Students,* USC Gould School of Law News, November 21, 2011. Copy supplied.

J.J. Green, *West Coast Worries: Los Angeles in the Crosshairs,* WTOP Radio, November 18, 2011. Copy supplied and audio available at http://www.wtop.com/?nid=807&sid=2638543&pid=0&page=1.

Warren Olney, *To the Point: The Crackdown on Medical Marijuana: Prohibition Revisited?*, KCRW Radio, October 14, 2011. Audio available at: http://www.kcrw.com/news/programs/tp/tp111014the_crackdown_on_med.

Conan Nolan, *NBC News Conference,* October 12, 2011. Video available at: http://www.bing.com/videos/watch/video/news-conference-andre-birotte-jr-us-attorney-ca-central-district/1d2t4skkj.

Matt Kettman, *U.S. Attorney Talks to Santa Barbara Media,* Santa Barbara Independent, August 25, 2011. Copy supplied.

Beverly White and Susan Browning, *Mayor Praises Summer Night Lights Program Despite Shooting*, NBC LA, July 21, 2011. Video available at: http://www.nbclosangeles.com/video/#!/on-air/as-seen-on/Mayor-Praises-Summer-Night-Lights-Program-Despite-Shooting/125999998.

Carrie Kahn, *Feds Crack Down on Immigration Scam Artists*, National Public Radio, June 16, 2011. Audio available at: http://www.npr.org/2011/06/16/137215213/feds-crack-down-on-immigration-scam-artists.

Miriam Hernandez, *Federal, Local Agencies Crack Down on Immigration Scams,* ABC LA, June 9, 2011. Video available at: http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=8181870.

Lisa Rau, *Loyola Hosts Legal Experts to Discuss Hot-Button Topics*, Loyola Law School, Los Angeles, California, April 9, 2011. Video available at: http://www.youtube.com/watch?v=HbjeNf1zRY0.

Miriam Hernandez, *LA Marks 20 Years Since Rodney King Beating*, ABC 7, March 3, 2011. Video available at: http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=7992193

André Birotte Honored by Armenian Bar, Los Angeles Sentinel, March 3, 2011. Copy supplied.

Armenian Bar Honors U.S. Attorney André Birotte Jr., Asbarez Armenian News, March 2, 2011. Copy supplied.

John Emshwiller, *Big Bust Targets Armenian Gang, Wall Street Journal*, February 17, 2011. Copy supplied.

Yusuff J. Simmonds, *A Prosecutor's Prosecutor,* Los Angeles Sentinel, October 14, 2010. Copy supplied.

U.S. Attorney André Birotte Jr., Tufts University Magazine, Summer 2010. Copy supplied.

Yussuf J. Simmonds, *Terry J. Hatter Jr.: A Judge for All Seasons*, Los Angeles Sentinel, July 22, 2010. Copy supplied.

Celeste Freeman, *Bruce Riordan Leaving Trutanich to Join U.S. Attorney Andre Birotte, Jr.*, WitnessLA, June 11, 2010. Copy supplied.

Emily DiFrisco, *LA's Lawyer*, Pepperdine Law Magazine, Spring-Summer 2010. Copy supplied.

Tom Girardi, *Champions of Justice Radio Program*," March 13, 2010. Video supplied.

Pepperdine University School of Law, Alumnus Andre Birotte Confirmed as U.S. Attorney in Los Angeles, February 2010. Copy supplied.

Yusuff J. Simmonds, *Birotte Confirmed as U.S. Attorney,* Los Angeles Sentinel, February 18, 2010. Copy supplied.

Sheannette Virtue, *A Talk With LAPD's Inspector Birotte*, LA Beez, December 14, 2009. Copy supplied.

Yusuff J. Simmonds and Brian Carter, *André Birotte Jr. – Inspector General of the LAPD*, Los Angeles Sentinel, October 1, 2009. Copy supplied.

Yussuf J. Simmonds, *Choosing the Next LAPD Chief*, Los Angeles Sentinel, August 13, 2009. Copy supplied.

Michael Blood, *Police Chief Bratton Shocks LA with Resignation*, Associated Press, August 5, 2009. Copy supplied.

Yussuf J. Simmonds, *Judge Ends Consent Decree*, Los Angeles Sentinel, July 30, 2009. Copy supplied.

Greg Katz, *With End in Sight for Consent Decree, a Fragile Hope for Oversight*, Los Angeles Daily Journal, July 2009. Copy supplied.

Christopher Stone, Todd Foglesong, Christine M. Cole, *Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD*. May 2009. Report available at: http://www.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf.

Richard Winton, *Baca's TV Shows Get Mixed Reviews*, Los Angeles Times, February 12, 2009. Copy supplied.

Joel Rubin, *Police Chief Says He Still Has Plenty to Prove*, Los Angeles Times, December 7, 2008. Copy supplied.

Rachel Uranga, *Penalty Revised in Cops' Errors*, The Daily News, August 24, 2008. Copy supplied.

André Birotte, Jr., Inspector General: Balancing Safety and Civil Rights, El Pueblo, July 2008. Copy supplied.

Thomas Watkins, *LAPD Failed to Properly Investigate Excessive-force Complaints, Review Finds*, Associated Press, February 13, 2008. Copy supplied.

Use-Of-Force Info Altered?, The Daily News, February 13, 2008. Copy supplied.

Alice Walton, *Audit: LAPD Faces Problems Policing Own Department*, City News Service, February 12, 2008. Copy supplied.

Thomas Watkins, *LA Gunman Dead after Killing Three in Home and SWAT Officer*, Associated Press, February 8, 2008. Copy supplied.

Richard Winton, *Policy Flaws Cited in LAPD Report*, Los Angeles Times, October 27, 2007. Copy supplied.

Rachel Uranga, *Police Report Due on May Day Rally*, The Daily News, October 8, 2007. Copy supplied.

Richard Winton, *Police Commission Rebukes LAPD Over Paperwork Lack*, Los Angeles Times, June 27, 2007. Copy supplied.

Rachel Uranga, *Feds Set Outside Probe of Cops*, The Daily News, May 4, 2007. Copy supplied.

Richard Winton, *LAPD Cut Back Forces at Park Rally*, Los Angeles Times, May 4, 2007. Copy supplied.

Jeramiah Marquez, *FBI Opening Inquiry into LA Police Conduct at Immigration Rally*, Associated Press, May 4, 2007. Copy supplied.

Art Marroquin, *City News Service*, City News Service, May 3, 2007. Copy supplied.

Richard Winton, *The State; Chief Vows Full Inquiry into Violence*, Los Angeles Times, May 3, 2007. Copy supplied.

Patrick McGreevy, *Ex-Officer's Record Called Inaccurate*, Los Angeles Times, April 11, 2007. Copy supplied.

Rachel Uranga, *5-Month Gap in Record of LAPD Complaints*, The Daily News, April 10, 2007. Copy supplied.

Beth Barrett, *Anti-Terror Unit Skirts the Law*, The Daily News, April 3, 2007. Copy supplied.

Rachel Uranga, *Schizophrenic's Death Investigated*, The Daily News, February 13, 2007. Copy supplied.

Linda Deutsch, *Lawyer, Witness Claim Police Neglected Evidence in Blake Murder Case*, Associated Press, January 19, 2007. Copy supplied.

Scott Glover, *Officer Had Been Warned in Prior Case*, Los Angeles Times, January 13, 2007. Copy supplied.

LA Patrol Cars to Get Video Cameras to Track How Arrests are Made, Associated Press, November 21, 2006. Copy supplied.

Patrick McGreevy, *LAPD to Install Cameras in Patrol Cars*, Los Angeles Times, November 21, 2006. Copy supplied.

Art Marroquin, *City News Service*, City News Service, November 14, 2006. Copy supplied.

Art Marroquin, *City News Service*, City News Service, September 12, 2006. Copy supplied.

Gene Johnson, *City Attorney Won't Charge Nation of Islam Minister*, Wave West, August 3, 2006. Copy supplied.

Matt Lait, *In a Troubled Area, Violence Competes Daily with Progress*, Los Angeles Times, July 17, 2006. Copy supplied.

Gene Johnson, *Report: 'Warrior Policing' Still Problem with LAPD*, Wave West, July 13, 2006. Copy supplied.

Art Marroquin, *Internal Probes in 2 High-Profile Police Cases Due Soon, Official Says*, City News Service, March 7, 2006. Copy supplied.

Patrick McGreevy, *Complaints Up, Discipline Down at LAPD, Study Says*, Los Angeles Times, February 21, 2006. Copy supplied.

Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice, United States Department of Justice Office of

Community Oriented Policing Services, 2005. Report available at: http://ric-zai-inc.com/Publications/cops-p164-pub.pdf.

Dan Laidman, *Activists Pressure Panel*, The Daily News, December 7, 2005. Copy supplied.

Josh Kleinbaum, *LAPD Terror Efforts to be Given Audit*, The Daily News, November 13, 2005. Copy supplied.

Dan Laidman, *Bratton: Modify Decree*, The Daily News, October 26, 2005. Copy supplied.

Jeffrey Anderson, *Jan Perry's LAPD Blues*, LA Weekly, October 21, 2005. Copy supplied.

Dan Laidman, *New Police Panel Confronts Backlog*, The Daily News, October 11, 2005. Copy supplied.

Paul McLaughlin, *Watching the Detectives*, CA Magazine, October 2005. Copy supplied.

Andrew Blankstein, *Cooley Scorns Report on Police Prosecutions*, Los Angeles Times, September 15, 2005. Copy supplied.

Dan Laidman, *Nation of Islam Leader Defended by Supporters*, The Daily News, August 31, 2005. Copy supplied.

Lela Oliver, *Mack Takes Over Reins as President of the Los Angeles Police Commission*, Los Angeles Sentinel, August 31, 2005. Copy supplied.

Andrew Blankstein, *Beating of Minister Discussed*, Los Angeles Times, August 30, 2005. Copy supplied.

Dan Laidman, *Taking the Reins at LAPD*, The Daily News, August 22, 2005. Copy supplied.

Dan Laidman, *LAPD Forced Incidents Up 16 percent for Last Year*, The Daily News, August 17, 2005. Copy supplied.

Andrew Blankstein, *LAPD Eases Rules on Street Sources*, Los Angeles Times, August 13, 2005. Copy supplied.

Jeremiah Marquez, *Scandalized LAPD Recruits Pattern-Scanning Computer to Stop Rogue Cops*, Associated Press, July 23, 2005. Copy supplied.

Jill Leovy, *Source of Fatal Shot May Never Be Known*, Los Angeles Times, July 20, 2005. Copy supplied.

Richard Fausset, *Villaraigosa Names 4 to Panel Overseeing LAPD*, Los Angeles Times, July 15, 2005. Copy supplied.

Jim Newton, *News Analysis; Villaraigosa Faces a Triple Challenge*, Los Angeles Times, June 26, 2005. Copy supplied.

Jason Kandel, *Six Cops Face Penalties*, The Daily News, April 29, 2005. Copy supplied.

LA Activists Urge More Transparency in Police Shooting, Associated Press, March 22, 2005. Copy supplied.

Cara DiMassa, *Day of Dialogue Planned to Discuss Police Shooting*, Los Angeles Times, February 13, 2005. Copy supplied.

Andrew Blankstein, *Monitor Sees More Work for LAPD*, Los Angeles Times, November 22, 2004. Copy supplied.

Beth Barrett, *Shooting Probe Done Properly, Top Officials Say*, The Daily News, November 6, 2004. Copy supplied.

Jason Kandel, *Shootout's Handling Triggers LAPD Outrage*, The Daily News, October 23, 2004. Copy supplied.

Jessica Keating, *Starr New Law Dean at Pepperdine*, Ventura County Star, September 14, 2004. Copy supplied.

Terri Vermeulen, *LAPD to Probe Flashlight Incidents*, Daily Breeze, August 18, 2004. Copy supplied.

Terri Vermeulen, *Bratton: Flashlights Used on Suspects in Two Weekend Incidents*, City News, August 17, 2004. Copy supplied.

Herbert Sample, *Oakland Police Union: Shut Review Hearings*, Sacramento Bee, August 6, 2004. Copy supplied.

David Zahniser, *Bratton Favors Lighter Flashlights after LAPD Beating Incident*, Daily Breeze, August 4, 2004. Copy supplied.

Jason Kandel, *Kin Sues LAPD in Death of Man after His Arrest*, The Daily News, July 27, 2004. Copy supplied.

Steve Hymon, *Beating Report Almost Done*, Los Angeles Times, July 25, 2004. Copy supplied.

Alison Shackelford, *Emotions Flow at 'Day of Dialogue,'* Daily Breeze, July 9, 2004. Copy supplied.

David Houston, *LAPD Inspector General Investigates the Investigations*, Los Angeles Daily Journal, July 6, 2004. Copy supplied.

Dominique DiPrima, *LA Speaks Out*, KJLH-FM 102.3, July 3, 2004. I have been unable to obtain a transcript or recording for this interview.

Andrew Blankstein, *Police Say Officers Didn't Collude,* Los Angeles Times, July 2, 2004. Copy supplied.

James Nash, *Community Leaders to Get Role in Beating Probe*, The Daily News, June 26, 2004. Copy supplied.

Matt Lait, *Police May Have Feared Arrestee Was Armed,* Los Angeles Times, June 26, 2004. Copy supplied.

Lester Holt, *LAPD Inspector General André Birotte Discusses the Role and Responsibility of His Office in the Investigation of the Arrest of Stanley Miller*, The Today Show, NBC News Transcripts, June 26, 2004. Copy supplied.

LAPD Inspector Promises Thorough Probe into Videotaped Beating Scandal, Xinhua General News Service, June 26, 2004. Copy supplied.

Erin Park, *City News Service*, City News Service, June 25, 2004. Copy supplied.

Video Shows LAPD Officer Beating Suspect, CNN, June 23, 2004. Copy supplied.

June 23, 2004: Press conference held by LAPD to address the use of force at the termination point of a police pursuit. I have no notes, transcript or recording.

Andrew Blankstein, *Key Period Begins in Reform of LAPD*, Los Angeles Times, June 14, 2004. Copy supplied.

Richard Winton, *LAPD Overseer Requests Larger Staff*, Los Angeles Times, May 18, 2004. Copy supplied.

LAPD Retaliation, City News Service, February 17, 2004. Copy supplied.

Amnesty International, *Deal with Police: Police Misconduct, Part 4*, Interview on January 29, 2004. This interview was conducted jointly with the Deputy Inspector General, and I do not recall the details of the interview or the exact source for each of the descriptions included in the article. Copy supplied.

Richard Winton, *Special Police Unit is Under Review*, Los Angeles Times, November 11, 2003. Copy supplied.

Alex Dobuzinskis, *Consent Decree*, City News Service, June 16, 2003. Copy supplied.

Robert Greene, *Neat and Messy*, LA Weekly, June 13, 2003. Copy supplied.

Mariel Garza, *Watchdog Seeks LAPD Reforms*, The Daily News, June 11, 2003. Copy supplied.

Mason Stockstill, *Police Commission Loosens Restrictions on Inspector General*, City News Service, June 10, 2003. Copy supplied.

Jim Crogan, *Life of a Whistleblower*, LA Weekly, June 6, 2003. Copy supplied.

From Both Sides of the Fence, Tufts University E-News, June 2, 2003. Copy supplied.

Gene Johnson, *He's the New 'Eyes and Ears' on Police Misconduct Cases*, Wave West, May 21, 2003. Copy supplied.

Richard Winton, *L.A. Police Commission Names Insider to Inspector General Post*, Los Angeles Times, May 14, 2003. Copy supplied.

Mason Stockstill, *Inspector General*, City News Service, May 13, 2003. Copy supplied.

A Critical Analysis of Lessons Learned: Recommendations for Improving the California Criminal Justice System in the Wake of the Rampart Scandal, Los Angeles County Bar Association, April 2003. Report available at: http://www.lacba.org/Files/Main Folder/News/HomepageArticles/Files/LACBA Task Force Report1.pdf.

Mariel Garza, *Shootings Fall by 30 Percent within LAPD*, The Daily News, May 8, 2002. Copy supplied.

Anthrax, City News Service, July 21, 1999. Copy supplied.

Andrew Blankstein, *Calabasas Man Convicted in Anthrax Threat*, Los Angeles Times, April 28, 1999. Copy supplied.

Mack Reed, *Woman Gets 8 Months of House Arrest in Bank Heist*, Los Angeles Times, September 24, 1996. Copy supplied.

Paul Elias, *Soccer Star, Boyfriend Plead Guilty in Robbery*, Los Angeles Times, April 3, 1996. Copy supplied.

Press conferences:

February 21, 2014: Press conference held with officials from the FBI, IRS-CID and California Department of Insurance to announce the filing of federal public corruption charges against a California State Senator, Los Angeles, CA. Outline supplied and video available at: http://www.kcra.com/news/local-news/news-sacramento/us-attorneys-office-expected-to-announce-sen-calderon-charges/24602444

December 9, 2013: Press conference with officials from the FBI to announce civil rights and obstruction of justice charges against 18 current and former LASD deputies, Los Angeles, CA. Outline supplied and videos available at: http://www.courier-journal.com/VideoNetwork/2917858564001/Los-Angeles-County-Sheriff-s-Officials-Charged; http://www.cnn.com/2013/12/09/justice/los-angeles-deputies-arrested/index.html?iref=allsearch; http://www.nbclosangeles.com/news/local/Federal-Authorities-Announce-Criminal-Charges-Against-Members-Local-Law-Enforcement-Agency-235097281.html. Audio recordings available at: http://news.yahoo.com/video/deputies-considered-themselves-above-law-222033502.html; http://www.npr.org/templates/story/story.php?storyId=249920055; http://www.npr.org/2013/12/09/249825394/l-a-sheriffs-deputies-indicted-on-corruption-civil-rights-abuses; http://www.kcrw.com/news/programs/ww/ww131209fbi_arrests_17_indic.

November 5, 2013: Press conference with officials from the FBI and Riverside District Attorney's Office to announce guilty pleas in Moreno Valley bribery case, Riverside, CA. Outline and representative press coverage supplied. Videos available at: http://abclocal.go.com/kabc/story?section=news/local/inland_empire&id=9314570; http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=9311341.

November 2, 2013: Press conference with officials from the FBI, TSA and other local and federal enforcement agencies to announce the filing of charges against the alleged murderer of TSA officer at LAX Airport, Los Angeles, CA. Outline supplied and videos available at:

http://live.wsj.com/video/federal-prosecutors-on-lax-shooting/F274D2CD-7700-4F31-AA4C-C73C79D1A48C.html#!F274D2CD-7700-4F31-AA4C-C73C79D1A48C;
http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=9311341.

September 27, 2013: Press conference held by LAPD with local law enforcement and local religious leaders at the LAPD headquarters to demonstrate local unity between law enforcement and representatives of the diverse religious communities of Los Angeles. Outline supplied.

September 24, 2013: Press conference with ATF, DEA and local law enforcement to announce the filing of charges against Orange County prison gang and street gang members in "Operation Smoking Aces," Santa Ana, California. Outline supplied and videos available at:
http://www.dailymail.co.uk/news/article-2431091/Street-gang-controls-ALL-Orange-County-drug-trade-taken-SWAT-teams-swoop-120-members-Mexican-Mafia.html;
http://abclocal.go.com/kabc/story?section=news/local/orange_county&id=9259996.

August 6, 2013: Press conference with officials from the DEA, ATF and other local and federal law enforcement agencies to announce charges in methamphetamine conspiracy case charging dozens of members and associates of drug trafficking organization, prison gang and street gang, Glendale, California. Outline and representative press coverage supplied.

May 15, 2013: Press conference with officials from the Montebello Police Department, ATF, the Los Angeles District Attorney's Office and other law enforcement agencies to announce arrests and charges in a joint federal and local operation focused on the criminal activities of the Southside Montebello Gang Montebello, CA. Outline and representative press coverage supplied.

March 22, 2013: Press conference with officials from the Los Angeles Sheriff's Department and FDA held in Monterey Park, CA to announce charges and arrests for illegal distribution of nitrous oxide in "Operation No Laughing Matter," Montebello, CA. Outline supplied and video available at:
http://www.youtube.com/watch?v=hRySDb1DDDQ.

February 8, 2013: Press conference with officials from FBI and Los Angeles Sheriff's Department to announce the filing of federal indictment against gang members for federal hate crimes, Los Angeles, CA. Outline supplied and video available at:
http://www.youtube.com/watch?v=uoOY1jyFJz4.

February 5, 2013: Press conference with Attorney General Eric Holder and others to announce filing of civil lawsuit against Standard & Poor's Financial Services,

Washington, DC. Video available at:
http://www.bloomberg.com/video/holder-cites-egregious-conduct-as-u-s-sues-s-p-iefwGiOAS9WI9zRqwc6GbQ.html.

January 17, 2013: Press conference after Human Trafficking film, San Bernardino County District Attorney's Office, Redlands, CA. Outline supplied.

January 3, 2013: Press conference with officials from ICE-HSI and others to announce law enforcement search for leads regarding fugitive producers of child pornography as part of international effort known as "Operation Sunflower," Los Angeles, CA. Outline supplied. Videos available at:
http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=8940879;
http://www.nbclosangeles.com/video/#!/on-air/as-seen-on/Clues-in-Background-of-Photos-Could-Help-Solve-Child-Porn-Case/185630622;
http://losangeles.cbslocal.com/2013/01/03/child-porn/.

October 2, 2012: Press conference at the National Humane Society of Los Angeles in Los Angeles, California to present annual awards for "prosecutor of the year" to three AUSAs from the U.S. Attorney's Office and to receive an award, Los Angeles, CA. Outline and representative press coverage supplied.

August 9, 2012: Press conference with the FBI and Riverside County Sheriff's Department held in Riverside, California to announce federal indictments filed against members of a sex trafficking and prostitution ring, Riverside, CA. Outline supplied and videos available at: http://losangeles.cbslocal.com/2012/08/09/8-indicted-in-inland-empire-teenage-sex-trafficking-ring/;
http://abclocal.go.com/kabc/story?section=news/local/inland_empire&id=8768552.

July 19, 2012: Press conference held at the City of Riverside Police Department to announce charges filed in "Operation Duck Pond" crackdown on stolen guns and vehicles, Riverside, CA. Outline supplied and videos available at:
http://abclocal.go.com/kabc/story?id=8742700
http://abclocal.go.com/kabc/story?section=news/local/inland_empire&id=8742700; http://www.nbclosangeles.com/news/local/Crime-Crackdown-in-the-Inland-Empire-163114366.html.

April 10, 2012: Press conference held at the City of Redlands Police Department to announce heroin trafficking charges filed against 20 individuals. Outline supplied and video available at:
https://www.youtube.com/watch?v=s_bZ2CfrTWM.

December 21, 2011: Press conference held at the Department of Justice with Attorney General Eric Holder and others to announce a $335 million settlement with Bank of America over claims of discriminatory lending practices. Video available at:

http://www.c-span.org/video/?303340-1/bank-america-mortgage-lending-settlement.

December 15, 2011: Press conference with officials from the FBI to announce crackdown on "Relative in Distress" fraud scams, Los Angeles, CA. Outline and representative press coverage supplied. Video available at: http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=8469045.

October 12, 2011: Press conference with FBI officials to announce the arrest of Florida man in celebrity hacking case, Los Angeles, CA. Outline supplied and video available at: http://abclocal.go.com/wabc/story?section=news/entertainment&id=8388989.

October 7, 2011: Press conference with the other three California U.S. Attorneys to announce law enforcement actions regarding the sale and distribution of marijuana taken by each of the four California U.S. Attorney's Offices, Sacramento, CA. Outline supplied and video available at: http://www.dailymotion.com/video/xljhy1_feds-announce-calif-pot-dispensary-crackdown_news. Audio available at: http://www.npr.org/2011/10/07/141162216/feds-crack-down-on-pot-shops.

July 13, 2011: Press conference with federal and local law enforcement to announce RICO charges in "Operation Black Flag," Santa Ana, CA. Outline supplied and videos available at: http://www.youtube.com/watch?v=_cQyuLiC0eg; http://abclocal.go.com/kabc/story?section=news/local/orange_county&id=8248343.

June 7, 2011: Press conference with officials from the DEA and Azusa Police Department to announce hate crime charges against members and associates of Azusa 13 Gang, Los Angeles, CA. Outline supplied and audio is available at: http://www.youtube.com/watch?v=stlEMIzN9RA.

May 3, 2011: Press conference in Santa Maria, California, with officials from the FBI and local law enforcement to announce the filing of federal charges against members and associates of Santa Maria area street gangs. Outline and representative press coverage supplied.

April 28, 2011: Press conference at the Harbor Division of the LAPD with officials from the ATF and LAPD to announce the filing of federal and local charges against members and associates of the Rancho San Pedro Gang. Outline and representative press coverage supplied.

February 16, 2011: Press conference at the Glendale Police Department Headquarters with officials from the DEA, FBI, IRS and local law enforcement agencies to announce federal RICO charges against 74 members and associates of

the AP-13 Gang. Outline supplied and
video available at:
http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=7963500.

February 9, 2011: Press conference in Oxnard, California at the Oxnard Police Department with officials from the FBI and Oxnard Police Department to announce the filing of charges against members and associates of Oxnard street gangs. Outline supplied and video available at:
http://www.vcstar.com/videos/detail/oxnard-press-conference/?partner=yahoo_feeds.

February 1, 2011: Press conference at the LAPD in Los Angeles with officials from LAPD, DEA and other law enforcement agencies to announce the filing of charges in the 38th Street Gang Operation. Outline and representative press coverage supplied.

December 14, 2010: Press conference at the offices of the FBI in Los Angeles with officials from the FBI and other law enforcement agencies to announce the filing of charges against an international child pornography ring known as the "Lost Boy" bulletin board. Outline supplied and videos available at:
http://abclocal.go.com/story?section=news/world_news&id=7844451;
http://abclocal.go.com/kabc/story?section=news/world_news&id=7844451;
http://www.cnn.com/2010/CRIME/12/14/california.child.porn/index.html?iref=allsearch.

October 21, 2010: Press conference in Los Angeles, California with officials from ICS HSI and other federal and local law enforcement officials to announce the filing of charges against Wilmington and San Pedro gang members in "Operation Red Rein." Outline supplied and video available at:
http://www.youtube.com/watch?v=OJVLjiKCgXw.

August 25, 2010: Press conference in Los Angeles, California, with officials from the FBI, LAPD and other federal and local law enforcement agencies to announce the filing of charges against members and associates of the Pueblo Bishop Bloods street gang. Outline and representative press coverage supplied.

June 17, 2010: Press conference in Ventura, California with officials from the Ventura County District Attorney's Office, the FBI and other federal and local law enforcement agencies to announce the filing of federal and local mortgage fraud charges as part of the national effort known as "Operation Stolen Dreams." Outline and representative press coverage supplied.

June 1, 2010: Press conference in Los Angeles, California with officials from the FBI and other law enforcement agencies to announce the filing of charges in an international mass marketing fraud scheme case. Outline supplied.

April 9, 2010: Press conference held by LAPD to provide an LAPD update on a recent quadruple murder investigation. I have no notes, transcript or recording.

Press releases:

In an effort to keep the public informed of the work done by the United States Attorney's Office, the office issues press releases on matters routinely. I have supplied a list that represents what I believe to be a complete list of press releases that have been released during my tenure as United States Attorney, as well as copies of those press releases.

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

From 1996 until I was appointed United States Attorney in 2010, I periodically served as a Temporary Judge in the Los Angeles Superior Court's Temporary Judge Program. This program allows attorneys who have been licensed for more than ten years and are in good standing with the bar to serve as Temporary Judges hearing civil matters. The Los Angeles Superior Court makes clear that serving as a Temporary Judge in the program is voluntary and that service is at the discretion of the Presiding Judge of the Superior Court. Moreover, The Superior Court makes clear that participation in the program does not permit participants to advertise in any manner that would cause the public to believe that participants are judicial officers.

During my tenure in the program, I served approximately three to four times a year, hearing exclusively small claims cases where the amount requested was $10,000 or less. In small claims court, there are no lawyers, the rules of evidence do not apply, and all matters are heard and decided by the Temporary Judge. It is a high volume court designed to resolve matters quickly. I estimate that I heard anywhere from 100 to 150 small claims matters during my tenure as a Temporary Judge. I do not recall the facts from any of the cases, and there are no transcripts of any of the hearings over which I presided.

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

I presided over approximately 100 to 150 cases that went to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	0 %
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

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

Given the nature of this caseload, I did not issue any written opinions.

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

Small claims matters are high volume matters where the litigants are not represented by counsel, the rules of evidence do not apply and all matters are heard and decided by the Temporary Judge. I have no independent recollection of any of the matters that I handled in the program and am unable to determine this information through searching the court records.

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.

Given the nature of this caseload, I did not issue any written opinions.

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

I am not aware of any cases over which I presided in which certiorari was either requested or granted.

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

I am not aware of any decisions that were reversed by a reviewing court or where my judgment was significantly criticized.

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

None.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the

opinions listed were not officially reported, provide copies of the opinions.

None.

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

None.

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

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

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

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

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

I would assess recusal issues on a case-by-case basis, erring on the side of caution to avoid even the appearance of a conflict of interest. During my tenure, I did not recuse myself from any case, nor was I requested to be recused.

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 the United States Attorney for the Central District of California on February 16, 2010, by President Barack H. Obama.

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

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

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

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

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

I have not served as a judicial law clerk.

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

I have never practiced as a sole practitioner.

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

1991 – 1994
Office of the Public Defender, Los Angeles County
210 West Temple Street
19th Floor
Los Angeles, California 90012
Deputy Public Defender

1995 – 1999
United States Attorney's Office
312 North Spring Street
12th Floor
Los Angeles, California 90012
Assistant United States Attorney

1999 – 2001
Quinn Emanuel Urquhart & Sullivan
865 South Figueroa Street
Los Angeles, California 90017
Associate

2001 – 2010
Los Angeles Police Commission
Office of the Inspector General
201 North Figueroa Street
Suite 610
Los Angeles, California 90012
Assistant Inspector General (2001 – 2003)
Inspector General (2003 – 2010)

2010 – Present
United States Attorney's Office
312 North Spring Street
12th Floor
Los Angeles, California 90012
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.

The vast majority of my practice has been in and around the criminal justice system, though I also have experience both handling and supervising civil litigation.

From 1991 to 1994, I served as a Los Angeles County Deputy Public Defender, representing indigent clients in various phases of criminal proceedings, including arraignments, preliminary hearings, pretrial conferences and trials.

From 1994 to 1999, I served as an Assistant United States Attorney ("AUSA") in the Criminal Division of the United States Attorney's Office for the Central District of California, where as a criminal prosecutor I handled all phases of criminal litigation from investigation through appeal.

From 1999 until 2001, I was an associate at Quinn Emanuel, representing clients in white-collar criminal and civil business litigation matters.

In 2001, I began my work as an Assistant Inspector General for the Los Angeles Board of Police Commissioners' (the "Commission") Office of the Inspector General ("OIG"). The OIG was responsible for reviewing and conducting administrative investigations regarding allegations of misconduct by LAPD officers and for reviewing LAPD internal investigations and audits to ensure compliance with both LAPD policies and mandates from a Federal Consent Decree. My work as an Assistant Inspector General included review of officer-involved shootings and other serious use of force investigations; investigations of complaints of misconduct by LAPD officers; and investigations and audits relating to arrest, booking and charging reports, search warrants, confidential informant packages, and LAPD's anti-terrorism division. In May 2003, I was appointed by the Commission to serve as Inspector General. As Inspector General, I led a staff of approximately 32 employees, and continued to be responsible in overseeing the review of use of force investigations, audit reports as well as complaints of misconduct against members of the Los Angeles Police Department.

In February 2010, I was confirmed by the United States Senate to serve as United States Attorney for the Central District of California. In that capacity, I oversee approximately 500 employees, including approximately 260 AUSAs, as well as paralegals and administrative and support staff. The United States Attorney's Office is responsible for representing the United States in virtually all litigation involving the federal government within the Central District of California in criminal, civil and tax matters. In addition, as United States Attorney, I coordinate federal law enforcement activities within the District with the heads of other federal agencies, including, among others, the Federal Bureau of Investigation, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco Firearms and Explosives, and a number of Inspectors General, as well as with the heads of local law enforcement agencies, including the LAPD and the Los Angeles County Sheriff's Department. I also oversee community outreach efforts in the District on behalf of the USAO and the Department of Justice, including in particular a wide variety of crime prevention efforts within the many diverse communities within the District.

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

As a Deputy Public Defender, my clients were indigent defendants charged with misdemeanor and felony offenses. As an Assistant United States Attorney for the Central District of California, my client was the United States government. As an associate at Quinn Emanuel, the clients were both individuals and companies. As Inspector General, our responsibility was to provide some level of community confidence that the

Los Angeles Police Department was compliant with its own policies as well as mandates from a Federal Consent Decree. As the United States Attorney for the Central District of California, my client is the United States government.

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

Approximately 60% of my practice has been in litigation. From 1991 through 1994, I served as a Deputy Public Defender where I appeared in court on a daily basis. From 1995 through 1999, I served as an Assistant United States Attorney where I appeared in court on a regular basis. From 1999 through 2001, I was a litigation associate at Quinn Emanuel where I appeared in court occasionally on both criminal and civil litigation matters. From 2001 to 2010, I worked in the Inspector General's Office of the Los Angeles Police Commission as an Assistant Inspector General and Inspector General. This was not a litigation position and I did not appear in court as counsel of record during that time period. In my current position, as United States Attorney, I oversee all of the federal criminal and civil litigation in the Central District of California. To date I have not appeared in court as counsel of record on any matters.

i. Indicate the percentage of your practice in:
   1. federal courts: 75%
   2. state courts of record: 25%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 20%
   2. criminal proceedings: 80%

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

During my legal career, I have tried approximately 40 jury trials in both state and federal courts. I have tried approximately three bench trials. I was sole counsel in approximately 90% of my cases

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

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

None.

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

a. the date of representation;

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

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

I have organized the cases listed below in reverse chronological order:

1. *TRW Inc., Continental Casualty Company and Steadfast Insurance Company v. American Monorail of California et al.*, Case No. 812999 (Consolidated with Case No. 786405)

I was the co-counsel, representing TRW Inc., Continental Casualty Company, and Steadfast Insurance Company, in an express and implied indemnity action to recover amounts TRW paid in settlement of a wrongful death action. TRW contracted the decedent to wash walls at a TRW facility. While working near a 480-volt electrical bridge crane manufactured and assembled by defendants, the decedent received an electrical shock from a piece of exposed metal at the end of the energized conductor bars that powered the crane and ran along the ceiling of the building. TRW alleged that the electrified metal was exposed when the insulated protective end cap – specifically designed to prevent contact with the electrified metal – fell off due to the negligently installed (and defectively designed) conductor bars. Defendants contended that the protective end cap was neither defectively designed nor negligently installed. Defendants further alleged that TRW was negligent in failing to ensure that the crane was turned off when the decedent was washing the walls. After a two-week jury trial in 2000, the jury found in favor of the defendants. Litigation on this case commenced in 1997. Because of my trial experience, I was asked to try the case with co-counsel approximately two months before the trial.

Court: The Honorable Derek W. Hunt
Orange County Superior Court

Co-Counsel: Michael E. Williams
Quinn Emanuel Urquhart & Sullivan LLP
865 South Figueroa Street
Tenth Floor
Los Angeles, CA 90017
(213) 443-3000

Defense counsel:
R. Scott Johnson, Esq.
John Rygh, Esq. (deceased)
Johnson & Cebula
115 Pine Avenue, Fifth Floor
Long Beach, CA 90802-4446
(562) 437-0307

John J. Duffy
Gray Duffy LLP
15760 Ventura Boulevard, 16th Floor
Encino, CA 91436
(818) 907-4000

2. *United States v. Spelkin* , Case No. CR 99-21-GHK

I was the prosecutor in this federal criminal case charging defendant with the threatened use of a weapon of mass destruction based on his telephone call to the U.S. Bankruptcy Court in Los Angeles – on the date he was scheduled to appear at a hearing to determine sanctions against him – in which he stated that there was possibly anthrax in the building's air conditioning system, in violation of 18 U.S.C. § 2332a. As a result of the defendant's misrepresentations, the courthouse had to be evacuated and a hazardous materials crew had to evaluate the building and all persons inside the courthouse for any signs of anthrax contamination. After a bench trial in 1999, the defendant was found guilty and was ordered to perform 400 hours of community service.

Court: The Honorable George H. King
United States District Court, Central District of California

Defense counsel:
Steven Michael Cron
Cron Israels & Stark
1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401
(310) 451-9888

3. *United States v. Williams, et al.,* Case No. 97-322-R

I was the co-prosecutor in this complex federal criminal case charging six defendants (Victor Herd, Purvis Herd, Anthony Boone, Layni Laurent, Tontantzin Rodriguez, and Larry West) with participation in a sophisticated robbery crew that committed multiple armed robberies of Persian rug stores in various California cities in violation of 18 U.S.C. §§ 1951 and 924(c). The defendants often created elaborate ruses, using attractive young females posing as potential buyers of expensive merchandise. The false buyer would request to meet the store owners again later in the day asking if the rugs could be shown to purported family members. At or near the store's closing, the false buyer would call and indicate that they were on their way and request that the store remain open. A robbery crew would then arrive, hold up the store, load the most expensive rugs into U-Haul trucks and leave. These rugs were then sold on the black market. Two defendants were also indicted in the Northern District of California resulting in court litigation in that District as well. After two one-week jury trials in 1998, four defendants (V. Herd, P. Herd, Boone and West) were either convicted by the jury of one or more of the charged crimes or pleaded guilty to related crimes pursuant to plea agreements. The remaining two defendants pleaded guilty before trial. Defendant P. Herd pleaded guilty in a related case and was sentenced to a term of imprisonment of 60 months. Defendant V. Herd was sentenced to a term of imprisonment of 188 months. Defendant Boone was sentenced to a term of imprisonment of 137 months. Defendant West was given five years' probation and ordered to pay over $15,000 in restitution.

Court: The Honorable Manuel Real
United States District Court, Central District of California

Co-Counsel: Mark Hardiman
Nelson Hardiman LLP
11835 West Olympic Boulevard, Ninth Floor
Los Angeles, CA 90064
(310) 203-2800

Defense counsel:
Anthony E. Alexander
Atkins and Evans
3699 Wilshire Boulevard, Suite 890
Los Angeles, CA 90010
(213) 487-1400

Ronald O. Kaye
Kaye McLane Bednarski & Litt LLP
234 East Colorado Boulevard, Suite 230

Pasadena, CA 91101
(626) 844-7660

Bernard J. Rosen
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Beverly Hills Law Building
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Beverly Hills, CA 90212
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Hermosa Beach, CA 90254
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Law Offices of Stephen E. Webber
Post Office Box 3497
Glendale, CA 91221
(818) 484-8650

Elliot E. Stanford
Law Offices of Elliot E. Stanford
15332 Antioch Street, Suite 526
Pacific Palisades, CA 90272
(310) 473-4017

Michael Norris
Law Offices of Michael Norris
120 Fishermans Wharf
Redondo Beach, CA 90277
(310) 376-0922

Philip Deitch
Law Offices of Philip Deitch
2633 Lincoln Boulevard, Suite 818
Santa Monica, CA 90405
(310) 899-9600

4. *United States v. Reed, et al.* Case No. CR 96-942(C)-WDK

I was the co-prosecutor in this federal criminal case charging two defendants (Mr. Rose and Mr. Mitchell) with organizing and supplying various robbery crews with police scanners, walkie-talkies and firearms to commit multiple armed take-over bank robberies in the Los Angeles area in violation of 18 U.S.C. §§ 371,

2113(a),(d) and 924(c). After a two-week jury trial in 1997, in which defendant Rose was granted pro-se status mid-trial, both defendants were convicted by the jury. Five other co-defendants, charged with actually committing the robberies, pleaded guilty before trial. Defendant Rose was sentenced to a term of imprisonment of 120 months. Defendant Mitchell was sentenced to a term of imprisonment of 360 months.

Court: The Honorable William D. Keller
United States District Court, Central District of California

Co-Counsel: Heidi L. Rummel
(Formerly Assistant U.S. Attorney)
Clinical Assistant Professor of Law
USC Gould School of Law
699 Exposition Boulevard
Los Angeles, CA 90017
(213) 740-2865

Defense counsel:
Cornell J. Price
Law Offices of Cornell J. Price
Post Office Box 91773
Pasadena, CA 91109
(213) 858-6976

Michael J. Treman
30 North Santa Ynez #B
Post Office Box 42059
Santa Barbara, CA 93140
(805) 962-6544

Malcolm Guleserian
14120 Beach Boulevard
Suite 201
Westminster, CA 92683
(714) 373-8222

Errol H. Stambler
Law Offices of Errol H. Stambler
10880 Wilshire Boulevard, Suite 1050
Los Angeles, CA 90024
(310) 473-4525

John Yzurdiaga
Law Offices of John Yzurdiaga
800 Wilshire Boulevard, Suite 1510

Los Angeles, CA 90017
(213) 622-9262

Richard M. Callahan, Jr.
Law Offices of Richard M. Callahan, Jr.
225 South Lake Avenue Suite 300
Pasadena, CA 91101
(626) 202-4060

5. *United States v. Patillo*, Case No. CR 97-167-SVW

I was the prosecutor in this federal criminal case charging defendant with committing bank fraud by depositing a fraudulently endorsed $78,000 check into his City National Bank account and using a fictitious business statement to falsely indicate to the bank that the business listed as the payee on the check belonged to him, in violation of 18 U.S.C. § 1344. After a two-day jury trial in 1997, defendant was convicted of bank fraud. The defendant was sentenced to 366 days' imprisonment.

Court: The Honorable Steven V. Wilson
United States District Court, Central District of California

Defense counsel:
Robert Bernstein
Law Offices of Robert Bernstein
9595 Wilshire Boulevard
Suite 900
Beverly Hills, CA 90212
(310) 477-1480

6. *United States v. McKenith, et al.*, Case No. 96-675-RMT

I was the co-prosecutor in this federal criminal case charging three defendants (Mr. McKenith, Mr. Jones and Mr. England) with committing multiple armed and highly violent take-over bank robberies in the Los Angeles area in violation of 18 U.S.C. §§ 371, 2113(a),(d) and 924(c). Defendants would scout out banks during early morning hours to learn the banks' opening procedures. Defendants also used a female co-conspirator to go inside the banks to learn their interior layouts. Defendants would then dress up as business men or security guards and approach unsuspecting tellers to gain entry. Defendants bound tellers with duct tape, and, on several occasions, tellers were pistol-whipped, kicked, and battered. Defendants stole more than $200,000 from the respective banks. All three defendants were convicted in a jury trial in 1996. I drafted the appellate briefs, with co-counsel, and I argued before the Ninth Circuit. All convictions were affirmed. Defendants McKenith and Jones were each sentenced to terms of

imprisonment of 968 months. Defendant England was sentenced to a term of imprisonment of 180 months.

Court: The Honorable Robert M. Takasugi (deceased)
United States District Court, Central District of California

Co-Counsel: Stephen G. Wolfe
Office of United States Attorney
312 North Spring Street, Room 1504
Los Angeles, CA 90012
(213) 894-7408

Defense counsel:
Louis H. Bernstein
(Formerly of Louis H Bernstein Law Offices)
(current business contact information unknown)

Ralph Bencangey
Ralph Bencangey Law Offices
10736 Jefferson Boulevard, Box 956
Culver City, CA 90230
(310) 858-3135

Jerome J. Goldfein
5402 Barwood Drive
Huntington Beach, CA 92649
(714) 846-1493
(Practitioner is currently retired.)

7. *United States v. Chandler*, Case No. 94-91-LHM

I was the prosecutor in this federal criminal case charging defendant with bank robbery, in violation of 18 U.S.C. § 2113(a). Counsel for defendant claimed defendant was incompetent to stand trial. A staff psychologist from the Federal Medical Center where defendant was being treated opined that the defendant was malingering. After extensive briefing on the matter and multiple hearings that included testimony from competing experts, the district court ruled that the defendant was competent, based in part on excerpts of the defendant's recorded phone calls while in custody. In 1997, the defendant pleaded guilty to bank robbery before trial and was sentenced to a term of imprisonment of 151 months.

Court: The Honorable Linda H. McLaughlin (deceased)
United States District Court, Central District of California

Defense counsel:
Craig Wilke

Law Office of Craig Wilke
305 North Harbor Boulevard, Suite 216
Fullerton, CA 92832
(714) 870-8900

8. *United States v. Luethi*, Case No. CV 95-2459-ABC (VAP)

I was the prosecutor assigned to an extradition on behalf of Switzerland. The defendant had fled to California after being convicted and sentenced in Zurich to seven and one-half years in prison for defrauding stock investors of approximately $100 million between 1987 and 1989. After vigorous litigation in the district court and briefing before the Ninth Circuit, the defendant was extradited to Switzerland in 1995.

Court: The Honorable Virginia A. Phillips
United States District Court, Central District of California

Defense counsel:
Joseph Shemaria
Joseph Shemaria Law Offices
1801 Century Park East Suite 2400
Los Angeles, CA 90067
(310) 278-2660

The Honorable Michael D. Abzug
(Formerly Private Practitioner)
Los Angeles County Superior Court
Clara Shortridge Foltz Criminal Justice Center
Department 32
210 West Temple Street
Los Angeles, CA 90012
(213) 974-9624

9. *United States v. Mohamadian*, Case No. CR 95-662-Kn

I was the prosecutor in this federal criminal case charging defendant with knowingly smuggling 4,834 grams of opium concealed in a wooden buffet addressed to him that he picked up from a U.S. Customs facility, in violation of 21 U.S.C. §§ 841(a)(1), 952(a) and 960(a). This was a difficult case from the outset because proof of defendant's knowledge of the contents of the well-concealed opium was entirely circumstantial. The government presented evidence of defendant's anxious and nervous behavior when picking up the buffet, as well as his inconsistent statements to both customs officials and law enforcement. After a three-day jury trial in 1995, defendant was convicted of all charges and sentenced to a term of imprisonment of 78 months.

Court: The Honorable David V. Kenyon (deceased)
United States District Court, Central District of California

Defense counsel:
Angel Navarro
714 West Olympic Boulevard
Suite 450
Los Angeles, CA 90015
(213) 744-0216

10. *United States v. Wiedow, et al.*, Case No. 95-07-AWT

I was the prosecutor in this federal criminal case charging defendants (Ms. Wiedow and Mr. Reilley) with possession of cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). This case originated from an FBI undercover investigation entitled, "Operation Blue Sweep," which targeted interstate narcotics dealing by the Los Angeles Rolling Sixties Neighborhood Crips. Defendants were arrested after they flew in from Kansas City and purchased $16,000 of cocaine from a confidential informant. Both defendants pled guilty to drug trafficking before trial. Defendant Wiedow received a term of imprisonment of 48 months. Defendant Reilley received a term of imprisonment of 57 months.

Court: The Honorable A. Wallace Tashima

Defense counsel:
Sylvia Torres-Guillen
(Formerly Deputy Federal Public Defender)
General Counsel
Agricultural Labor Relations Board
1325 J Street, Suite 1900
Sacramento, CA 95814
(916) 653-2690

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

As the United States Attorney for the Central District of California, I am actively engaged in overseeing many of the most significant criminal and civil matters in the District, and I frequently make filing decisions and/or investigative strategic decisions relative to cases. Consistent with DOJ policies and rules protecting the secrecy of grand jury information and precluding in many instances discussion of non-public information

relating to specific investigations and cases, I am limited with respect to what I can share relative to the cases described in the text below. Similarly, much of the work performed by the OIG falls within either the privilege afforded to peace officer personnel records or the official information privilege, both pursuant to California law. Accordingly, absent a waiver by either the involved officers or, where appropriate, the LAPD, the amount of detail I can provide as to each case is limited. As a result of these limitations, my discussion of the cases set forth below is limited to information that has been released into the public domain:

CVS Investigation:

In what has been described as the largest civil penalty ever paid under the Controlled Substances Act, CVS Pharmacy, Inc. agreed to pay $75 million in civil penalties based on violations of the Combat Methamphetamine Epidemic Act of 2005, which, among other things, limits the amount of pseudoephedrine that a customer can purchase in one day. The catalyst for the investigation was a practice known as "smurfing" where individuals make multiple purchases of pseudoephedrine in small amounts with the intent to aggregate the purchases for use in the illegal production of methamphetamine. Smurfers discovered that CVS, unlike other large chain pharmacies, allowed customers to make repeated purchases that exceeded federal daily and monthly sales limits. For more than a year, CVS failed to change its sales practices to prevent criminals from purchasing excessive amounts of pseudoephedrine.

Public Corruption and Civil Rights Investigations:

One of my first acts as United States Attorney was to reinstate the Public Corruption and Civil Rights Section within the Criminal Division of the USAO. In addition, I created a Civil Rights Enforcement Action Team in our Civil Division to address affirmative civil litigation involving civil rights enforcement. Some of the representative work of both sections in which I have been involved includes:

> Azusa 13 Racketeering Indictment: Over 50 members of the Varrio Azusa gang were indicted for a host of crimes including conspiracy to violate the Racketeer Influenced and Corrupt Organizations (RICO) Act and conspiracy to violate the civil rights of African-Americans. The government alleged that the gang harassed and used violence to deter African-Americans from moving into Azusa. Forty-nine defendants have pleaded guilty to racketeering and narcotics charges (with six of the 49 also pleading guilty to the civil rights charge). The remaining defendants are fugitives.
>
> Los Angeles County Sheriff's Department: The FBI commenced a criminal investigation into the Los Angeles County Sheriff's Department (LASD) concerning allegations of excessive use of force by LASD Deputies as well as other mistreatment of prisoners and/or visitors to the LASD jail. In December 2013, the office announced the indictments of 18 LASD Deputies relative to

allegations of excessive force and obstruction of justice. The investigation is ongoing.

Starline Tours Settlement: Starline Tours of Hollywood, Inc. entered into an agreement to reform its policies and practices to settle allegations that it was violating the Americans with Disabilities Act (ADA) by failing to provide wheelchair-accessible vehicles for its sightseeing tours. The investigation stemmed from a complaint from a resident who contracted Starline for a wheelchair accessible tour only to be told that tours were not accessible to disabled individuals unless they could walk on the bus and stow their wheelchairs. As part of the agreement, Starline agreed to ensure that any new vehicles purchased or leased for use in its sightseeing tours will be accessible to individuals who use wheelchairs. Starline also agreed to maintain a sufficient number of wheelchair-accessible vehicles to ensure a level of service for individuals who use wheelchairs that is equivalent to the level of service provided to individuals without disabilities. Finally, Starline agreed to implement a policy requiring all of its employees to receive mandatory training on their obligations under the ADA.

City of Upland Investigation: The former mayor of Upland and a member of the Building Appeals Board of Upland were convicted on federal corruption charges. The two defendants conspired to receive money from the owners of two Upland businesses in exchange for business permits to operate within the city of Upland.

Sands Corporations Investigation:

In a first of its kind settlement, the Las Vegas Sands Corp., which operates the Venetian-Palazzo hotel complex in Las Vegas, resolved a criminal investigation regarding the casino's failure to follow certain provisions of the Bank Secrecy Act, an important component of the government's anti-money laundering laws. In doing so, Sands Corp. agreed to return $47,400,300 to the United States. This amount represented a portion of the numerous large and suspicious deposits made to the casino from a high-stakes gambler, who was later linked to international drug trafficking.

Standard & Poors Investigation:

After a more than three-year investigation, the Department of Justice and the USAO announced the filing of a civil penalties action against credit rating agency Standard & Poor's Ratings Services (S&P), alleging that S&P engaged in a scheme to defraud investors in structured financial products known as Residential Mortgage-Backed Securities (RMBS) and Collateralized Debt Obligations (CDOs). The lawsuit alleges that investors, many of them federally insured financial institutions, lost billions of dollars on CDOs for which S&P issued inflated ratings that misrepresented the securities' true credit risks. The complaint also alleges that S&P falsely represented that its ratings were objective, independent, and uninfluenced by S&P's relationships with investment banks

when, in actuality, S&P's desire for increased revenue and market share led it to favor the interests of these banks over investors. The litigation is ongoing.

Wal-Mart Investigation:

In a multi-district case involving the Northern District of California and the Western District of Missouri, Wal-Mart Stores Inc. pleaded guilty to multiple violations of the Clean Water Act as well as violating the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). This was a multi-year investigation where the government alleged that Wal-Mart did not have a program in place and failed to train its employees on proper hazardous waste management and disposal practices at the store level. As a result, hazardous wastes were either discarded improperly or improperly transported without proper safety documentation.

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

    I was an adjunct professor at the University of Southern California Gould School of Law where I taught legal writing and advocacy from August 2003 to May 2004. I do not have a syllabus for the course.

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

    The only future funds that I expect to receive are from the Federal Thrift Savings Plan and City of Los Angeles Retirement Plan. I am also the beneficiary of an annuity with Allstate that I received as a result of my mother's passing in 2011.

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 to this position.

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.

       Should I be appointed, I initially would have a conflict with cases and matters pending in the U.S. Attorney's Office while I was U.S. Attorney. I would address any such conflict by working with the Acting or Interim U.S. Attorney and Clerk of the Court to ensure that I was not assigned any such cases.

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

       If any matter were to arise that involved an actual or potential conflict of interest, I would handle it by careful and diligent application of the Code of Conduct for United States Judges, as well as any other relevant canons and statutory provisions.

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

    I have always maintained the view that community engagement is an essential component of my work as a law enforcement official. I have made it a personal point to make sure that each office I have served engages with its stakeholders. As United States Attorney, I take pride in the efforts we have made to connect with many of the diverse stakeholders in ways that may be viewed as "non-traditional" for a United States Attorney's Office. We have, for example, hosted a number of community forums in various neighborhoods throughout the District to educate residents not only about the USAO, but also about various issues that may impact residents. We have conducted Mortgage Fraud Summits in the Inland Empire, a region that has one of the highest foreclosure rates in the United States. We have partnered with groups like the Los Angeles Urban League and the Islamic Center of San Gabriel Valley to host Consumer Protection Summits in an effort to educate residents about various fraudulent scams and how to avoid them and to provide them with a host of resources in the event they believe they are victims of a

scheme. Similarly, our office has developed a meaningful partnership with the All Peoples Community Center. The partnership has resulted in our providing crime prevention seminars, as well as serving meals to community members during the holiday season.

Our office has also been an active participant in Teen Court at Dorsey High School where I and other lawyers from our office have served as trial monitors in cases involving juveniles who are accused of various offenses.

Finally, our office has played a very active role in the City of Los Angeles' Summer Night Lights Program – a program that seeks to provide youth with a safe venue to recreate during summer nights in various parks within the City of Los Angeles. Our office has "adopted" Jim Gilliam Park for the past several years, and on a weekly basis, a number of lawyers and staff from our office engage with the community by participating in various activities at the park. This past year, we expanded our responsibilities and created a weekly tennis clinic for young children.

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 October 11, 2013, I submitted an application to Senator Feinstein's judicial selection committee for the position of United States District Court Judge in the Central District of California. On November 6, 2013, I interviewed with Senator Feinstein's judicial selection committee for the Central District of California in Los Angeles, California. On November 26, 2013, I met with the statewide chair in San Diego, California. On January 30, 2014, I received a call from Senator Feinstein to inform me that my name was being sent to the White House for consideration. Since January 31, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 18, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On April 3, 2014, 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. 1/2014

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
Birotte, Jr, Andre	United States District Court Central District of California	04/04/2014
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 04/03/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2013 to 3/28/2014
7. Chambers or Office Address		
312 N. Spring Street Los Angeles, CA 90012		

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Co-Executor	Estate #1
2.	Trustee	Trust #1
3.	Trustee	Trust #2
4.	Trustee	Trust #3
5.	Trustee	Trust #4
6.	Trustee	Trust #5
7.	Trustee	Trust #6
8.		
9.		
10.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		

Name of Person Reporting	Date of Report
Birotte, Jr, Andre	04/04/2014

3.

FINANCIAL DISCLOSURE REPORT Page 3 of 11	Name of Person Reporting Birotte, Jr, Andre	Date of Report 04/04/2014

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	Consulting Fees from Rehalbilitation Centers in Los Angeles County
2.	2013	Consulting Fees from Rehalbilitation Centers in Los Angeles County
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

Name of Person Reporting	Date of Report
Birotte, Jr, Andre	04/04/2014

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.	EdFinancial Services	Education Loans	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 5 of 11

Name of Person Reporting	Date of Report
Birotte, Jr, Andre	04/04/2014

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. American Funds EuroPacific Growth Fund	A	Dividend	J	T	Exempt				
2. American Funds Growth Fund of America	A	Dividend	J	T					
3. American Funds Investment Company of America	A	Dividend	J	T					
4. AT&T	A	Dividend	J	T					
5. Columbia Mid Cap Growth Fund	A	Dividend	J	T					
6. Columbia Small Cap Growth Fund	A	Dividend	J	T					
7. Fidelity Prime Fund Capital Reserves	A	Dividend	J	T					
8. Franklin Small Cap Value Fund	A	Dividend	J	T					
9. Heartland Select Value Fund	A	Dividend	J	T					
10. iShares russell 1000 Value Index Fund	A	Dividend	J	T					
11. iShares russell 2000 Value Index Fund	A	Dividend	J	T					
12. iShares S&P Mid-Cap 400 Growth ETF	A	Dividend	J	T					
13. iShares S&P Mid-Cap 400 Vallue ETF	A	Dividend	J	T					
14. iShares S&P Small Cap 400 Growth ETF	A	Dividend	J	T					
15. Janus Fund	A	Dividend	J	T					
16. Lazaard Emerging Markets Equity Portfolio	A	Dividend	J	T					
17. SPDR S&P 500 ETF Trust	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

Name of Person Reporting	Date of Report
Birotte, Jr, Andre	04/04/2014

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)
18. Vanguard 500 Index fund	A	Dividend	J	T					
19. Vanguard Growth Index Fund	A	Dividend	J	T					
20. Vanguard Total Internatinoal Index Fund	A	Dividend	J	T					
21. iShares MSCI EAFE ETF	A	Dividend	J	T					
22. Estate #1									
23. - Rental Property (Newark, NJ)	F	Rent	O	W					
24. - Trust #1	A	Interest	P1	T					
25. - - National Financial Services Cash Account									
26. - Trust #2	A	Interest	P1	T					
27. - - National Financial Services Cash Account									
28. - Trust #3	A	Interest	P1	T					
29. - - National Financial Services Cash Account									
30. - Trust #4	E	Int./Div.	P1	T					
31. - - Mainstay Marketfeild Class I									
32. - - Robeco Boston PRTNS LG/SH Research INSTL									
33. - - Putnam Capital Spectrum Fun CL Y									
34. - - Artisan International Fund									

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 11

Name of Person Reporting	Date of Report
Birotte, Jr, Andre	04/04/2014

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)
35. - - iShares Russell 1000 Growth ETF									
36. - - American Washington Mutual Investors F2									
37. - - FPA Crescent Inst Share									
38. - - Yacktman									
39. - - Maxim Integrated Prods									
40. - - Atlas Resource Partners									
41. - - Metabolix Inc									
42. - - Newstar Financial Inc									
43. - - NPS Pharmaceuticals Inc									
44. - - Celgene Corp									
45. - -Vanguard extended Market Vipers Index Fund									
46. - - Templeton Global Total Return Fund CL ADV									
47. - - iShares Tips Bond ETF									
48. - - SPDR SER TR Lehman Short Term Intl Treas Bd etf									
49. - -Cherry Hill Twp NJ - Municipal Bond									
50. - - Hammonton NJ - Municipal Bond									
51. - -Mercer Cnty NJ - Municipal 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
Birotte, Jr, Andre	04/04/2014

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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52. - - New Jersey ST EDL Facs - Municipal Bond									
53. - - Ocean Cnty NJ - Municipal Bond									
54. - - DWS Commodity Security CL S									
55. - -Ashmore Emerging MKT Local Curr BD CL I									
56. - - Oppenheimer Developing Markets Y									
57. - - Virtus Global Real Estate Securities I									
58. - - Lord Abbett High Yield Fd CL F									
59. - - Prime Fund Capital Reserves Class									
60. - Trust #5	A	Interest	P1	T					
61. - - National Financial Services Cash Account									
62. - Trust #6	C	Int./Div.	P1	T					
63. - - DWS Rreef Global Infrastructure Fd CL S									
64. - - Goldman Sachs Multi-Manager Altrnv Instl									
65. - - Putnam Capital Spectrum Fund CL Y									
66. - - Artisan International Fund									
67. - - iShares MSCI EAFE ETF									
68. - - American Washington Mutual Investors F2									

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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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
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FINANCIAL DISCLOSURE REPORT
Page 9 of 11

Name of Person Reporting	Date of Report
Birotte, Jr, Andre	04/04/2014

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69. - - FPA Crescent Inst Share									
70. - - iShares S&P 500 Value ETF									
71. - -Atlas Resource Partners									
72. - - Goldman Sacs Small/Mid Cap Growth I									
73. - - Templeton Global Total Return Fund CL Adv									
74. - - iShares Tips Bond ETF									
75. - - SPDR SER TR Lehman Short Term Intl Treas BD ETF									
76. - - New York NY City Transitional Fin									
77. - -Somers Conn GO Ref BDS Ser. 2012 - Municipal Bond									
78. - - South Carolina St Gost Institution BDS - Municipal Bond									
79. - - Triborough Brdg & Tunl Auth NY Revs - Municipal Bond									
80. - - Fidelity Ohio Muni Money Market									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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Name of Person Reporting	Date of Report
Birotte, Jr, Andre	04/04/2014

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

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting Birotte, Jr, Andre	Date of Report 04/04/2014

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/ Andre Birotte, Jr

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		188	022	Notes payable to banks-secured (auto)		6	745
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		99	783	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		454	550
Real estate owned – personal residence		850	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property				Education loans		30	000
Cash value-life insurance							
Other assets itemize:							
Los Angeles Deferred Compensation Plan		178	005				
Thrift Savings Plan		6	094				
				Total liabilities		491	295
				Net Worth		830	609
Total Assets	1	321	904	Total liabilities and net worth	1	321	904
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds EuroPacific Growth Fund	$ 2,855
American Funds Growth Fund of America	3,068
American Funds Investment Company of America	2,655
AT&T stock	12,860
Columbia Mid Cap Growth Fund	1,784
Columbia Small Cap Growth Fund	777
Fidelity Prime Fund Capital Reserves	1,464
Franklin Small Cap Value Fund	888
Heartland Select Value Fund	1,517
iShares MSCI EAFE Index Fund	8,776
iShares Russell 1000 Value Index Fund	8,710
iShares Russell 2000 Value Index Fund	3,000
iShares S&P Mid-Cap 400 Growth ETF	6,016
iShares S&P Mid-Cap 400 Value ETF	3,222
iShares S&P Small-Cap 400 Growth ETF	4,874
Janus Fund	11,117
Lazard Emerging Markets Equity Portfolio	915
SPDR S&P 500 ETF Trust	10,432
Vanguard 500 Index Fund	707
Vanguard Growth Index Fund	11,813
Vanguard Total International Stock Index Fund	2,333
Total Listed Securities	$ 99,783

AFFIDAVIT

I, André Birotte, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/4/14
(DATE)

(NAME)

State of California, County of Los Angeles
Subscribed and sworn to (or affirmed) before me
on this 14 day of April 2014
by Andre Birotte, Jr
~~personally known~~ to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.
Signature: Jung Ki Kim

(NOTARY)

JUNG KI KIM
Commission # 1885222
Notary Public - California
Los Angeles County
My Comm. Expires May 4, 2014

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   John Wheadon deGravelles

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

   United States District Judge for the Middle District of Louisiana

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.

   John W. deGravelles Law, L.L.C.
   618 Main Street
   Baton Rouge, Louisiana 70801

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

   1949; Lafayette, 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.

   1971 – 1974, Louisiana State University Paul M. Hebert Law Center; J.D. (Order of the Coif), 1974

   1969 – 1971, Louisiana State University, B.A., 1971

   1967 – 1969, University of Oklahoma, 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.

   2010 – present
   DDW Joint Litigation Group (Deepwater Horizon Litigation)

618 Main Street
Baton Rouge, Louisiana 70801
Attorney

1995 – present
Louisiana State University
Paul M. Hebert Law Center
202 Law Center
Baton Rouge, Louisiana 70803
Adjunct Faculty

1993 – present
Tulane University Law School
Summer Session, Rhodes, Greece
6329 Freret Street
New Orleans, Louisiana 70118
Instructor (unpaid)

1987 – present
deGravelles, Palmintier, Holthaus & Frugé L.L.P.
(formerly known as deGravelles, Palmintier & Holthaus (1989 – 2000); deGravelles & Palmintier (1987 – 1989))
618 Main Street
Baton Rouge, Louisiana 70801
Partner

1984 – present
John W. deGravelles Law, L.L.C.
(formerly John W. deGravelles, PLC (1984 – 2004))
618 Main Street
Baton Rouge, Louisiana 70801
Attorney (1984 – 1986, 1987 – present)
Solo Practitioner (1986 – 1987)

1973 – 1986
Dué, Dodson, deGravelles, Robinson & Caskey
(formerly known as Dué, Dodson, deGravelles & Robinson (1980 – 1981); Dué, Dodson & deGravelles (1976 – 1980); Dué & Dodson (1973 – 1976))
One Maritime Plaza
Baton Rouge, Louisiana 70802
Partner (1980 – 1986)
Junior Partner (1976 – 1980)
Associate (1974 – 1976)
Law Clerk (1973 – 1974)

1972 – 1973
Neesom, Mellon, Cavanaugh and Dué (no longer exists)
519 Florida Avenue Southwest
Denham Springs, Louisiana 70726
Law Clerk

1972 – 1973
East Baton Rouge Parish District Attorney's Office
Baton Rouge, Louisiana
Law Clerk (unpaid intern)

Summer 1971
YMCA
350 South Foster Drive
Baton Rouge, Louisiana 70806
Swim coach

Other affiliations (uncompensated unless otherwise indicated):

January 2014 – present
deGravelles Family III, LLC
(family LLC owning/managing property)
From my private residence
Owner/Manager

2012 – present
deGravelles Enterprises, LLC
(family LLC owning/managing property)
From my private residence
Owner/Manager

2012 – present
deGravelles Family II, LLC
(family LLC owning/managing property)
From my private residence
Owner/Manager

2000 – present
DPHF Company, LLC
(entity which owns the law office building)
618 Main Street
Baton Rouge, Louisiana 70801
Member

1998 – present
The deGravelles Inter Vivos Trust

(An irrevocable trust for life insurance)
From my private residence
Settlor (creator)

1989 – present
Louisiana Litigation Services, Inc.
(Focus groups for trial preparation)
618 Main Street
Baton Rouge, LA 70801
Director and Owner

1984 – present
Louisiana Association for Justice
(formerly Louisiana Association of Trial Lawyers of America)
442 Europe Street
Baton Rouge, Louisiana 70802
President (1992 – 1993)
President-Elect (1991 – 1992)
Board of Governors (1984 – present)

2011 – present, 1993 – 1996
American Association for Justice
(formerly Association of Trial Lawyers of America)
777 Sixth Street, NW, Suite 200
Washington, DC 20001
Board of Governors

1999 – 2001
Louisiana State University Paul M. Hebert Law Center National Alumni Board
Paul M. Hebert Law Center
Office of Alumni Relations
One East Campus Drive, Suite 400
Baton Rouge, Louisiana 70803-1000
President

1996 – 2001
American Board of Trial Advocates
2001 Bryan Street Suite 3000
Dallas, Texas 75201
National Board of Directors (1999 – 2001)
President, Louisiana Chapter (1998)
President-Elect, Louisiana Chapter (1997)
Secretary-Treasurer, Louisiana Chapter (1996)

1992 – 1994
Common Cause of Louisiana

9431 Common Street
Baton Rouge, Louisiana 70809
Governing Board, At Large Member

1984 – 1992
Citizens for a Clean Environment
(now defunct)
Baton Rouge, Louisiana
President (1984 – 1987)
Board of Directors (1984 – 1992)

1976 – 1986
Southern Townhouses, Inc.
(construction company)
One Maritime Plaza, Third Floor
Baton Rouge, Louisiana 70802
Record Owner

1984 – 1986
Dué Dodson & Fausts-Nicholson & Brightside Properties, LA
442 Europe Street
Baton Rouge, Louisiana 70802
Record Owner

1983 – 1986
Catfish Town II, A Partnership In Commendam, LA
One Maritime Plaza
Baton Rouge, Louisiana 70802
Record Owner

1982 – 1986
Catfish Town Properties, A Louisiana Partnership In Commendam
One Maritime Plaza, Third Floor
Baton Rouge, Louisiana 70802
Record Owner

1982 – 1986
Dué Dodson and deGravelles D/B/A Sharlo Terrace II
442 Europe Street
Baton Rouge, Louisiana 70802
Record Owner

1981 – 1986
Southern Mining Company
442 Europe Street

Baton Rouge, Louisiana 70802
Record Owner

1975 – 1985
Sleepy Lake, Incorporated
442 Europe Street
Baton Rouge, Louisiana 70802
Record Owner

1980 – 1984
Sharlo Apartments, A Partnership In Commendam
One Maritime Plaza, Third Floor
Baton Rouge, Louisiana 70801
Record Owner

1982 – 1984
Elm Street Limited Partnership, A Louisiana Partnership in Commendam
One Maritime Plaza, Third Floor
Baton Rouge, Louisiana 70802
Record Owner

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 timely registered for selective service and was given a 4F deferment.

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.

   Board Certified in Civil Pretrial Practice Advocacy by the National Board of Civil Pretrial Practice Advocacy, a Division of the National Board of Legal Specialty Certification, An American Bar Association Accredited Organization (2013 – present)

   Board Certified in Civil Trial Litigation by National Board of Legal Specialty Certification (NBLSC), An American Bar Association Accredited Organization (1995 – present)

   Martindale-Hubbell Rating: "AV Preeminent" (1988 – present)

   Super Lawyer, Louisiana Super Lawyer (2007 – 2013)

   Super Lawyer, Top 50 Lawyers in Louisiana (2008 – 2013)

Super Lawyer, Plaintiff Personal Injury, General (2007 – 2013)

Super Lawyer, Top 10 Lawyers in Louisiana (2007)

Fulbright Scholar (2001 – 2002)

Louisiana Trial Lawyers Association President's Award (1991, 2000)

Council for a Better Louisiana Better Louisiana Award (1988)

Inductee, Lafayette High School Athletic Hall of Fame (Track) (1983)

Louisiana State University Law School Moot Court Board (1974)

Winner, Flory Trial Competition, LSU Law School (Fall 1973)

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

American Association for Justice, formerly Association of Trial Lawyers of America (1975 – present)
- Board of Governors (2011 – 2014, 1993 – 1996)
- Vice Chairman Admiralty Section (2002 – 2003)
- Chairman-Elect Admiralty Section (2003 – 2004)
- Chairman Admiralty Section (2004 – 2005)
- Immediate Past Chairman of the Admiralty Section (2005 – 2006)

American Bar Association (1974 – present)
- Tort Trial and Insurance Practice Section (1974 – present)

American Board of Trial Advocates (ABOTA) (1992 – present)
- Secretary-Treasurer, Louisiana Chapter (1996)
- President-Elect, Louisiana Chapter (1997)
- President, Louisiana Chapter (1998)
- National Board of Directors (1999 – 2001)

Baton Rouge Bar Association (1974 – present)

Dean Henry George McMahon American Inn of Court No. 71 (1990 – present)

The Environmental Lawyers Association (2009 – present)

Federal Bar Association (2002 – present)

International Academy of Trial Lawyers (2006 – present)

Litigation Counsel of America (2009 – present)

Louisiana Association for Justice (formerly Louisiana Trial Lawyers Association) (1974 – present)
- President (1992 – 1993)
- President-Elect (1991 – 1992)
- Board of Governors (1984 – present)
- Chairman, Legislative Committee (1989 – 1993)
- Section Chairman, Medical Malpractice Section (1997 – 1998)
- Committee Chairman, Standing Ethics Committee (1999 – 2014)
- Chairman, Maritime Section (2008 – 2009)

Louisiana Bar Foundation (1991 – present)

Louisiana State Bar Association (1974 – present)
- Committee on Code of Lawyer and Judicial Conduct (2002 – 2003)
- Rules of Professional Conduct Committee-New Rules Subcommittee (2004 – 2009)

Louisiana State Law Institute, Continuous Committee for the Revision for the Louisiana Code of Civil Procedure (1998 – present)

Louisiana State University Paul M. Hebert Law Center Board of Trustees (formerly The National Alumni Board (1999 – 2001, 2013 – present)

Louisiana State University Paul M. Hebert Law Center National Alumni Board
- President (1999 – 2000)

Maritime Law Association (1996 – present)

The National Trial Lawyers Association (formerly The American Trial Lawyers Association) (2009 – present)

Supreme Court Committee to Study Issue of Financial Assistance to Clients (2001 – 2005)

10. **Bar and Court Admission**:

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

       Louisiana, 1974
       Texas, 1995
       Colorado, 1996

There have been no lapses in membership.

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

Supreme Court of the United States, 1981
United States Court of Appeals for the Fifth Circuit, 1981
United States Court of Appeals for the Sixth Circuit, 1985
United States Court of Appeals for the Eleventh Circuit, 1981
United States Court of Appeals for the Ninth Circuit, 1979
United States District Court for the Western District of Louisiana, 1985
United States District Court for the Eastern District of Louisiana, 1976
United States District Court for the Middle District of Louisiana, 1974
United States District Court for the Southern District of Texas, 1985
United States District Court for the Eastern District of Texas, 1984

I am no longer admitted before the United States Ninth Circuit Court of Appeals or United States District Court for the Eastern District of Texas. I have had no cases before these courts in many years and therefore have not renewed my membership. I have had no lapses in the other court memberships listed above.

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.

Baton Rouge Mayor's Council on Environmental Quality (1984 – 1985)
Chairman

Citizens for a Clean Environment (1984 – 1992)
President (1984 – 1987)
Board of Directors (1984 – 1992)

Common Cause of Louisiana (1992 – 1994)
Governing Board, At Large Member

Louisiana Environmental Action Network (1988 – present)

Louisiana State University Law Center Chancellor's Council (1999 – present)

Louisiana State University Law Center, Judge Alvin B. Rubin Conference on Maritime Law, Chair of the Planning Committee (2006 – present)

Louisiana State University Law Center Litigation and Liability in the Work Place Seminar, Planning Committee (2011)

Louisiana State University Law Center, Medical Malpractice Seminar, Planning Committee (2010)

Louisiana State University Law Center, Tradition of Excellence Campaign, Campaign Steering Committee (2012)

Louisiana Trial Lawyers Association Hurricane Katrina/Rita Relief Committee (2005 – 2006)
Chairman

South Baton Rouge Legal Association (formerly Tuesday Afternoon Philanthropic Society) (1975 – 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 requirements or the practical implementation of membership policies.

To my knowledge, I have never been a member of any organization or club, which, through its formal membership requirements or the practical implementation of its membership policies, 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.

LOUISIANA CIVIL TRIAL PROCEDURE (John W. deGravelles, Honorable Billie C. Woodard and David R. Frohn eds., West Group 1998-1999, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014). Hard copy of 2013-2014 edition supplied.

Just When We Thought We Knew What a Vessel Was..., LOUISIANA ADVOCATES, at 8 (March 2013). Copy supplied.

Washington Supreme Court Decides Important Case on Maritime Punitive Damages, LOUISIANA ADVOCATES, (May 2012). Copy supplied.

The Deepwater Horizon Rig Disaster: Issues of Personal Injury and Death, 85 TUL. L. REV. 1075 (2011) (with J. Neale deGravelles). Copy supplied.

The British Petroleum Oil Spill, Punitive Damages, and the Oil Pollution Act, AAJ Admiralty Law Newsletter (Fall 2010). Copy supplied.

Supreme Court Charts Course on Maritime Punitive Damages, 22 U.S.F. MAR. L.J. 123 (May 2010). Copy supplied.

Louisiana Punitive Damages — A Conflict of Traditions, 70 LA. L. REV. 579 (February 2010) (with J. Neale deGravelles). Copy supplied.

Reminder: Non-Attorney Should Not Sign on Your Trust Account, LOUISIANA ADVOCATES, (August 2009). Copy supplied.

Atlantic Sounding Co., Inc. v. Townsend: Punitive Damages Available in Maintenance and Cure Case — But Might There Be More?, LOUISIANA ADVOCATES, (August 2009). Copy supplied.

Warning! The Legal Advice You Get May Come From India, LOUISIANA ADVOCATES, (February 2009). Copy supplied.

Help Needed; Writs Granted In Maintenance, Cure Punitive Damages Case, LOUISIANA ADVOCATES, (December 2008). Copy supplied.

Supreme Court Preserves But Limits Maritime Punitive Damages, LOUISIANA ADVOCATES, (August 2008). Copy supplied.

The Erosion of Seamen's Damage Rights under American Maritime Law, JUSTICE IN PARTICULAR, (Ant. N. Sakkoulas Publishers 2007). Copy supplied.

The Ebb and Flow of the Rights of American Seamen, HELLENIC REVIEW OF EUROPEAN LAW INTERNATIONAL EDITION 2006-2007. Copy supplied.

Committee Completes Work Proposed Rule Changes on Financial Assistance To Clients, LOUISIANA ADVOCATES, (January 2006). Copy supplied.

Liberia in SEAFARERS' RIGHTS (with Philip Banks, III) (Deirdre Fitzpatrick & Michael Anderson eds., Oxford University Press 2005). Copy supplied.

Notes from the Wheelhouse - the Supreme Court's "Vessel," ASSOCIATION OF TRIAL LAWYERS NEWSLETTER, (Spring 2005). Copy supplied.

Stewart v. Dutra Construction Co. - From the Seaman's Perspective, BENEDICT'S MARITIME BULLETIN, (Spring Issue 2005). Copy supplied.

LTLA Representative and Louisiana Supreme Court Committee on Financial Assistance to Clients Meet, LOUISIANA ADVOCATES, (May 2004). Copy supplied.

New Rules of Professional Conduct: Emphasis on Trial Lawyers' Issues and Concerns, LOUISIANA ADVOCATES, (March 2004). Copy supplied.

Uncertain Seas for Maritime Punitive Damages, TRIAL, (January 2004). Copy supplied.

Participating in Conduct Rules Hearings Important; Broussard's Comments on Some Proposed Rules Changes, LOUISIANA ADVOCATES, (August 2002). Copy supplied.

Advancing Money to Clients: the Edwins Rule Currently Prevails, LOUISIANA ADVOCATES, (August 2002). Copy supplied.

A Primer on Effective Appellate Oral Advocacy, AROUND THE BAR, (May 2002). Copy supplied.

Strategies for Avoiding and Overcoming a Negative Medical Review Panel, LOUISIANA ADVOCATES, (November 2000). Copy supplied.

Examining Rule 1.15(b) of the Rules of Professional Conduct, LOUISIANA ADVOCATES, (October 2000). Copy supplied.

The Lawyer Becomes a Judge (For A While), AROUND THE BAR, (March 2000). Copy supplied.

Louisiana Supreme Court Examines Seaman's Status, LOUISIANA ADVOCATES, (April 1999). Copy supplied.

Who is a Jones Act Seaman?, LEGAL INVESTIGATOR, (April 1999) (with Jimmie Murvin). I have been unable to obtain a copy of the article.

MEDICAL MALPRACTICE SECTION FORM BOOK (John W. deGravelles ed., Louisiana Trial Lawyers Association 1998). I have been unable to obtain a copy of this book.

Harbor Tug & Barge Co. v. Papai: Another Turn in the Labyrinth?, 10 U.S.F. MAR. L.J. 209 (Summer 1998). Copy supplied.

One Team Approach in a Plaintiff's Personal Injury Practice, AROUND THE BAR, (October 1996) (with Jimmie W. Murvin). Copy supplied.

Toxic Tort Litigation in LOUISIANA ENVIRONMENTAL HANDBOOK (1992) (with John R. Tharpe) (Roger A. Stetter and Joseph E. LeBlanc, Jr. eds., West Group 2000). Copy supplied.

Who Is A Jones Act Seaman? For the Maritime Investigator, LEGAL INVESTIGATOR, (August 1982). I have been unable to obtain a copy of this article.

The Dive, LOUISIANA RENAISSANCE, at 14 (1980). Copy supplied.

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

In 2001, I was appointed by the Louisiana Supreme Court to serve on a committee to study the issue of financial assistance to clients. The final report of that committee, which was issued in 2005, is supplied.

I was involved in the leadership of the Louisiana Trial Lawyers' Association (LTLA) (now the Louisiana Association for Justice) from the late 1980s until the end of my presidency in 1993. During this time, LTLA issued policy statements from time to time. While I only recall preparing those statements listed below, I also would have been involved in the discussion of and, in some instances, voted on additional statements that likely would have addressed state legislation being considered at the time, such as no fault insurance, the broadening of statutory employer immunity, the repeal of strict liability, the repeal of the direct action statute, the appointment of judges, the right of appellate courts to review issues of fact, and the elimination of joint and several liability. I have listed the materials that I was able to identify after searching my records and consulting with LTLA:

Sometime in 1993, I circulated a proposed legislative package to the LTLA members of those bills that LTLA would support during the legislative session. I do not recall the specific bills that were in that package, although it may have included a proposed repeal of statutory employer immunity. I have been unable to obtain a copy.

Let's Fight the Image Problem, LOUISIANA ADVOCATES, (May/June 1993). Copy supplied.

Member Involvement Crucial for Fierce Legislative Battles, LOUISIANA ADVOCATES, (March/April 1993). Copy supplied.

Trial Lawyers Face Challenging Times, LOUISIANA ADVOCATES, (October/ November 1992). Copy supplied.

deGravelles Blasts Forbes Magazine Ads, LOUISIANA ADVOCATES, (August 1990). Copy of article discussing letter to editor is supplied; however, I have been unable to obtain a copy of the actual Forbes Magazine letter to the editor.

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 recall testifying on a few occasions before legislative committees of the Louisiana Legislature as a representative of the Louisiana Trial Lawyers' Association (LTLA) in approximately the late 1980s and/or early 1990s. I have carefully checked my own records—and LTLA has checked its records—but have not found any notes, transcripts, or recording of my testimony. My best recollection is that I likely testified against no-fault insurance and in support of the repeal of statutory employer tort immunity. I also may have testified on the repeal of strict liability, the repeal of the direct action statute, the appointment of judges, the right of appellate courts to review issues of fact, and the elimination of joint and several liability—but this is a list of general topics on which LTLA was engaged at the time; I have no specific recollection of actually testifying with respect to any of these areas.

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

February 12, 2014: Guest Speaker, "Advanced Torts Litigation Seminar," Paul M. Hebert Law Center, Baton Rouge, LA. I discussed the technical and strategic aspects of jury selection and how to identify issues in a given case that should be explored in *voir dire*. I have no notes, transcript or recording. The address of the sponsoring organization is LSU Law School, One East Campus Drive, Baton Rouge, LA 70803.

February 4, 2014: Speaker, "BP and the Sinking of the Deepwater Horizon: Litigating and Resolving the World's Largest Environmental Disaster," Tulane University Law School Seminar Class on Civil Law, Tulane University Law School, New Orleans, LA. I used the same PowerPoint that was provided for the event on April 9, 2012.

December 13, 2013: Panelist, "Litigating in Class: the Current State of Class Action Law," Louisiana Judicial College, 2013 Torts Seminar, New Orleans, LA. I used the same paper that was provided for the other event on December 13, 2013.

December 13, 2013: Panelist, "Litigating In Class: The Current State of Class Action Law," Louisiana Association of Defense Counsel, 2013 Defense Lawyers' Seminar, New Orleans, LA. Paper on which presentation was based supplied.

December 10, 2013: Panelist, "Judges Are People, Too!," Motions Practice, Louisiana State Bar Association, New Orleans, LA. PowerPoint supplied.

November 22, 2013: Faculty, "Demonstration of Closing Argument" (as part of Mock Trial), American Board of Trial Advocates Masters in Trial Seminar, New Orleans, LA. PowerPoint supplied.

November 14, 2013: Speaker, "The Deepwater Horizon Rig Disaster Litigation: Litigating the World's Largest Environmental Disaster," Southern Law School Maritime Society, Southern University Law School, Baton Rouge, LA. I used the same PowerPoint that was provided for the event on April 9, 2012.

October 17, 2013: Speaker, "The Deepwater Horizon Rig Disaster Litigation: Litigating the World's Largest Environmental Disaster," Tulane University Law School, New Orleans, LA. I used the same PowerPoint that was provided for the event on April 9, 2012.

October 9, 2013: Speaker: "Effective Design and Use of Demonstratives/ Exhibits," AAJ's Trial Advocacy College: Essentials of Civil Litigation, Tulane University Law School, New Orleans, LA. Outline and notes supplied.

October 7, 2013: Speaker and Faculty, "Voir Dire: De-Selecting Jurors," AAJ's Trial Advocacy College: Essentials of Civil Litigation, Tulane University Law School, New Orleans, LA. Paper on which presentation was based and PowerPoint supplied.

August 23, 2013: Speaker, "Just When We Thought We Understood Vessel Status: Uncertainty After *Lozman v. Riviera Beach, Florida*," Louisiana Association for Justice, High Stakes on the High Seas, A Maritime Law Conference, New Orleans, LA. Paper on which presentation was based and PowerPoint supplied.

May 17, 2013: Speaker, "Capping Maritime Punitive Damages – Balancing Competing Goals," 11th Annual Alvin B. Rubin Maritime Personal Injury Seminar, Paul M. Hebert Law Center, Baton Rouge, LA. I used the same paper that was provided for the event on July 29, 2012.

November 14, 2012: Speaker, "Don't Miss the Deadlines: What You Need to Know About Presentment and Filing of Non-Settled BP/Deepwater Horizon Cases," Louisiana Association for Justice, Webinar. Paper on which presentation was based supplied.

September 28, 2012: Speaker, "Trying the Difficult Medical Malpractice Case – From the Plaintiff's Perspective," Louisiana State Bar Association; New Orleans, LA. Paper on which presentation was based supplied.

August 10, 2012: Speaker, "Maritime Punitive Damages: Is the Sky the Limit?," Louisiana Association for Justice, High Stakes on the High Seas – A Maritime Law Conference, New Orleans, LA. PowerPoint supplied.

July 29, 2012: Speaker, "Capping Maritime Punitive Damages – Balancing Fairness, Effectiveness and Predictability," American Association of Justice, Chicago, IL. Paper on which presentation was based supplied.

May 25, 2012: Speaker, "The Deepwater Horizon Rig Disaster: Litigating and Resolving the World's Largest Environmental Disaster," Second International Congress of Maritime and Admiralty Law, Tulane University Law School, Istanbul, Turkey. I used the same PowerPoint that was provided for the event on April 9, 2012.

April 17, 2012: Speaker, "BP and the Sinking of the Deepwater Horizon: Litigating and Resolving the World's Largest Environmental Disaster," LSU Law School Seminar Class on BP/Deepwater Horizon Spill, Paul M. Hebert Law Center, Baton Rouge, LA. I used the same PowerPoint that was provided for the event on April 9, 2012.

April 9, 2012: Speaker, "BP and the Sinking of the Deepwater Horizon: Litigating and Resolving the World's Largest Environmental Disaster," Tulane University Law School Seminar Class on Civil Law, Tulane University Law School, New Orleans, LA. PowerPoint supplied.

March 8, 2012: Moderator, Tenth Annual Alvin B. Rubin Maritime Personal Injury Seminar, Paul M. Hebert Law Center, Baton Rouge, LA. I acted as the moderator and introduced the speakers. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

September 23, 2011: Speaker, "Understanding Statutory Employer Defense," Litigation & Liability in the Workplace, Paul M. Hebert Law Center, Baton Rouge, LA. Paper on which presentation was based supplied.

August 12, 2011: Speaker, "Maritime Punitive Damages, The Cutting Edge," Louisiana Association for Justice, High Stakes on the High Seas, A Maritime Law Conference, New Orleans, LA. Paper on which presentation was based and PowerPoint supplied.

May 13, 2011: Speaker, "Personal Injury and Death Issues Arising Out of BP Spill," Ninth Annual Alvin B. Rubin Maritime Personal Injury Seminar, Paul M. Hebert Law Center, Baton Rouge, LA. Paper on which presentation was based previously supplied in response to 12a.

October 9, 2010: Speaker, "The Deepwater Horizon Rig Disaster: The Law of Personal Injury and Death," International Congress of Maritime and Admiralty Law, Tulane University Law School, Istanbul, Turkey. PowerPoint supplied.

August 13, 2010: Speaker, "Maritime Punitive Damages: Catch a Rising Star," 2010 High Stakes on the High Seas: A Maritime Law Conference, Louisiana Association for Justice, New Orleans, LA. I used the same paper that was provided for the event on June 2, 2010.

July 11, 2010: Speaker, "The British Petroleum Oil Spill, Punitive Damages, & the Oil Pollution Act," 2010 Annual Convention, American Association for Justice, Vancouver, Canada. I used the same paper that was provided for the event on June 2, 2010.

June 23, 2010: Speaker, "The British Petroleum Oil Spill, Punitive Damages, and the Oil Pollution Act," HarrisMartin's Oil Spill Litigation Conference, New Orleans, LA. I used the same paper that was provided for the event on June 2, 2010.

June 15, 2010: Speaker, "British Petroleum Oil Rig Disaster – Controlling The Legal Fallout," Tulane University Law School, Summer Session, Rhodes, Greece. I discussed the unfolding facts of the Deepwater Horizon blowout and oil spill, and the implications for the application of maritime law, as well as issues of how the litigation would be handled procedurally. I have no notes, transcript or recording. The address of the sponsoring organization is Tulane University Law School, 6329 Freret Street, New Orleans, LA 70118.

June 2, 2010: Speaker, "Punitive Damages and the Deepwater Horizon Disaster," Gulf Coast Oil Spill Litigation National Teleseminar, American Association for Justice Education, New Orleans, LA. Paper on which presentation was based supplied.

May 14, 2010: Panelist, "Dealing with the PCF: Making it a Win/Win for All Sides," Paul M. Hebert Law Center, Baton Rouge, LA. The panel discussed strategies for successfully dealing with the Louisiana Patient's Compensation Fund Board in a malpractice case. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

March 5, 2010: Moderator, Eighth Annual Alvin B. Rubin Conference on Maritime Personal Injury, Paul M. Hebert Law Center, Baton Rouge, LA. I acted as the moderator and introduced the speakers. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

December 11, 2009: Speaker, "Louisiana Punitive Damages: A Conflict of Traditions," Louisiana Association for Justice, Last Chance Seminar, New Orleans, LA. Paper on which presentation was based previously supplied in response to 12a.

November 5-7, 2009: Speaker, "Practical Aspects of the Mediation Process," The Mediation Process presented to Bar Association of Thessaloniki and Bar Association of Piraseus, Thessaloniki, Greece. Paper on which presentation was based supplied.

August 14, 2009: Moderator, "High Stakes on the High Seas Maritime Law Conference," Windsor Court Hotel, New Orleans, Louisiana. I acted as moderator and introduced the speakers. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Association for Justice, 442 Europe Street, Baton Rouge, LA 70802.

April 17, 2009: Speaker, "Louisiana Punitive Damages – A Conflict of Traditions," Symposium on Punitive Damages, Paul M. Hebert Law Center Baton Rouge, LA. Paper on which presentation was based previously supplied in response to 12a.

April 14, 2009: Lecturer, "An Overview of the Maritime Personal Injury Practice," Louisiana State University Law School Seminar on Admiralty Law, Paul M. Hebert Law Center, Baton Rouge, LA. I discussed the practical side of a typical plaintiff's maritime personal injury practice. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

March 6, 2009: Moderator, Seventh Annual Judge Alvin B. Rubin Conference, LSU Maritime Personal Injury Conference, Paul M. Hebert Law Center, Baton Rouge, LA. I acted as the moderator and introduced the speakers. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

March 4, 2009: Speaker, "*Exxon Shipping Co. v. Baker*: Maritime Punitive Damages and the Search for a Silver Lining," Internet Live Presentation by SeminarWeb Live, Louisiana Association for Justice, Baton Rouge, LA. I used the same paper that was provided for the event on September 26, 2008.

February 26, 2009: Participant in CLE Program: "Perspectives of the Insurance Defense Lawyer," Inns of Court, Baton Rouge, LA. I participated in a workshop environment in which a scene from a typical car accident was acted, and I played the role of the police officer. I have no notes, transcript or recording. The address of the sponsoring organization is American Inns of Court, 225 Reinekers Lane, Suite 770, Alexandria, VA 22314.

December 5, 2008: Introductory Speaker, Masters in Trial, American Board of Trial Advocates, New Orleans, LA. I assisted in introducing the participants. I have no notes, transcript or recording. The address of the sponsoring organization is American Board of Trial Advocates, 2001 Bryan Street, Suite 3000, Dallas, TX 75201.

November 14, 2008: Co-Presenter, "Losing the Battle But Winning the War: Strategies for Avoiding and Overcoming a Negative Medical Review Panel," Louisiana State Bar Association, New Orleans, LA. Paper on which presentation was based supplied.

September 26, 2008: Speaker, "Punitive Damages in Maritime Law – *In Re Exxon Valdez*," Louisiana Association For Justice, New Orleans, LA. Paper on which presentation was based supplied.

August 15, 2008: Speaker, "*Exxon Valdez* Decision," Louisiana Association for Justice, High Stakes on the High Seas, New Orleans, LA. I discussed the landmark case of *Exxon Shipping Co. v. Baker* and the implications for maritime punitive damages. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Association for Justice, 442 Europe Street, Baton Rouge, LA 70802.

May 27, 2008: Lecturer, "The Rights of Maritime Plaintiffs Under American Admiralty Law," American Maritime Law at the Russian Academy of Liberal Arts and Education, St. Petersburg, Russia. I gave an overview of the law related to personal injury and death, and rights and remedies of plaintiffs under the American maritime law, focusing on the rights of seamen. I have no notes, transcript or recording. The address of the sponsoring organization is Tulane University Law School, 6329 Freret Street, New Orleans, LA 70118.

March 7, 2008: Speaker, "*Norfolk Southern Railway v. Sorrell*," Sixth Annual Judge Alvin B. Rubin Conference, LSU Maritime Personal Injury Seminar. I discussed the United States Supreme Court decision of *Norfolk Southern Railway*

v. Sorrell, its holding and implications for the issue of proving causation in a Jones Act personal injury case. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

October 29, 2007: Presenter, "Demonstrating Cross Examination of the Defendant," Masters In Trial Seminar, American Board of Trial Advocates, New Orleans, LA. I cross-examined the defendant in a mock trial presentation of a personal injury case. I have no notes, transcript or recording. The address of the sponsoring organization is American Board of Trial Advocates, 2001 Bryan Street, Suite 3000, Dallas, TX 75201.

August 17, 2007: Speaker, "Post-*Stewart* Vessel Status in the Offshore and Inland Water Oil Patch," High Stakes on the High Seas, A Maritime Law Conference, Louisiana Association for Justice, New Orleans, LA. Paper on which presentation was based supplied.

July 26, 2007: Participant in Debate, "*Jordan v. Shell Offshore* and Vessel Status of a Tension Leg Platform," New Orleans Bar Association, New Orleans, LA. I debated the future of vessel status following the landmark decision of *Stewart v. Dutra* and specifically, as it pertained to various kinds of drilling and production craft. I have no notes, transcript or recording. The address of the sponsoring organization is New Orleans Bar Association, 650 Poydras Street, Suite 1505, New Orleans, LA 70130.

May 24, 2007: Speaker, "Overview of American Maritime Tort Law," International Seminar on Maritime Law and the Law of the Sea, Odessa, Ukraine. I provided an overview of the rights and remedies of personal injury and wrongful death plaintiffs under American maritime law. I have no notes, transcript or recording. The address of the sponsoring organization is Aegean Institute of the Law of the Sea and Maritime Law, Ippoton Str., Rhodes, Dodecanese, Greece 85100.

April 2007: Speaker, "Tips and Traps in Prosecuting and Defending Tort Claims," LSU Law School Advanced Torts Seminar, Paul M. Hebert Law Center, Baton Rouge, LA. I discussed practical strategies in handling tort claims from the view of the plaintiff. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

March 30, 2007: Speaker, LSU Paul M. Hebert Law Center Chancellor's Council and Alumni Board of Trustees, Baton Rouge, LA. I made remarks commemorating the chancellorship of Chancellor John J. Costonis. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

March 23, 2007: Speaker, "Ethical Considerations in the Context of a Maritime Litigation Practice," Louisiana Tort Law: Where We Are and Where We Are Going," Center for Continuing Professional Development: Ethics, Paul M. Hebert Law Center, Baton Rouge, LA. Paper on which presentation was based supplied.

March 2, 2007: Moderator, Fifth Judge Alvin B. Rubin Conference on Maritime Personal Injury Law, Paul M. Hebert Law Center, Baton Rouge, LA. I acted as the moderator and introduced the speakers. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

December 14, 2006: Speaker, "Recent Developments in Maritime Law," Review of Louisiana Law, Louisiana Association of Justice, New Orleans, LA. Paper on which presentation was based supplied.

September 28, 2006: Speaker, "Seaman Status After *Stewart v. Dutra*," SeminarWeb Live, Louisiana Trial Lawyers Association, Baton Rouge, LA. PowerPoint supplied.

September 8, 2006: Speaker, "Complete Detailed Explanation of Post-*Chittenden* and Exact Definition of Expenses of Litigation (Ethics)," 2006 High Stakes on The High Seas: A Maritime Law Conference, Louisiana Trial Lawyers Association, New Orleans, LA. Paper on which presentation was based and PowerPoint supplied.

September 1, 2006: Speaker, "Uncertain Seas For Maritime Punitive Damages (Revisited)," 13th Annual Admiralty Symposium, Louisiana State Bar Association, New Orleans, LA. I used the same paper that was provided for the event on September 2, 2005.

May 26, 2006: Speaker, "Introduction to Labor Relations and Accidents in the American Maritime Law," International Conference on Greek and American Maritime Law, Center of International and European Economic Law and Aristotle University of Thessaloniki Law School, Thessaloniki, Greece. I gave an overview of the law related to personal injury and death, and the rights and remedies of plaintiffs under the American maritime law, focusing on the rights of seamen. I have no notes, transcript or recording. The address of the sponsoring organization is Centre of International and European Economic Law, Post Office Box 14, 551 02, Thessaloniki, Greece.

April 21, 2006: Speaker, "Motion Practice – the Do's and the Don't's," Civil Litigation in the 21st Century: Tips, Traps & Trends, Paul M. Hebert Law Center, Baton Rouge, LA. Paper on which presentation was based supplied.

February 17, 2006: Moderator, the Fourth Judge Alvin B. Rubin Conference on

Maritime Personal Injury Law, Paul M. Hebert Law Center, Baton Rouge, LA. I acted as the moderator and introduced the speakers. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

November 15, 2005: Speaker, "From Law School to the School of Hard Knocks: Practicing in the Real World," Paul M. Hebert Law Center, Baton Rouge, LA. I provided a description of a personal injury practice and answered questions regarding how to begin and maintain a personal injury practice. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

September 2, 2005: Speaker, "Uncertain Seas for Maritime Punitive Damages (Revisited)," Louisiana State Bar Association Maritime Seminar, Baton Rouge, LA. Paper on which presentation was based supplied.

August 12, 2005: Speaker, "Update on Maritime Damages: What Hath *Miles* Wrought?," Louisiana Trial Lawyers Association High Stakes on the High Seas – Maritime Conference, New Orleans, LA. Paper on which presentation was based supplied.

March 4, 2005: Speaker, "The Ethics of Getting and Hanging on to the Client – From the Plaintiff," the Third Judge Alvin B. Rubin Conference on Maritime Personal Injury Law, Paul M. Hebert Law Center, Baton Rouge, LA. Paper on which presentation was based supplied.

February 18, 2005: Speaker, "Dealing with the Patient's Compensation Fund: Getting to the End Zone Without Fumbling the Ball," Louisiana Trial Lawyers Association 2005 Medical Malpractice Section Workshop, Baton Rouge, LA. I used the same paper that was provided for the event on November 12, 2004.

November 12, 2004: Speaker, "Dealing with the Patient's Compensation Fund: Getting to the End Zone Without Fumbling the Ball," Louisiana State Bar Association Seminar on Medical Malpractice, New Orleans, LA. Paper on which presentation was based supplied.

August 13, 2004: Speaker, "Maritime Practice in the Balance: The Supreme Court Determines the Test for Vessel Status," Louisiana Trial Lawyers Association High Stakes on the High Seas – A Maritime Law Conference, New Orleans, LA. Paper on which presentation was based supplied.

July 5, 2004: Moderator, "Maritime Law in a Changing World," 2004 American Trial Lawyers Association Annual Convention, Boston, MA. I made introductory remarks and introduced the speakers at the program. I have no notes, transcript or recording. The address of the sponsoring organization is American Trial Lawyers Association, 777 Sixth Street, NW, Suite 200, Washington, DC 20001.

May 25, 2004: Speaker, "Perspectives in Protecting the American Mariner," Odessa Maritime University, Odessa Ukraine. Outline supplied.

March 26, 2004: Speaker, "Focus Groups 'On the Cheap': an Inexpensive Way to Utilize a Valuable Pretrial Tool," Solo & Small Firm Law Practice Seminar, Louisiana Trial Lawyers Association, Baton Rouge, LA. Paper on which presentation was based supplied.

December 11, 2003: Speaker, "Recent Developments in Maritime Law," Louisiana Trial Lawyers Association Last Chance Seminar, New Orleans, LA. Paper on which presentation was based supplied.

November 14, 2003: Speaker, "Uncertain Seas for Maritime Punitive Damages," the Second Judge Alvin B. Rubin Conference on Maritime Personal Injury Law, Paul M. Hebert Law Center, Baton Rouge, LA. Paper on which presentation was based supplied.

August 15, 2003: Speaker, "Seaman Status: Emerging Issues and Recent Developments," Louisiana Trial Louisiana Association 2003 High Stakes on the High Seas – A Maritime Law Conference, New Orleans, LA. Paper on which presentation was based supplied.

August 15, 2003: Moderator, Panel Discussion on Recent Jurisprudence, Louisiana Trial Lawyers Association 2003 Maritime Law Conference, New Orleans, LA. I made introductory remarks, introduced the speakers and moderated the discussion on recent cases affecting maritime personal injury law. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

April 4, 2003: Speaker, "*Voir Dire,*" Baton Rouge Bar Association, Bench Bar Conference, Point Clear, AL. Paper on which presentation was based supplied.

March 12, 2003: Debater, Merit Selection of Judges, Inns of Court-Florida Parishes, Hammond, LA. I participated in a debate regarding the advantages and disadvantages of the merit selection process, rather than judicial elections. I have no notes, transcript or recording. The address of the sponsoring organization is American Inns of Court, 225 Reinekers Lane, Suite 770, Alexandria, VA 22314.

February 14, 2003: Speaker, "The Shortest Distance Between Two Points (A Suggestion for Straightening the Line and Shortening the Distance)," Louisiana Trial Lawyers Association Auto Torts 2003 Seminar, Baton Rouge, LA. I used the same paper that was provided for the event on August 9, 2002.

December 13, 2002: Speaker, "Ethics: Upcoming Proposed Changes to the

Louisiana Code of Professional Responsibility," Louisiana Trial Lawyers Association Last Chance Seminar, New Orleans, LA. Along with my co-speaker, I reviewed the adopted, but not yet instituted, changes to the Louisiana Code of Professional Conduct. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

December 13, 2002: Speaker, "Recent Developments in Maritime Law," Louisiana Trial Lawyers Association Last Chance Seminar, New Orleans, LA. Along with my co-speaker, I reviewed recent cases affecting maritime law and, especially, maritime personal injury law. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

November 15, 2002: Speaker, "Processing Maritime Claims: Practical Suggestions for Getting to the End Zone Without Fumbling the Ball," First Judge Alvin B. Rubin Conference on Maritime Personal Injury Law, Paul M. Hebert Law Center, Baton Rouge, LA (Thomas G. Galligan, Jr.). Paper on which presentation was based supplied.

November 13, 2002: Speaker, "Possible Changes to the Louisiana Rules of Professional Conduct," Louisiana Trial Lawyers Association Luncheon, Baton Rouge, LA. I discussed the adopted, but not yet instituted, changes to the Louisiana Code of Professional Conduct. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

October 17, 2002: Panelist, "Computer Generated Visual Evidence: Opportunities and Pitfalls," Evidence and Cyberspace, 2002 Tulane University Law School Maritime Seminar, New Orleans, LA. Paper on which presentation was based supplied.

September 20, 2002: Speaker, "Toxic Mold and Mildew Litigation – What's All the Fuss About?," Louisiana Trial Lawyers Association Annual Convention Seminar, New Orleans, LA. Paper on which presentation was based supplied.

August 16, 2002: Speaker, "Seamen's Remedies: Is The Luster Fading? Is The Thrill Gone?," Louisiana Trial Lawyers Association High Stakes on the High Seas Maritime Seminar, New Orleans, LA. Paper on which presentation was based supplied.

August 9, 2002: Speaker, "The Shortest Distance Between Two Points (A Suggestion for Straightening The Line And Shortening The Distance)," Louisiana Association of Defense Counsel Attorney/Client Seminar, Negotiations and Settlements, New Orleans, LA. Paper on which presentation was based supplied.

July 14, 2001: Speaker, "Seaman Status and the Evolving Requirement of 'Identifiable Fleet,'" 2001 American Trial Lawyers Association Convention, Montreal, Canada. Paper on which presentation was based supplied.

April 6, 2001: Speaker, "The Ethics of Funding Litigation: *Edwins*, *Chittenden* and The Like," Money 201 for Lawyers Liens, Loans & Liability, Louisiana Trial Lawyers Association, Baton Rouge, LA. Paper on which presentation was based supplied.

December 13, 2000: Speaker, "The Ethics of Trial Practice," Last Chance Seminar, Louisiana Trial Lawyers Association, New Orleans, LA. Paper on which presentation was based supplied.

October 13, 2000: Speaker, "The Ethics of Funding Litigation: *Edwins*, *Chittenden* and The Like," Money 101 for Lawyers Liens, Loans & Liability, Louisiana Trial Lawyers Association Seminar, New Orleans, LA. Paper on which presentation was based supplied.

September 8, 2000: Speaker, "Seaman Status: Emerging Issues and Recent Developments," Eighth Annual Maritime Symposium, Louisiana State Bar Association, New Orleans, LA. Paper on which presentation was based supplied.

April 14, 2000: Speaker, "Strategies for avoiding and Overcoming a Negative Medical Review Panel," 2000 Start to Finish, Louisiana Trial Lawyers Association Seminar, New Orleans, LA. I used the same paper that was provided for the event on December 17, 1999.

December 17, 1999: Speaker, "Strategies at Trial for Dealing With a Negative Medical Review Panel Opinion," Last Chance, Louisiana Trial Lawyers Association Seminar, New Orleans, LA. Paper on which presentation based supplied.

November 19, 1999: Participant, Direct Examination of Police Officer, Trial Demonstration in a Truck/Pedestrian Collision Case from Opening Statements to Jury Deliberations, American Board of Trial Advocates Masters in Trial Seminar, New Orleans, LA. In a seminar sponsored, mock trial demonstration, I conducted the direct examination of a police officer in a personal injury case. I have no notes, transcript or recording. The address of the sponsoring organization is American Board of Trial Advocates, 2001 Bryan Street, Suite 3000, Dallas, TX 75201.

September 24, 1999: Speaker, "Seaman Status: Emerging Issues," Fall 1999 Maritime Law Program, Tulane University Law School, New Orleans, LA. I discussed recent developments in the law of seaman status and implications of those developments for future cases. I have no notes, transcript or recording. The

address of the sponsoring organization is Tulane University Law School, 6329 Freret Street, New Orleans, LA 70118.

July 19, 1999: Speaker, "The Paralegal's Role in Initial Pleadings," 1999 Association of Trial Lawyers of America Convention and Seminar, Association of Trial lawyers of America, San Francisco, CA. Paper on which presentation was based supplied.

March 12, 1999: Speaker, "*Harbor Tug & Barge Company v. Papai*, Another Turn in the Labyrinth?," Louisiana Trial Lawyers Association 1999 Admiralty Law Seminar, Louisiana Trial Lawyers Association, Point Clear, AL. Paper on which presentation was based previously supplied in response to 12a.

December 1998: Speaker, "Justice by the People, An Introduction to Interactive Learning About Our Jury system," Acadiana Teachers, Lafayette, LA. I discussed instituting an interactive teaching program introducing students to the law and practice of jury trials. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Chapter of the Board of Trial Advocates through American Board of Trial Advocates, 2001 Bryan Street, Suite 3000, Dallas, TX 75201.

October 30, 1998: Speaker, "Opening Statement, The Big Picture of Your Case," Louisiana Trial Lawyers Association Seminar, New Orleans, LA. I discussed the importance of the opening statement in the trial of a personal injury case and provided tips on maximizing the effectiveness of the opening statement. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

October 16, 1998: Moderator, "The Big Bucks Disaster: A Case Study of Maritime Personal Injury Claims," LSU Maritime Personal Injury Seminar, Paul M. Hebert Law Center, Baton Rouge, LA. I provided introductory remarks, introduced the participants and led a discussion regarding the various issues arising from a hypothetical mass disaster case. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

October 9, 1998: Participant in Mock Trial, "Direct Examination of Plaintiff," Masters in Trial, American Board of Trial Advocates, New Orleans, LA. Paper on which presentation was based supplied.

October 7, 1998: Speaker, LSU Law School Course on Legal Negotiations and Professionalism, Paul M. Hebert Law Center, Baton Rouge, LA. I discussed with students practical advice as it pertains to negotiating a personal injury on behalf of a plaintiff. I have no notes, transcript or recording. The address of the sponsoring

organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

September 11, 1998: Speaker, "*Harbor Tug and Barge Company v. Papai*; Another Turn in the Labyrinth?," Sixth Annual Admiralty Symposium Seminar, Louisiana State Bar Association, New Orleans, LA. Paper on which presentation was based previously supplied in response to 12a.

May 1, 1998: Participant, Opening Statement for Plaintiff in Mock Trial, Masters in Trial, American Board of Trial Advocates, New Orleans, LA. In a mock trial demonstration of a jury trial, I gave the opening statement for the plaintiff. I have no notes, transcript or recording. The address of the sponsoring organization is American Board of Trial Advocates, 2001 Bryan Street, Suite 3000, Dallas, TX 75201.

March 6, 1998: Moderator, 1998 Medical Malpractice Section Workshop, Louisiana Trial Lawyers of America, Baton Rouge, LA. I acted as the moderator and introduced the speakers. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

January 22, 1998: Panelist, Longshore and Harborworkers' Compensation Act, Tulane University Law School, New Orleans, LA. Along with the other panelists, I discussed recent developments in the area of Longshore and Harborworkers' Compensation Act. I have no notes, transcript or recording. The address of the sponsoring organization is Tulane University Law School, 6329 Freret Street, New Orleans, LA 70118.

December 30, 1997: Speaker, "Recent Developments in Maritime Law," Louisiana Trial Lawyers Association Seminar, Baton Rouge, LA. I discussed recent cases involving maritime personal injury law. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

November 19, 1997: Speaker, "Maritime Personal Injury and Riverboat Gaming," Maritime Law Association Seminar, Loyola University New Orleans College of Law, New Orleans, LA. I discussed issues of maritime law as they pertained to the ownership and operation of a riverboat casino. I have no notes, transcript or recording. The address of the sponsoring organization is Loyola University New Orleans College of Law, 7214 St. Charles Avenue, Box 901, New Orleans, LA 70118.

October 17, 1997: Speaker, "Showing Bias in Medical Expert Witness Testimony," Louisiana State Bar Association Seminar, New Orleans, LA. I discussed techniques for cross-examining the defendant and defendant's expert in a medical malpractice case, focusing on techniques in proving bias. I have no

notes, transcript or recording. The address of the sponsoring organization is Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, LA 70130.

September 20, 1997: Speaker, "Preparing Clients/Witnesses and Expert Witnesses to Testify," Louisiana State Paralegal Association Seminar, Baton Rouge, LA. I discussed ways in which to prepare witnesses to give truthful and effective testimony in discovery depositions and at trial. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana State Paralegal Association, Post Office Box 51690, Lafayette, LA 70505.

December 12, 1996: Speaker, "Updates in Maritime Personal Injury," Last Chance Seminar, Louisiana Trial Lawyers Association Seminar, New Orleans, LA. I discussed recent cases in maritime personal injury law. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

October 18, 1996: Speaker, "Processing Seafarers' Claims, Problems, Possibilities and Promises," Seminar on Maritime Personal Injury, Paul M. Hebert Law Center, Baton Rouge, LA. Along with Professor Galligan, I discussed both legal and practical issues in the handling of a seaman's personal injury case. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

April 19, 1996: Faculty, "Trial by Fire," Civil Trial Short Course, Louisiana Trial Lawyers Association, New Orleans, LA. Along with other faculty members, I discussed the proper way to handle various aspects of a typical personal injury trial. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

January 26, 1996: Speaker, "The Paralegal's Role in Auto Accident Cases," Professional Education Systems, Baton Rouge, LA. I discussed the team approach in handling an automobile accident case and, specifically, the role of a paralegal in assisting the attorney in the handling of such a case. I have no notes, transcript or recording. The sponsoring organization was Professional Education Systems and was in Baton Rouge, LA, but the company is now defunct.

October 13, 1995: Faculty, Masters in Trial Seminar, American Board of Trial Advocates, New Orleans, LA. In a mock trial demonstration of a jury trial, I believe I gave the opening statement for the plaintiff. I have no notes, transcript or recording. The address of the sponsoring organization is American Board of Trial Advocates, 2001 Bryan Street, Suite 3000, Dallas, TX 75201.

August 14-16, 1995: Faculty member, National Institute of Trial Advocacy Program, Paul M. Hebert Law Center, Baton Rouge, LA. In a mock trial

demonstration of a jury trial, I believe I gave the opening statement for the plaintiff. I have no notes, transcript or recording. The address of the sponsoring organization is National Institute of Trial Advocacy, 1685 38th Street, Suite 200, Boulder, CO 80301.

January 10, 1995: Speaker, "Premises Liability," Baton Rouge Bar Association Seminar, Baton Rouge, LA. I discussed the law of premises liability in Louisiana and gave practical advice in the handling of such a case. I have no notes, transcript or recording. The address of the sponsoring organization is Baton Rouge Bar Association, 544 Main Street, Baton Rouge, LA 70802.

October 21, 1994: Panelist, Ethics Panel Discussion, Louisiana State University Paralegal Studies Program Seminar, Louisiana State University, Baton Rouge, LA. The panel discussed ethical issues that can arise from the use of paralegals in handling personal injury cases. I have no notes, transcript or recording. The address of the sponsoring organization is LSU Continuing Education, 1225 Pleasant Hall, Baton Rouge, LA 70803.

August 27, 1994: Speaker, "Premises Liability," Louisiana Private Investigators Association Seminar, New Orleans, LA. I discussed the law of premises liability in Louisiana for an audience of legal investigators. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Private Investigators Association, Post Office Box 53889, Lafayette, LA 70505.

August 17, 1994: Faculty, Demonstration of Closing Argument, Advanced Trial Practice Seminar, Paul M. Hebert Law Center, Baton Rouge, LA. I gave a demonstration of a closing argument in a mock trial setting. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

July 27, 1994: Speaker, "Premises Liability," National Business Institute Seminar, Baton Rouge, LA. I discussed the law of premises liability in Louisiana and gave practical advice in handling such a case. I have no notes, transcript or recording. The address of the sponsoring organization is National Business Institute, 1218 McCann Drive, Altoona, WI 54720.

July 11, 1994: Speaker, "Preparing for Trial and the Trial Notebook," 17th Post-Graduate Summer School for Lawyers, Paul M. Hebert Law Center, Baton Rouge, LA. I discussed pretrial preparation in a personal injury case and the use of a trial notebook during preparation and trial. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

March 8, 1994: Speaker, "Preparing for Trial," Louisiana State University Law School Advanced Tort Litigation Course, Paul M. Hebert Law Center, Baton Rouge, LA. I discussed the importance of adequate preparation for trial and

techniques for such preparation. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

April 3, 1993: Speaker, "Proposed Amendments to the Federal Rules of Civil Procedure and Federal Rules of Evidence," Baton Rouge Bar Association Bench Bar Conference, Orange Beach, LA. I discussed proposed changes in the Federal Rules of Civil Procedure and Federal Rules of Evidence. I have no notes, transcript or recording. The address of the sponsoring organization is Baton Rouge Bar Association, 544 Main Street, Baton Rouge, LA 70802.

March 18, 1993: Speaker, "Ethics of Trial Practice," Trial By Fire, Louisiana Trial Lawyers Association Seminar, New Orleans, LA. I discussed ethical issues rising from a typical plaintiff's personal injury practice and ensuring compliance with ethical rules. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

February 5, 1993: Presenter, Bring Your Own Files Medical Malpractice Workshop, Louisiana Trial Lawyers Association, New Orleans, LA. I gave practical advice to participants in the program regarding how to handle pending medical malpractice cases. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

August 11, 1992: Speaker, "Medical Products Liability," Louisiana Trial Lawyers Association 1992 Post-Legislative Retreat, Jackson Hole, WY. I discussed the law of products liability under Louisiana law, focusing on medical products liability. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

May 4-7, 1992: Faculty, Trial Advocacy Training Program, Paul M. Hebert Law Center, Baton Rouge, LA. Along with other faculty members, I provided practical advice in handling various aspects of trial to students in a workshop environment. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

March 20, 1992: Speaker. "Opening Statements," Trial By Fire, Louisiana Trial Lawyers Association Seminar, Metairie, LA. I discussed the importance of the opening statement in the trial of a personal injury case and provided tips on maximizing the effectiveness of the opening statement. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

January 30, 1992: Speaker, "Use of Mock Trials in Preparation for Trial," Pre-trial Preparation, Dean Henry George McMahon American Inn of Court, Baton Rouge, LA. I discussed the importance of mock trials and focus groups in preparing for trial and various techniques in performing these mock trials and focus groups. I have no notes, transcript or recording. The address of the sponsoring organization is American Inns of Court, 225 Reinekers Lane, Suite 770, Alexandria, VA 22314.

December 27, 1991: Speaker, "Use of Mock Trials in Preparation for Trial," Last Chance, Louisiana Trial Lawyers Association, Baton Rouge, LA. I discussed the importance of mock trials and focus groups in preparing for trial and various techniques in performing these mock trials and focus groups. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

December 6, 1991: Speaker. "Use of Mock Trials in Preparation for Trial," Innovative Trial Techniques, Louisiana Trial Lawyers Association, Houston, TX. I discussed the importance of mock trials and focus groups in preparing for trial and various techniques in performing these mock trials and focus groups. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

September 13-14, 1991: Speaker, "The Use of a Paralegal in a Civil Trial Practice - One Approach," Legal Education Annual Meeting Seminar, Louisiana State Paralegal Association, Baton Rouge, LA. I discussed the importance of a team approach in handling personal injury cases and, specifically, the role of a paralegal. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana State Paralegal Association, Post Office Box 51690, Lafayette, LA 70505.

November 16, 1990: Speaker, "Civil Jury Practice, the Art of Demanding, Selecting and Persuading the Jury," Closing Argument-Plaintiff and Defendant Continuing Legal Education Seminar, Paul M. Hebert Law Center, Baton Rouge, LA. I provided an overview of effective advocacy from pretrial preparation to closing argument. I have no notes, transcript or recording. The address of the sponsoring organization is Paul M. Hebert Law Center, One East Campus Drive, Baton Rouge, LA 70803.

October 19, 1990: Speaker, "Civil Practice and Procedure," Updates in Jurisprudence and Legislation, Louisiana Trial Lawyers Association, New Orleans, LA. I discussed recent jurisprudential and legislative developments in civil procedure as it pertained to trial practice. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

April 7, 1989: Faculty, "Trial by Fire," Civil Trial Short Course, Louisiana Trial Lawyers Association, New Orleans, LA. Along with other faculty members, I discussed the proper way to handle various aspects of a typical personal injury trial. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

November 11, 1988: Speaker, "Handling a Case With Complex Document Production," Your Case from Start to Finish, Louisiana Trial Lawyers Association, Baton Rouge, LA. I discussed issues arising in cases involving complex document production and provided practical advice in handling such cases. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

October 28-29, 1988: Speaker, "Recovering Damages for Psychological Injuries," Proof of Damages Seminar, Louisiana Trial Lawyers Association and Mississippi Trial Lawyers Association, Baton Rouge, LA. I discussed techniques for handling brain injury cases. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

September 23, 1988: Speaker, "Update on Joint and Several Liability," Recent Developments in the Law, Louisiana Trial Lawyers Association, Monroe, LA. I discussed recent jurisprudential and legislative developments in the area of joint and several liability. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

June 11, 1988: Speaker, "Discovery Strategies and Techniques," Louisiana State University Paralegal Studies Program Seminar, Louisiana State University, Baton Rouge, LA. I discussed ways in which to maximize effective discovery in civil litigation. I have no notes, transcript or recording. The address of the sponsoring organization is LSU Continuing Education, 1225 Pleasant Hall, Baton Rouge, LA 70803.

June 11, 1988: Speaker, "The Law and Civic Activism," Louisiana State University Short Courses, Baton Rouge, LA. I discussed the importance of the attorney's involvement in community involvement and outreach. I have no notes, transcript or recording. The address of the sponsoring organization is LSU Continuing Education, 1225 Pleasant Hall, Baton Rouge, LA 70803.

February 2, 1988: Speaker, "Settlement Strategies," Baton Rouge Bar Association Seminar, Baton Rouge, LA. I discussed techniques for successful negotiations in a personal injury case. I have no notes, transcript or recording. The

address of the sponsoring organization is Baton Rouge Bar Association, 544 Main Street, Baton Rouge, LA 70802.

February 28, 1986: Speaker, "Maritime Law," Annual Meeting Seminar, National Association of Legal Assistants, St. Louis, MO. I provided a broad overview of American maritime law. I have no notes, transcript or recording. The address of the sponsoring organization is National Association of Legal Assistants, 1516 South Boston, Suite 200, Tulsa, OK 74119.

November 21, 1985: Speaker, "Use of Paralegals in Plaintiff's Litigation Firm," Baton Rouge Paralegal Association Seminar, Baton Rouge, LA. I discussed the importance of a team approach in handling personal injury cases and, specifically, the role of a paralegal. I have no notes, transcript or recording. The address of the sponsoring organization is Baton Rouge Paralegal Association, Post Office Box 306, Baton Rouge, LA 70821.

November 8, 1985: Panel member, Personal Injury Case Settlement Evaluation, Tangipahoa Parish Bar Association, Hammond, LA. I discussed techniques for accurately and effectively predicting the settlement value of a contested personal injury case. I have no notes, transcript or recording. The sponsoring organization is Tangipahoa Parish Bar Association, but it appears this association is now defunct.

October 24, 1985: Speaker, "Closing Argument," Louisiana Trial Lawyers Association, New Orleans, LA. I discussed the importance of the closing argument in the trial of a personal injury case and provided tips on maximizing the effectiveness of the closing argument. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

January 19, 1985: Moderator, "The Courtroom," Specialized Litigation Techniques, Louisiana State Bar Association, New Orleans, LA. I acted as the moderator and introduced the speakers. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, LA 70130.

December 8, 1984: Speaker, "Recent Developments in the Law: Industrial Products Litigation," Products Liability, Louisiana Trial Lawyers Association, Dallas, TX. I discussed the law of products liability under Louisiana law, focusing on industrial products liability. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, LA 70130.

October 9, 1984: Speaker, "The Plaintiff's Practice: The Good, The Bad and The Ugly," Southern University Law School, Baton Rouge, LA. I provided a broad and practical overview of a plaintiff's personal injury practice. I have no notes,

transcript or recording. The address of the sponsoring organization is Southern University Law School, Two Roosevelt Steptoe Drive, Baton Rouge, LA 70813.

January 13, 1984: Speaker, "The Louisiana Medical Malpractice Act 1975-1984: The View of Plaintiffs' Counsel," Law and Medicine, Louisiana Trial Lawyers Association, New Orleans, LA. I provided a critical analysis of the Louisiana Medical Malpractice Act from the viewpoint of the plaintiff's practitioner. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

October 7, 1982: Speaker, "Depositions, Negotiations and Settlement," 22nd Annual Bridging the Gap Seminar, Young Lawyers Section of the Louisiana State Bar Association, New Orleans, LA. I provided an overview and practical advice regarding depositions, negotiations and settlement. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, LA 70130.

June 16, 1982: Speaker, "Maritime Investigation: The Law," Annual Convention, National Association of Legal Investigators, Lake of Ozarks, MO. I provided an overview of maritime law for an audience of legal investigators. I have no notes, transcript or recording. The address of the sponsoring organization is National Association of Legal Investigators, 235 North Pine Street, Lansing, MI 48933.

April 26, 1982: Speaker, "Negligence and Insurance," Peoples Law School, Baton Rouge, LA. I provided a broad overview of our civil justice system as it pertained to personal injury and death. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

April 20, 1981: Speaker, "Negligence and Insurance," Peoples Law School, Baton Rouge, LA. I provided a broad overview of our civil justice system as it pertained to personal injury and death. I have no notes, transcript or recording. The address of the sponsoring organization is Louisiana Trial Lawyers Association, 442 Europe Street, Baton Rouge, LA 70802.

January 23, 1981: Speaker, "Admiralty," Mid-Winter Seminar, National Association of Legal Investigators, Orlando, FL. I provided an overview of maritime law for an audience of legal investigators. I have no notes, transcript or recording. The address of the sponsoring organization is National Association of Legal Investigators, 235 North Pine Street, Lansing, MI 48933.

April 26, 1980: Speaker, "Investigation and Trial Preparation in Offshore Cases," Regional Seminar, National Association of Legal Investigators, New Orleans, LA. I discussed trial litigation in offshore cases and the role and importance of the legal investigator. I have no notes, transcript or recording. The address of the

sponsoring organization is National Association of Legal Investigators, 235 North Pine Street, Lansing, MI 48933.

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

Through online database searches and a review of my own files, I have found records of the following instances in which I have been quoted from an interview in a publication.

Office of Senator Mary L. Landrieu: "Landrieu Recommends deGravelles for Middle District Court Judge," Press release from Senator Mary L. Landrieu's office, December 5, 2013. Copy supplied. (Reprinted in multiple outlets).

I was interviewed by Louisiana State Senator Daniel A. Claitor and Roy Fletcher, regarding BP settlement on the Fletcher-Claitor Hour on Talk 107.3 FM, Baton Rouge, LA, July 19, 2013. I do not have a transcript or clip of the interview.

Allen Johnson, Jr., Margaret Cronin Fisk and Jef Feeley, "Transocean Witness Says 2010 Gulf Rig Was Well-Maintained.," Bloomberg, March 26, 2013. Copy supplied.

"NBLSC Member Juggles America Practice With Life and Work in Greece," National Board of Legal Specialty Certification, Spring 2012. Copy supplied.

Joe Gyan Jr., "Minimart Denies Potpourri Allegations," The Advocate, Baton Rouge, LA, January 16, 2012. Copy supplied.

Joe Gyan Jr., "Man Files Suit Over Incense," The Advocate, Baton Rouge, LA., October 30, 2011. Copy supplied.

Penny Font, "The Blame Game," Baton Rouge Business Report, May 16, 2010. Copy supplied.

Louis Sahagun, "Gulf Oil Spill; Widow Swept Away with Grief," Los Angeles Times, May 6, 2010. Copy supplied.

Terry Carter, "Judge Says Firm Must Explain 'Fraudulent' Removals Or Pony Up $25K," ABA Journal, February 10, 2009. Copy Supplied.

Karin Beuerlein, "Tongue of Fire," Louisiana Super Lawyers Magazine, January 2009. Copy supplied.

Adrian Angelette, "Death-Row Inmate Still Making Appeals," The Advocate, Baton Rouge, LA, September 5, 2006. Copy supplied.

Lane Nelson, "Price of Admission? 25 Years and Counting," The Angolite, July/August, 2006. Copy supplied.

Virginia deGravelles, "LSU Law School: A Family Legacy for Three Generations," Around the Bar, Baton Rouge, LA, October 2005. Copy supplied.

Susan Finch and John Pope, "Dental Suit Could Cost State Millions," New Orleans Times Picayune, January 18, 2004. Copy supplied.

Amy Alexander, "Louisiana Supreme Court Considers Issue of Financial Assistance to Clients," LoanCompanies.net, 2003. Copy supplied.

"State Paid Out $1 Million to Settlement Malpractice Suit," Associated Press State & Local Wire, September 18, 2003. Copy supplied.

Susan Finch, "Bad Implants Cost $1 Million," New Orleans Times Picayune, September 18, 2003. Copy supplied.

Laura Stafford and Samantha Sanchez, "Campaign Contributions and the Louisiana Supreme Court," July 14, 2003. Copy supplied.

Adrian Angelette, "EBR Jury Indicts Man in Assisted Suicide," The Advocate, Baton Rouge, LA, February 28, 2003. Copy supplied.

"State Supreme Court Asked to Curb Lawyers' High Interest Loans," Associated Press State & Local Wire, December 29, 2002. Copy supplied.

"Parents of Strangled Patient File Suit Against State Hospital," Associated Press State & Local Wire, December 7, 2002. Copy supplied.

Adrian Angelette, "EBR May Pay Award in Installments," The Advocate, Baton Rouge, LA, September 8, 2002. Copy supplied.

"deGravelles Completes Fulbright Scholarship," Louisiana Advocates, February 2002. Copy supplied.

"deGravelles Named Fulbright Scholar," Louisiana Advocates, May 2001. Copy supplied.

"deGravelles to Chair Hebert Law Center's National Alumni Board," Louisiana Advocates, January 2000. Copy supplied.

"deGravelles Appointed Ad Hoc Judge," Louisiana Advocates, September 1999. Copy supplied.

Christopher Baughman, "Hotel Where Clerk Killed Dismissed From Lawsuit," The Advocate, Baton Rouge, LA, February 23, 1999. Copy supplied.

"Worker Injured in a Chemical Cleanup Awarded $8.2 Million," Associated Press State & Local Wire, January 20, 1999. Copy supplied.

"Fatal Crash Brings $3.7 Million Judgment," Associated Press State & Local Wire, January 14, 1999. Copy supplied.

Christopher Baughman, "Judge Awards $3.7 Million in Wreck," The Advocate, Baton Rouge, LA, January 14, 1999. Copy supplied.

Christopher Baughman, "Judge Sets Aside Jury Verdict," The Advocate, Baton Rouge, LA, November 26, 1997. Copy supplied.

"Ethical Issues in Toxic Tort Litigation," Louisiana Environmental Lawyer, Vol. II, No. 11 (Section on Environmental Law), Winter 1996. I have been unable to locate this article.

Mukul Verma, "Health Care Costs Worry Voters in Poll," The Advocate, Baton Rouge, LA, January 13, 1994. Copy supplied.

Sheila Grissett, "House Panel Rejects No-Fault Insurance Bill," New Orleans Times Picayune, May 13, 1993. Copy supplied.

Sheila Grissett, "Group Seeks to Shift Insurance to No-Fault, No-Lawyers Plan," New Orleans Times Picayune, May 11, 1993. Copy supplied.

Ed Anderson, "No-Fault Has a Chance, Proponents Say," New Orleans Times Picayune, April 14, 1993. Copy supplied.

Tim Talley, "La. Supreme Court Run-Off Grabs Statewide Attention," The Advocate, Baton Rouge, LA, October 19, 1992. Copy supplied.

"Inmates File Suit in Car Crash," New Orleans Times Picayune, February 17, 1991. Copy supplied.

"deGravelles Blasts Forbes Magazine Ads," Louisiana Advocates, August 1990. Copy supplied.

"LTLA Members Wind down with Music," Louisiana Advocates, February 1989. Copy supplied.

Dallas Morning News, "Environmental Groups Assail Louisiana Session," The Dallas Morning News Company, July 11, 1987. Copy supplied.

"Battle Over Pollution Stirs the Air Above Louisiana's Capital City," The Christian Science Monitor, 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.

I was appointed by the Louisiana Supreme Court to fill the unexpired term of Judge Darrell White on the Baton Rouge City Court from August 1, 1999, to November 30, 1999. The jurisdictional limit for the Baton Rouge City Court is $35,000 for personal injury, contracts and landlord/tenant disputes and $5,000 for small claims. The jurisdictional limit for criminal cases is a term of six months and/or a fine of $1,000.

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

I am uncertain of the number of trials that I presided over during this four-month period. I estimate that I presided over approximately 15 to 20 trials.

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	25%
criminal proceedings:	75%

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

I have been unable to obtain copies of any opinions that I wrote during this four-month period. To my knowledge, none of these were recorded decisions.

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 cannot recall the particulars of the specific cases over which I presided, and I have been unable to obtain any copies. To my knowledge, none of the opinions were reported decisions. I handled a wide variety of cases, both civil and criminal, including, for example, moving traffic violations, misdemeanor criminal

cases, civil damage cases for personal injury and property damage, civil cases for battery, eviction proceedings and restraining orders.

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.

I have been unable to obtain copies of any opinions that I wrote during this four-month period. The Clerk of the City Court has confirmed that there are no opinions available in the files.

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.

Given the nature of my caseload, I generally issued oral rulings from the bench although I do recall occasionally issuing written opinions and orders, which were all unpublished. The Clerk of Court of the City Court has advised that none of the records associated with my cases reflect any published opinions, which means that either there were no opinions or that the files have been destroyed in accordance with the court's retention policies.

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

None.

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

None.

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

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

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

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

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

    The court did not have an automatic recusal system. Rather, at the beginning of my involvement in each case, I would review the parties and the attorneys to determine whether my relationship with either was such that a possible recusal should be brought to the attention of the parties, considered or required. During the four months that I was a judge, to my knowledge and recollection, there was never any motion for recusal or any recusal order issued sua sponte or any reason for recusal.

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

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

    I have not held any public offices other than judicial office. In 1971, I ran for the Louisiana House of Representatives, District 45, but was unsuccessful.

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

    Over the years, I have been on the election and fundraising committees of various candidates, mostly judicial candidates. Other than to lend my name to campaign

literature as a member of a campaign committee or a fundraising committee, or to make campaign contributions, I do not recall playing an active role in any of these campaigns and have no records regarding these campaigns. I do not recall all of the campaigns in which I may have been so involved but, based on my recollection, I believe I was on the election or fundraising campaign committees for the following candidates: Dan Claitor for Louisiana Senate (2012); John Michael Guidry for Louisiana Court of Appeal (2010); Jeff Hughes for Louisiana Supreme Court (2012); Tim Kelley for Louisiana Court of Appeal (2010) and for Louisiana District Court (2002); Kitty Kimball for Louisiana Supreme Court (2002); Jimmy Kuhn for Louisiana Supreme Court (2008) and for Louisiana Court of Appeal (2005); and Duke Welch for Louisiana Supreme Court (2012) and for Louisiana Court of Appeal (2005).

In 1968, I was a page at the Republican National Convention in Miami, Florida.

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 clerk for a judge.

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

1986 – 1987
John W. deGravelles, PLC
One Maritime Plaza
Baton Rouge, Louisiana 70802
Solo Practitioner

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

1974 – 1986
Dué, Dodson, deGravelles, Robinson & Caskey
(formerly known as Dué, Dodson, deGravelles & Robinson (1980 – 1981); Dué, Dodson & deGravelles (1976 – 1980); Dué & Dodson (1973 – 1976))
One Maritime Plaza
Baton Rouge, Louisiana 70802
Partner (1980 – 1986)

Junior Partner (1976 – 1980)
Associate (1974 – 1976)

1984 – present
John W. deGravelles Law, L.L.C.
(formerly John W. deGravelles, PLC (1984 – 2004)
618 Main Street
Baton Rouge, Louisiana 70801
Attorney (1984 – 1986, 1987 – present)
Solo Practitioner (1986 – 1987)

1987 – present
deGravelles, Palmintier, Holthaus & Frugé L.L.P.
(formerly known as deGravelles, Palmintier & Holthaus (1989 – 2000);
deGravelles & Palmintier (1987 – 1989))
618 Main Street
Baton Rouge, Louisiana 70801
Partner

2010 – present
DDW Joint Litigation Group (Deepwater Horizon Litigation)
618 Main Street
Baton Rouge, Louisiana 70801
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.

During the first five or so years of my practice, I had a general practice in which I did criminal law, primarily being appointed by the court to represent indigent defendants, as well as family law, civil tort litigation, successions and wills. The general nature of my practice currently is civil litigation with a primary emphasis in maritime personal injury, products liability, medical malpractice, business litigation and general tort litigation.

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

Over the first five or so years of my practice, I had a general civil and criminal practice that included family law, personal injury and death cases, and criminal law. Typically, I represented indigent defendants, plaintiffs in personal injury and death cases, and individuals seeking advice in family law matters, including separation and divorce proceedings, custody trials and community property partitions. In addition, I drafted wills and handled successions. Since I began to focus more on civil tort and business litigation, I have represented primarily individuals and businesses as plaintiffs. For instance, I represented a company whose offshore drilling vessel was lost because of its insurance company's refusal to insure it for a return voyage from Suriname to its home port in South Louisiana. I have also represented businesses in their bad faith insurance claims against their insurers for the insurers' failure to defend and cover the business.

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 the course of my entire career, I estimate that 90% of my practice has been in litigation and I have appeared in court frequently. In the first five years of my career, I appeared in court frequently. During that time, approximately 50% of my practice would have involved litigation and 50% involved general counseling. After the first five years of my practice, I have practiced almost exclusively in civil litigation and have appeared in court frequently. During that time, almost 100% of my practice involved civil litigation. While there have been fluctuations in percentages over the course of my career, I would estimate that the percentage of my practice in various courts has been as follows:

i. Indicate the percentage of your practice in:
   1. federal courts: 30%
   2. state courts of record: 69%
   3. other courts: 0%
   4. administrative agencies: 1%

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 not kept a record of the number of bench trials I have tried to judgment over the course of my career, but I would estimate the total number to be several hundred. In almost all of these I have been sole or lead counsel. My best estimate as to the number of jury trials I have tried to verdict as lead counsel is approximately 35. I estimate another 10 jury trials or so in which I assisted in the trial.

i. What percentage of these trials were:
   1. jury: 20%
   2. non-jury: 80%

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.

CSX Transportation v. McBride, 131 S. Ct. 2630 (2011) (amicus curiae brief on behalf of Cheryl Campagno and others, 2011 WL 757406 (June 23, 2011))

Lozman v. The City of Riviera Beach, Florida, 133 S. Ct. 735 (2013) (brief on behalf of Thirty-Six Admiralty and Maritime Law Professors as Amici Curiae in Support of Respondent, 2012 WL 3027159 (July 19, 2012))

Stewart v. Dutra Construction Co., 125 S. Ct. 1118 (2005) (amicus curiae brief on behalf of the Association of Trial Lawyers of America (ATLA), 2004 U.S. S. Ct. briefs LEXIS 365, 2004 WL 1174101 (May 21, 2004))

Symeonides v. Cosmar Compania Naviera, S.A., 433. So.2d 281 (La. App. 1st Cir. 1983), *writ denied*, 440 So.2d 731 (Mem), (La. 1983), *cert. denied*, 465 U.S. 1079 (1984) (brief and opposition to application for certiorari). I have been unable to locate a copy because I did not maintain any personal records, the business records no longer exist, and they are not available from public sources.

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: Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico, on April 20, 2010*, Case 2:10-md-02179-CJB-SS, United States District Court, Eastern District of Louisiana — Honorable Carl Barbier presiding — Dates of Representation: Summer 2010 to present

This case arose from the explosions and fire aboard the MODU Deepwater Horizon on April 20, 2010, which was the biggest environmental disaster in the history of the United States and caused the death of 11 people. The case involves complex issues of jurisdictional, environmental and maritime law. The Phase I trial dealt with how and why the explosions and fire occurred and apportionment of fault. This trial was one of the largest trials in the history of American law. Defendants included BP, Transocean, Halliburton and Cameron. Other phases of the trial remain. I was a member of trial team for over 100,000 plaintiffs. In the pretrial phase, I was active in discovery, deposing among others, BP's second highest management official, and in the brief-writing. I was also active in the Phase 1 trial, which lasted from February 25, 2013 to April 17, 2013. I argued on behalf of plaintiffs before the United States Court of Appeals for the Fifth Circuit in a Petition for Mandamus challenging the trial court's trial plan. I also argued on the issue of preemption/displacement of general maritime punitive damages *vel non* before Judge Barbier on the F.R.C.P. 12(b) Motions to Dismiss. I am currently on the trial team for OPA test cases, which are currently being scheduled for trial. I have continued to participate in legal and trial issues as the case progresses toward final resolution.

Co-Counsel: Other members of the plaintiffs' trial team included:
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Members of the Phase I trial team for BP, included, among others:
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Halliburton's Phase I trial team included, among others:
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(214) 939-4400

Cameron's Phase I trial team included, among others:
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Beck Redden LLP
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(713) 951-3700

M-I SWACO's Phase I trial team included, among others:
Hugh E. Tanner
Morgan, Lewis & Bockius LLP
1000 Louisiana, Suite 4000
Houston, Texas 77002
(713) 890-5000

(2) *In Re: Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico, on April 20, 2010*, Case 2:10-md-02179-CJB-SS related to 02:10-cv-1196-CJB-SS, United States District Court, Eastern District of Louisiana — Honorable Carl Barbier presiding — Dates of representation: April 26, 2010 to June 2, 2011

This case arose from the explosions and fire aboard the MODU Deepwater Horizon. I was lead counsel for the family members of Mr. Jones, who was one of the 11 men killed on the Deepwater Horizon on April 20, 2010. It was alleged that his death was caused by the gross negligence, willful and wanton misconduct of those involved in the operations aboard the Deepwater Horizon including BP, Transocean, Halliburton, Sperry Sun and Cameron. It was also alleged that the vessel Deepwater Horizon was unseaworthy. Based on written discovery in this case, along with depositions that I took in the related cases described, this case was settled for a confidential amount.

Co-Counsel and client:
Keith D. Jones
Attorney at Law
8480 Bluebonnet Boulevard, Suite F
Baton Rouge, Louisiana 70810
(225) 763-6900

Opposing Counsel:
M-I SWACO, Jones' employer:
Hugh E. Tanner
Morgan, Lewis & Bockius LLP
1000 Louisiana, Suite 4000
Houston, Texas 77002
(713) 890-5000

(3) *Rivere, et ux. v. NPC Services, Inc., et al.*, Number 336,561, Division A, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana — Honorable Bob Downing, presiding — Dates of representation: 1997 to 1999

I was lead counsel in a jury trial in East Baton Rouge Parish where the jury awarded $8.2 million to my clients, Mr. and Mrs. Rivere. The award included compensatory and punitive damages. Mr. Rivere suffered permanent lung injury as a result of his exposure to toxic and hazardous waste located at a federal Superfund site. This was one of the largest awards of its kind in the history of jury cases in East Baton Rouge Parish. The defendant, NPC Services, Inc., was a corporation made up of major petrochemical

companies including Exxon Corporation; the Dow Chemical Company; Ethyl Corporation; Allied Chemical Corporation; ICI Americas, Inc. (formerly Rubicon Chemicals, Inc.); Celanese Corporation (formerly American Hoechst Corporation, formerly Foster Grant Company, Inc.); Uniroyal, Inc.; Copolymer Rubber and Chemical Corporation; and Shell Chemical, Inc., formed to carry out a court order to clean up the site. The case was settled after trial and before appeal.

Co-Counsel:
Locke Meredith
Locke Meredith, Sean Fagan & Corey Orgeron
1300 Millerville Road
Baton Rouge, Louisiana 70816
(225) 272-5555

Opposing Counsel:
John Schwab, Retired

Gerald L. Walter, Jr.
Taylor, Porter, Brooks & Phillips, L.L.P.
Chase Tower South, Eighth Floor
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Baton Rouge, Louisiana 70821
(225) 387-3221

(4) *McClendon, et al. v. Jane Doe, M.D., et al.*, Number 592,209, Section 26, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana — Honorable Kay Bates, presiding — Dates of representation: 2009 to 2013

I was lead counsel for plaintiffs, Mrs. McClendon and her family, in a jury trial in East Baton Rouge Parish where the jury awarded the McClendon family $2,261,507, subject to a reduction for 35% comparative fault and the medical malpractice cap on damages. This was a medical malpractice case involving standard of care and credibility issues regarding the diagnosis and treatment of inflammatory breast cancer. The jury found the defendant, the plaintiff's treating obstetrician/gynecologist, to have been negligent in failing to timely diagnose and initiate treatment of the inflammatory breast cancer in the plaintiff.

Co-Counsel:
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Ridgeland, Mississippi 39157
(601) 351-3339

Stephanie B. Hulett
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618 Main Street
Baton Rouge, Louisiana 70801-1910
(225) 344-3735

Opposing Counsel:
Janie Languirand Coles
Mang, Bourgeois, LLC
8550 United Plaza Boulevard, Suite 310
Baton Rouge, Louisiana 70808
(225) 932-9312

(5) *Beilenson, et al. v. Jefferson Parish Hospital Service District No. 2 d/b/a East Jefferson General Hospital, et al.*, Number 561-418, Division A, 24th Judicial District Court, Parish of Jefferson — Honorable Joan S. Benge, presiding — Dates of representation: 2000 to 2007

I was lead counsel representing the Beilensons, the sons of Ms. Ostrolenk, who died at East Jefferson General Hospital as a result of alleged medical negligence on the part of the hospital and her treating physicians. The case involved standard of care issues regarding a patient with an obstructed bowel, ileus and acute abdomen. The case was tried to a jury and to the bench. Judgment was rendered in favor of the Bielensons and against Jefferson Parish Hospital Service District No. 2, d/b/a East Jefferson General Hospital, in the sum of $521,245, which was reduced to the malpractice cap. The case was appealed, and I represented the plaintiffs in opposing the appeal. The judgment of the lower court was affirmed. *Beilenson v. Jefferson Parish Hospital Service District No. 2, d/b/a East Jefferson General Hospital,* 891 So.2d 74, 04-814 (La. App. 5 Cir. 2004).

Co-Counsel:
Joseph J. LePow
Attorney at Law
One Galleria Boulevard, Suite 1822
Metairie, Louisiana 70001
(504) 849-2600

Opposing counsel for defendants Drs. Levy and Khalaf:
C. William Bradley, Jr.
Bradley Murchison Kelly and Shea
1100 Poydras Street, Suite 2700
New Orleans, Louisiana 70163
(504) 596-6302

J. Don Kelly, Jr.
650 Poydras Street, Suite 2700
New Orleans, Louisiana 70130
(504) 585-6368

Opposing Counsel for East Jefferson General Hospital:
Jacqueline H. Blankenship
Attorney at Law
One Galleria Boulevard
Metairie, Louisiana 70001
(504) 833-5600

(6) *Turner Industries Group, L.L.C. v. The Travelers Companies, Inc., et al.,* Case 3:09-cv-00834-BAJ -DLD, United States District Court, Middle District of Louisiana — Honorable Brian A. Jackson, presiding — Dates of representation: 2009 to 2011

I was lead counsel for plaintiff Turner Industries Group, LLC in a suit against its insurers. The case involved issues of establishing coverage in cases where, because of the lapse of many years, direct evidence of coverage was difficult to establish, and also issues of the obligations of an insurer to defend and/or pay insurance asbestos litigation claims made against Turner and the insurers' bad faith in failing to do so. After considerable discovery and negotiations, I was able to obtain a settlement for Turner Industries for confidential terms.

Co-Counsel:
Thomas Balhoff
Roedel, Parsons, Koch, Blanche, Balhoff & McCollister
8440 Jefferson Highway, Suite 301
Baton Rouge, Louisiana 70809
(225) 929-7033

Opposing Counsel:
Ralph S. Hubbard III
Lugenbuhl, Wheaton, Peck, Rankin & Hubbard
601 Poydras Street, Suite 2775
New Orleans, Louisiana 70130
(504) 568-1990

(7) *Saxon, et ux. v. Timothy Barton Ehrlich, M.D.,* Number 2003-12902, Division D, 22nd Judicial District Court, Parish of St. Tammany, State of Louisiana — Honorable Peter J. Garcia, presiding — Dates of representation: 2001 to 2007

I was lead counsel for plaintiffs Saxon, et ux., in a medical malpractice alleging medical negligence on the part of her treating physician. The case involved issues of standard of care in timely diagnosing and treating a patient in a clinical office and hospital setting. The resulting injuries included necrotizing fasciitis. After a bench trial on November 30, 2006, plaintiffs were awarded over $3.2 million subject to the medical malpractice cap on damages.

Co-Counsel:
Edward A. Shamis, Jr.

Attorney at Law
486 Brown Switch Road
Slidell, Louisiana 70458
(985) 641-5570

Opposing Counsel:
Daniel A. Reed
Seale Smith Zuber & Barnette
8550 United Plaza Boulevard, Suite 200
Baton Rouge, Louisiana 70809
(225) 924-1600

(8) *Citron v. Rollins Environmental Services, Inc.,* Civ. A. Nos. 85-489LON, 85-501LON, United States District Court, D. Delaware [644 F.Supp. 733 (1986)] — Honorable Joseph J. Longobardi, presiding — Dates of representation: 1985 to 1986

I was appointed special counsel for the Louisiana Attorney General to represent the then-Secretary of the Louisiana Department of Environmental Quality Norton, in a third party claim brought by Rollins Environmental Services, Inc. ("Rollins"). Secretary Norton had suspended operations at Rollins' hazardous waste facility in Baton Rouge. Rollins' shareholders brought a shareholders' derivative action against Rollins. Rollins, in turn, filed a third party claim against Secretary Norton claiming that her suspension of operations was unjustified. After considerable discovery, I and my co-counsel succeeded in having Secretary Norton dismissed on preliminary motions.

Co-Counsel:
Phillip W. Preis
Preis Gordon, A.P.L.C.
North Chase Tower
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Baton Rouge, Louisiana 70801
(225) 387-0707

Stephen P. Lamb
Paul, Weiss, Rifkind, Wharton & Garrison LLP
500 Delaware Avenue, Suite 200
Wilmington, Delaware 19899
(302) 655-4411

Opposing Counsel:
For Citron and Fisher:
Joseph Rosenthal
Rosenthal, Monhait & Goddess, P.A.
919 N. Market Street, Suite 1401
Wilmington, Delaware 19899
(302) 656-4433

For third-party plaintiffs:
Edmund N. Carpenter, II (deceased)
Jesse A. Finkelstein
Gregory V. Varallo
Richards, Layton & Finger
One Rodney Square, 920 North King Street
Wilmington, Delaware 19801
(302) 651-7700

(9) *Sandbom, et al. v. BASF Wyandotte Corporation*, 674 So.2d 349 (La. App. 1st Cir. 1996), *writs denied*, 625 So.2d 1042 (La. 1993) – Honorable Glynn Long, presiding (deceased) — Dates of representation: 1992 to 1999

I was sole counsel for plaintiff Sandbom, who suffered a toxic exposure when he was required, as a matter of his employment, to enter and clean out a pit that contained methylene diphenyl isocyanate (MDI) and other dangerous chemicals, without adequate protection. The defendant was BASF Wyandotte Corp. The court found that the defendant was negligent in violating its own safety rules and procedures with the result that Sandbom was exposed to and damaged by these harmful chemicals. After trial, the court awarded $1.4 million in damages. The defendant appealed. The judgment in favor of the plaintiff was sustained in the First Circuit Court of Appeal.

Opposing Counsel:
For BASF Wyandotte Corporation:
Gary A. Bezet
Kean Miller, LLP
400 Convention Street, Suite 700
Baton Rouge, Louisiana 70802
(225) 387-0999

For Hartford Insurance Company, Twin City Fire Insurance Company and Aetna Casualty & Surety:
Judith R. Atkinson
Roedel Parsons Koch Blache Balhoff & McCollister
8440 Jefferson Highway, Suite 301
Baton Rouge, Louisiana 70809
(225) 929-7033

For Louisiana Environmental Sales and Service, Inc.:
John L. Dardenne (who is now Lieutenant Governor)
1051 North Third Street
Baton Rouge, Louisiana 70802
(225) 342-7009

(10) *Pence v. Dewey Kelley Ketchum, et al.*, 326 So.2d 831 (La. 1976) — Honorable Steve A. Alford, Jr., presiding (deceased) — Dates of representation: 1974 to 1976 (estimate)

I was lead counsel for plaintiff Pence in a personal injury case in which the Ms. Pense was struck by a car after leaving a bar where she had been served excessive amounts of alcohol. The district court granted defendants' exception of no cause of action in which defendants argued that Louisiana Law did not recognize a dram shop cause of action against the commercial purveyor of alcohol. The Court of Appeal affirmed, holding that Louisiana did not recognize a dram shop cause of action against the commercial purveyor of alcohol, *Pence v. Ketchum*, 314 So.2d 550 (La.App. 1st Cir. 1975). Following briefing and oral argument, the Louisiana Supreme Court, for the first time, established a cause of action for civil dram shop liability. The case was settled after remand to the district court.

Co-Counsel:
Paul H. Dué
Dué, Price, Guidry, Piedrahita & Andrews
8201 Jefferson Highway
Baton Rouge, Louisiana 70809
(225) 929-7481

Opposing Counsel:
For Victor J . Silvio and Anthony J. Silvio:
Joseph W. Cole, Jr., believed to be deceased

For Dewey Ketchum
Robert J. Vandaworker, 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.)

In addition to my litigation practice, I have served on numerous boards and committees involved in the development of court and professional rules. For example, I was appointed by the Louisiana Supreme Court to serve on the Committee to Study the Issue of Financial Assistance to Clients and served on that Committee from 2001 to 2005. The present Rule of Professional Conduct, Rule 1.8(e) is the product of the Committee's work. Similarly, I have been a permanent member of the Louisiana Law Institute's Continuous Committee for the Revision of the Louisiana Code of Civil Procedure since 1998. The Louisiana Law Institute was formed to promote and encourage the clarification and simplification of the law of Louisiana, to secure the better administration of justice and to carry on scholarly legal research and scientific legal work. The work of

the Committee on the Louisiana Code of Civil Procedure, of which I am a member, considers the repeal of obsolete articles in the Code of Civil Procedure and suggests needed amendments and additions.

Similarly, I have served on committees of the Louisiana State Bar Association that considered new rules applicable to the bar. For example, I served as a member of the Louisiana State Bar Association Rules of Professional Conduct Committee, New Rules Subcommittee from 2004 to 2009. This subcommittee was charged with considering new rules of professional responsibility and, among other issues considered, the committee studied issues regarding disclosure of legal malpractice coverage, mandatory fee arbitration and code of judicial conduct reform. I also served as a member of the Louisiana State Bar Association Committee on Lawyer and Judicial Conduct from 2002 to 2003. This committee studied ethical issues, such as unauthorized practice of law, mandatory fee arbitration, financial assistance to clients, multi-jurisdictional practice issues, judicial campaigns and interim suspensions. I was appointed to chair a subcommittee on financial assistance to clients. This subcommittee worked with a similar committee appointed by the Supreme Court of Louisiana on which I also serve.

Over the course of my career, I have lobbied on various civil justice issues for the Louisiana Association for Justice and its predecessor organization, the Louisiana Trial Lawyers' Association (LTLA). These lobbying efforts occurred primarily in the late 1980s and early 1990s, particularly during the year of my presidency of LTLA, 1992-1993. I cannot recall the specific bills that I lobbied but they likely would have involved issues of access to the civil justice system and the substantive rights of those involved in same. These may have included bills regarding no fault insurance, the broadening of statutory employer immunity, the repeal of strict liability, the repeal of the direct action statute, the appointment of judges, the right of appellate courts to review issues of fact, and the elimination of joint and several liability. Because I was not being paid as a lobbyist, I was not required to register.

Primarily from 1984 until 1992, I also lobbied on various environmental issues on behalf of Citizens for a Clean Environment, a citizens' environmental group I helped form that is now defunct. I cannot recall the specific issues on which I lobbied, but issues that were raised by the organization and in which I may have participated included the development of standards for the prevention of chemical accidents, community notification of chemical accidents, and improvement of ozone and air quality standards in our area. Because I was not being paid as a lobbyist, I was not required to register.

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.

Maritime Personal Injury for Tulane University Law School's Summer Session in Rhodes, Greece, 1993 – present. This course provides instruction in the law of American maritime personal injury and death. Summer 2013 syllabus supplied.

Advanced Litigation, Louisiana State University Paul M. Hebert Law Center, 1999 - 2000, 2002 – 2013. This course provided instruction in the law and mechanics of trying a civil and criminal jury trial, as well as the applicable professionalism and ethics canons. Fall 2013 syllabus supplied.

Short Course: Introduction to the American Judicial System; Lugansk State University of Internal Affairs Law School, Lugansk Ukraine; Sponsored by the Center For International Legal Studies, Salzburg Austria, (March 14-24, 2011). The course provided an overview of America's civil and criminal justice system. March 2011 syllabus supplied.

Fulbright Scholar (International American Maritime Private International Law: Aristotle University of Thessaloniki Law School, Thessaloniki, Greece) Fall Semester, September 2001 – January 2002. The course provided an overview of the jurisdiction of American maritime courts. Fall 2001 syllabus supplied.

Pretrial Litigation, Louisiana State University Paul M. Hebert Law Center, 1995, 1998, 1999. This course provided instruction in the law and mechanics of handling a civil case in litigation prior to trial, as well as the applicable professionalism and ethics canons. Fall 1998 syllabus supplied.

Maritime Personal Injury, Louisiana State University Paul M. Hebert Law Center, 1996 – 1997. This course provided instruction in the law of American maritime personal injury and death. No syllabus is available.

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

    If confirmed, I anticipate receiving undetermined income from the sale of the Law Practice of John W. deGravelles, L.L.C. In addition, I anticipate receiving contingency fee income in pending cases in which I have fee interest.

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

    I have agreed to teach a course in Maritime Personal Injury for Tulane University Law School's Summer Session in Rhodes Greece (May 23, 2014 - June 16, 2014), as I have since 1993. I have also agreed to make a presentation at the Third International Congress of Maritime and Admiralty Law Istanbul, Turkey, October 16-17, 2014. I have agreed to

teach a course on Federal Courts for the spring semester of 2015 for Louisiana State University, Paul M. Hebert Law Center.

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

    Please see attached Financial Disclosure Report.

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

    Please see attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       I would recuse from any case in which any member of my family or law firm appeared. I would carefully review each case for any conflict or appearance of a conflict.

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

       I would handle all matters involving actual or potential conflicts of interest through careful application of the Code of Conduct for United States Judges and pertinent advisory opinions.

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

    As an attorney, I have engaged in pro bono activities. For example, pursuant to La. Rev. Stat. 15:149.1 and 15:151.2(E)(2) from October 23, 2000 to September 29, 2011, I was appointed by the Louisiana Supreme Court to be a part of a team of lawyers representing death row inmate Allen Robertson, Jr. in his pursuit of post-conviction remedies. In addition to assisting in drafting the petition for post-conviction relief, I participated in the investigation, conducted legal research and writing, and argued motions of various kinds.

In addition, when Robertson's case was consolidated with that of Jimmy Ray Williams (*State ex rel. Allen Robertson, Jr. v. Cain*, 2003-2747 (La. 5/7/04); 872 So. 2d 1073, c/w *State ex rel. Jimmy Ray Williams v. State*, 2004-0575 (La. 5/7/04); 872 So. 2d 1073, I argued before the Louisiana Supreme Court on the issue of an alleged violation of due process and equal protection created by unequal funding policies of the state public defender. The Court ruled that remand was required so that the post-conviction trial court could consider statutory issues that might allow due process and equal protection issues to be avoided. *State ex rel. Jimmy Ray Williams v. State*, 2004-0575 (La. 12/1/04); 888 So. 2d 792 (2004). The case was held in abeyance pending the evidentiary hearing ordered to be held on capital defendants post-conviction proceedings funding requests, *id.* Ultimately, the case was remanded to allow Robertson to seek funds from the state indigent defender board. *State ex rel. Allen Robertson, Jr. v. Cain*, 2003-KP-2747 (La. 1/31/07); 947 So.2d 709 (La. 2007). On September 29, 2011, my co-counsel and I were substituted as counsel of record by the Capital Post Conviction Project of Louisiana. This case is still pending.

I also have served the community through my bar membership activities. For example, I served as Chairman of the Louisiana Association for Justice's Hurricane Katrina/Rita Relief Committee in the fall of 2005. Following the devastating back-to-back hurricanes Rita and Katrina, this committee coordinated efforts to assist member attorneys who were displaced or had otherwise suffered injury to their offices and practices as a result of the two hurricanes. In 1998, as a part of my presidency of the Louisiana Chapter of the American Board of Trial Advocates, I spearheaded a project to introduce an interactive teaching program about the jury system to Louisiana school children, grades 5-9. I encouraged the active involvement of the Louisiana Bar Association's Center for Education and the Louisiana Trial Lawyers' Association. I obtained the approval and endorsement of then-Louisiana Superintendent of Education, Cecil Picard.

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 September 20, 2013, I submitted my resume to Senator Mary Landrieu and expressed my interest in being considered to serve on the United States District Court for the Middle District of Louisiana. On September 30, 2013, I interviewed with the vetting committee appointed by Senator Landrieu to make recommendations regarding federal appointments in the Middle District in Baton Rouge, Louisiana. On October 28, 2013, I interviewed with Senator Landrieu in

Baton Rouge, Louisiana. On December 4, 2013, Senator Landrieu called me to tell me that she was recommending me to the President. Since December 10, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 7, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On March 13, 2014, 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
deGravelles, John W.	US District Court, Louisiana, Middle District	03/13/2014
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 03/13/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 02/20/2014
7. Chambers or Office Address		
John W. deGravelles Law, LLC 618 Main Street Baton Rouge, LA 70801		

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	John W. deGravelles Law, LLC
2. Partner	deGravelles, Palmintier, Holthaus, Fruge'
3. Member	deGravelles Enterprises, LLC
4. Member	deGravelles Family II, LLC
5. Member	deGravelles Family III, LLC
6. Partner	DPHF Company
7. Shareholder	Louisiana Litigation Services, Inc.

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 1/1/2014	Louisiana State University - Lecturer - Course on Federal Courts
2. 11/26/2013	Tulane University Law School - Lecturer - Course on Maritime Personal Injury
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 32	Name of Person Reporting deGravelles, John W.	Date of Report 03/13/2014

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. 2014	John W. deGravelles Law, LLC - Wages	$11,410.00
2. 2014	John W. deGravelles Law, LLC - S-corp income (NET)	$116,111.30
3. 2014	West Services, Inc. - Book Royalties	$459.73
4. 2013	John W. deGravelles Law, LLC - Wages	$257,575.87
5. 2013	John W. deGravelles Law, LLC - S-corp income (NET)	$1,654,766.83
6. 2013	Louisiana State University - Wages	$2,656.52
7. 2013	West Services, Inc. - Book Royalties	$2,417.39
8. 2012	John W. deGravelles Law, LLC - Wages	$300,711.00
9. 2012	John W. deGravelles Law, LLC - S-corp income (NET)	$3,547,885.00
10. 2012	Louisiana State University - Wages	$2,656.52
11. 2012	West Services, Inc. - Book Royalties	$1,851.53

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.	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 32	Name of Person Reporting deGravelles, John W.	Date of Report 03/13/2014

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 5 of 32	Name of Person Reporting deGravelles, John W.	Date of Report 03/13/2014

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. deGravelles Enterprises, LLC		None	N	W	Exempt				
2. deGravelles Family II, LLC - Baton Rouge, LA	A	Rent	M	W					
3. deGravelles Family III, LLC		None	O	W					
4. John W. deGravelles Law, LLC		None	P1	U					
5. Chase Cash Account		None	J	T					
6. Citibank Cash Account	A	Interest	M	T					
7. IRA #1	C	Int./Div.	M	T					
8. -Morgan Stanley Cash Account									
9. -Consulting Group Govt MMKT									
10. -Consulting Group Emrg Market Equity Invest									
11. -Consulting Group International Equity Inv									
12. -Consulting Group Large Cap Value Eq									
13. -Consulting Group Large Cap Growth Inv									
14. -Consulting Group Small Cap Growth Inv									
15. -Consulting Group Small Cap Value Equity Inv									
16. Allianz Valuemark III Annuity		None	O	T					
17. Lincoln American Legacy Design 2 Annuity		None	O	T					

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
18. Prudential Annuity		None	M	T					
19. Transamerica Retirement Plus Annuity		None	P1	T					
20. Eaton Vance Tax Managed Growth Fund	A	Dividend	L	T					
21. Unit Quality Municipal National Long Term 109 MPS		None	K	T					
22. Morgan Stanley Managed Bond Account #1									
23. -Morgan Stanley Money Market Account	A	Interest	K	T					
24. -Arizona Trans Board	D	Interest	M	T					
25. -California St Econ Recovery	D	Interest	M	T					
26. -California St Pub Wks Brd	B	Interest	L	T					
27. -California St	C	Interest	M	T					
28. -Chicago IL Transit Auth	C	Interest	M	T					
29. -Curators Univ Mo Sys	D	Interest	M	T					
30. -Eanes Tex Indpt Sch Dist Sch	D	Interest	M	T					
31. -Energy Northwest Wash Elec	D	Interest	M	T					
32. -Indiana St Fin Auth	B	Interest	M	T					
33. -Iowa St	C	Interest	M	T					
34. -Jea Fla St Johns Riv Pwr Pk	D	Interest	M	T					

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

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
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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P4 =More than $50,000,000
Q =Appraisal
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FINANCIAL DISCLOSURE REPORT Page 7 of 32	Name of Person Reporting deGravelles, John W.	Date of Report 03/13/2014

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)
35. -Los Angeles Ca Dept Arpts	C	Interest	L	T					
36. -Louisiana Pub Facs Auth Rev	B	Interest	K	T					
37. -Louisiana St Gasoline and Fuels Tax Revenue	D	Interest	M	T					
38. -Louisiana St	C	Interest	L	T					
39. -Louisiana St	C	Interest	M	T					
40. -Louisiana St Unclaimed Property Spl Rev		None	L	T					
41. -Massachusetts Wtr Resources	C	Interest	L	T					
42. -Metropolitan Transportation Auth NY Trans Rev Ref	C	Interest	M	T					
43. -Metropolitan Transportation Auth NY Trans Rev Series B	C	Interest	M	T					
44. -Michigan St Comprehensive Transn Rev Ref	C	Interest	M	T					
45. -Michigan St Hosp Fin Auth		None	L	T					
46. -Minnesota St Genl Fund Appropriation	C	Interest	M	T					
47. -New Hampshire St Tpk Sys Rev	D	Interest	M	T					
48. -New Jersey Econ Dev Auth	C	Interest	M	T					
49. -New Jersey Turnpike Authority	D	Interest	M	T					
50. -New York NY	A	Interest	J	T					
51. -New York NY City Trnstnl Fin Auth		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
2. Value Codes (See Columns C1 and D3) J =$15,000 or less; K =$15,001 - $50,000; L =$50,001 - $100,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000
3. Value Method Codes (See Column C2) Q =Appraisal; R =Cost (Real Estate Only); S =Assessment; T =Cash Market; U =Book Value; V =Other; W =Estimated

FINANCIAL DISCLOSURE REPORT
Page 8 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
52. -New York NY City Trnstnl Fin Auth		None	M	T					
53. -New York St Dorm Auth Revs	C	Interest	L	T					
54. -Reedy Creek FL Impt Dist Utilities Rev Ref-I	A	Interest	L	T					
55. -Snohomish Cnty Wash Pub Util Dist No 001	C	Interest	M	T					
56. -University Minn	D	Interest	M	T					
57. -Washington Hlth Care Facs	B	Interest	L	T					
58. -Pennsylvania E BE	D	Interest							
59. -Allegheny Hosp Be	B	Interest							
60. -FL St BOE-D	D	Interest							
61. -Harris Co Toll	C	Interest							
62. -IA Fin Auth	D	Interest							
63. -LI PW SPCFP	A	Interest							
64. -New York NY	A	Interest							
65. -VA Clge Bldg	B	Interest							
66. -Ascension MI-C	B	Interest							
67. -Indiana St Fin	C	Interest							
68. -L I Pwr Auth-A	C	Interest							

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 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
69. -NYC Transn-B	D	Interest							
70. Morgan Stanley Managed Bond Account #2									
71. -Morgan Stanley Cash Account	A	Interest	J	T					
72. -Arizona Trans Brd	A	Interest	J	T					
73. -California St	A	Interest	J	T					
74. -District Columbia Income Tax Rev-F	A	Interest	J	T					
75. -Fulton Cnty GA Dev Auth Rev-A	A	Interest	J	T					
76. -Illinois St Sales Tax Rev	A	Interest	J	T					
77. -Jea Fla St Johns Riv Pwr Pk Sys	A	Interest	J	T					
78. -Kentucky St	A	Interest	J	T					
79. -Louisiana St Gasoline and Fuels Tax Revenue Ref Series A		None	J	T					
80. -Louisiana St	A	Interest	J	T					
81. -Louisiana St	A	Interest	K	T					
82. -Lower Colorado River Auth Tx Trans	A	Interest	J	T					
83. -Massachusetts St Health & Edl		None	J	T					
84. -Massachusetts Wtr Resources Auth	A	Interest	J	T					
85. -Michigan St Comprehensive Transn Rev Ref	A	Interest	J	T					

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

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
86. -Minnesota Pub Facs Auth	A	Interest	J	T					
87. -New Jersey Environmental Infrastructure Tr Rev-B	A	Interest	J	T					
88. -New York NY City Trnstnl Fin Auth Fir Tx		None	J	T					
89. -New York St Urban Dev Corp Contract	A	Interest	J	T					
90. -Ohio State Cap FACS Lease Appropriation Ser-B		None	J	T					
91. -Pennsylvania Econ Dev Fing AU Unemployment Compensation	A	Interest	J	T					
92. -Phoenix Ariz Civic Impt Corp Wtr Sys Rev	A	Interest	J	T					
93. -Rhode Island Clean Wtr Fin AGYWTR Pollu	A	Interest	J	T					
94. -San Diego Cnty Calif Wtr Auth	A	Interest	J	T					
95. -San Francisco CA Arpt Commn	A	Interest	J	T					
96. -University Minn	A	Interest	J	T					
97. -Virginia Comwlth Transn Brd	A	Interest	J	T					
98. -Allegheny Hosp Be	A	Interest							
99. -CA St ECON-A	A	Interest							
100. -KY St PPTY	A	Interest							
101. -LI PW SPC	A	Interest							
102. -Virginia Colle	A	Interest							

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

FINANCIAL DISCLOSURE REPORT
Page 11 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
103. -L I Pwr Auth-A	A	Interest							
104. -New Jersey Env	A	Interest							
105. -NYC Transn-B	A	Interest							
106. Morgan Stanley Managed Stock Account									
107. -Citibank Cash Mgmt Account	A	Interest	L	T					
108. -AFLAC INCORPORATED	A	Dividend	J	T					
109. -AT&T INC	A	Dividend	J	T					
110. -ABBOTT LABORATORIES	A	Dividend	J	T					
111. -ADVANCE AUTO PARTS	A	Dividend	J	T					
112. -AEGON NV ADR	A	Dividend	J	T					
113. -ADVENT SOFTWARE INC	B	Dividend	J	T					
114. -AGEAS SPONSORED ADR	A	Dividend	J	T					
115. -AGRIUM INC	A	Dividend	J	T					
116. -AKBANK TURK ANONIM SIRKETI ADR	A	Dividend	J	T					
117. -ALBEMARLE CORPORATION	A	Dividend	J	T					
118. -ALEXANDER & BALDWIN INC	A	Dividend	J	T					
119. -ALLIANCE DATA SYSTEMS CORP		None	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	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 12 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
120. -ALLIANT TECHSYSTEM	A	Dividend	J	T					
121. -ALLSTATE CORP		None	J	T					
122. -ALSTOM ADR	A	Dividend	J	T					
123. -AMAZON COM INC		None	J	T					
124. -AMBEV S A SPONSORED ADR	A	Dividend	J	T					
125. -AMERICAN EAGLE OUTFITTERS NEW	A	Dividend	J	T					
126. -AMERICAN EXPRESS CO	A	Dividend	J	T					
127. -AMERICAN TOWER REIT COM		None	J	T					
128. -ANADARKO PETE	A	Dividend	J	T					
129. -ANSYS INC		None	J	T					
130. -APPLE INC	A	Dividend	K	T					
131. -ATWOOD OCEANICS INC		None	J	T					
132. -BAIDU INC ADS		None	J	T					
133. -BANCO DO BRASIL SA SPON ADR	A	Dividend	J	T					
134. -BANCO MACRO S.A. SPONS ADR		None	J	T					
135. -BANCO SANTANDER BRASIL SA ADS	A	Dividend	J	T					
136. -BANK OF AMERICA CORP	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
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M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
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FINANCIAL DISCLOSURE REPORT
Page 13 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
137. -BARRICK GOLD CORP	A	Dividend	J	T					
138. -BIDVEST GROUP LTD SPONS ADR	A	Dividend	J	T					
139. -BIOMARIN PHARMAC SE		None	J	T					
140. -BOEING CO	A	Dividend	K	T					
141. -BRISTOL MYERS SQUIBB CO	A	Dividend	J	T					
142. -CF INDUSTRIES HOLDINGS,INC	A	Dividend	J	T					
143. -CIT GROUP INC NEW	A	Dividend	J	T					
144. -CNOOC LTD ADS	A	Dividend	J	T					
145. -CVS CAREMARK CORP	A	Dividend	K	T					
146. -CABELA'S INC		None	J	T					
147. -CAMECO CORP	A	Dividend	J	T					
148. -CAMERON INTNL CORP		None	J	T					
149. -CARREFOUR SA SPONSORED ADR	A	Dividend	J	T					
150. -CATERPILLAR INC	A	Dividend	J	T					
151. -CATLIN GRP LTD SPONS ADR		None	J	T					
152. -CELGENE CORP		None	J	T					
153. -CENTRAIS ELEC BRAS ADR PREF	A	Dividend	J	T					

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

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
154. -CENTRAIS ELEC BRAS SP ADR CM	A	Dividend	J	T					
155. -CHEVRON CORP	A	Dividend	K	T					
156. -CHINA CONSTRUCTION BANK CORP	A	Dividend	J	T					
157. -CHINA MOBILE LTD	A	Dividend	J	T					
158. -CHURCH & DWIGHT CO INC	A	Dividend	J	T					
159. -CIELO SA SPONSORED ADR NEW	A	Dividend	J	T					
160. -CITIGROUP INC NEW	A	Dividend	J	T					
161. -CLARCOR INC	A	Dividend	J	T					
162. -CLICKS GROUP LTD SPONS ADR	A	Dividend	J	T					
163. -COACH INC	A	Dividend	J	T					
164. -COCA COLA CO	A	Dividend	J	T					
165. -COHEN & STEERS INC	A	Dividend	J	T					
166. -COLUMBIA SPORTSWEAR CO	A	Dividend	J	T					
167. -COMCAST CORP (NEW) CLASS A	A	Dividend	K	T					
168. -COMERICA INC		None	J	T					
169. -COMMERCIAL INTL BNK LTD SP ADR	A	Dividend	J	T					
170. -COMPANHIA ENERGY DE MIN SP ADR	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 15 of 32	Name of Person Reporting deGravelles, John W.	Date of Report 03/13/2014

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)
171. -CONOCOPHILLIPS	A	Dividend	J	T					
172. -CONVERSANT INC		None	J	T					
173. -COPART INC		None	J	T					
174. -CORNING INC	A	Dividend	J	T					
175. -CORRECTIONS CORP OF AMER NEW	A	Dividend	J	T					
176. -COSTCO WHOLESALE CORP NEW		None	J	T					
177. -CROWN CASTLE INTL		None	J	T					
178. -DAI NIPPPN PRGT LTD JAPAN	A	Dividend	J	T					
179. -DAIICHI SANKYO CO LTD SPON ADR	A	Dividend	J	T					
180. -DANAHER CORPORATION	A	Dividend	J	T					
181. -DECKER OUTDOOR CORPORATION		None	J	T					
182. -DELTA AIR LINES INC NEW	A	Dividend	J	T					
183. -WALT DISNEY CO HLDG CO	A	Dividend	J	T					
184. -DISCOVER FINCL SVCS	A	Dividend	J	T					
185. -DOLLAR GEN CORP NEW COM		None	J	T					
186. -DOMINION RES INC (NEW)	A	Dividend	J	T					
187. -DONALDSON CO INC	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 16 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
188. -DRESSER-RAND GROUP INC		None	J	T					
189. -EMC CORP MASS	A	Dividend	J	T					
190. -EATON VANCE CP	A	Dividend	K	T					
191. -EDISON INTERNATIONAL	A	Dividend	J	T					
192. -ELECTRICITE DE FRANCE ADR	A	Dividend	J	T					
193. -EQUIFAX INC	A	Dividend	J	T					
194. -ERICSSON LM TEL ADR CL B NEW	A	Dividend	J	T					
195. -EXPEDITORS INTL WASH INC	A	Dividend	J	T					
196. -EXXON MOBIL CORP	A	Dividend	J	T					
197. -FACTSET RESEARCH SYSTEMS INC	A	Dividend	J	T					
198. -FAMILY DOLLAR STORES	A	Dividend	J	T					
199. -FEDEX CORP	A	Dividend	J	T					
200. -FIRST CASH FINL SVCS INC		None	J	T					
201. -FIRST INDUST REALTY TR INC	A	Dividend	J	T					
202. -FREEPORT MCMORAN CP&GLD	A	Dividend	J	T					
203. -FUJIFILM HLDGS CORP ADR	A	Dividend	J	T					
204. -GAZPROM O A O SPON ADR	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

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
205. -GENERAL ELECTRIC CO	A	Dividend	J	T					
206. -GENERAL MTRS CO		None	J	T					
207. -GILEAD SCIENCE		None	J	T					
208. -GLAXOSMITHKLINE PLC ADS	A	Dividend	J	T					
209. -GOLDMAN SACHS GRP INC	A	Dividend	J	T					
210. -GOOGLE INC-CL A		None	K	T					
211. -HSBC HOLDINGS PLC SPON ADR NEW		None	J	T					
212. -JACK HENRY & ASSOC INC	A	Dividend	J	T					
213. -HITTITE MICROWAVE CORP COM		None	J	T					
214. -HOME DEPOT INC	A	Dividend	J	T					
215. -HOME RETAIL GROUP ADR	A	Dividend	J	T					
216. -HONEYWELL INTERNATIONAL INC	A	Dividend	J	T					
217. -IMPERIAL HLDGS LTD ADR	A	Dividend	J	T					
218. -ING GROEP NV ADR		None	J	T					
219. -INTEL CORP	A	Dividend	J	T					
220. -INTUIT INC	A	Dividend	J	T					
221. -JPMORGAN CHASE & CO	A	Dividend	K	T					

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

FINANCIAL DISCLOSURE REPORT
Page 18 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
222. -JOHNSON & JOHNSON	A	Dividend	J	T					
223. -KB FINANCIAL GRP INC SONS ADR	A	Dividend	J	T					
224. -KAMAN CORP CL A	A	Dividend	J	T					
225. -KIMBERLY CLARK SPON ADR	A	Dividend	J	T					
226. -KINDER MORGAN INCORP	A	Dividend	J	T					
227. -KINROSS GOLD CORP NEW	A	Dividend	J	T					
228. -KOC HLDG AS UNSPON ADR	A	Dividend	J	T					
229. -KRAFT FOODS GROUP INC COM	A	Dividend	J	T					
230. -LANDSTAR SYSTEMS INC	A	Dividend	J	T					
231. -LOCALIZA RENT A CAR SA SPON		None	J	T					
232. -MBIA INC		None	J	T					
233. -MRC GLOBAL INC COM		None	J	T					
234. -MS&AD INS GROUP HLDGS ADR	A	Dividend	J	T					
235. -MSC INDL DIRECT CO CLASS A	A	Dividend	J	T					
236. -MSCI INC COM		None	J	T					
237. -MACY'S INC	A	Dividend	J	T					
238. -MANPOWERGROUP INC COM	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 19 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
239. -MARATHON OIL CO	A	Dividend	J	T					
240. -MARTIN MARIETTA MATERIALS	A	Dividend	J	T					
241. -MATSON INC COM	A	Dividend	J	T					
242. -MERCK & CO INC NEW COM	A	Dividend	J	T					
243. -METLIFE INCORPORATED	A	Dividend	J	T					
244. -MICREL INC	A	Dividend	J	T					
245. -MICROS SYST		None	J	T					
246. -MICROSOFT CORP	A	Dividend	J	T					
247. -MITSUBISHI TANBE PHRM CP ADR	A	Dividend	J	T					
248. -MOBILE TELESYSTEMS OJSC	A	Dividend	J	T					
249. -MOHAWK INDUSTRIES INC		None	J	T					
250. -MONOTYPE IMAGING HLDGS INC	A	Dividend	J	T					
251. -MONSANTO CO/NEW	A	Dividend	J	T					
252. -MORGAN STANLEY	A	Dividend	J	T					
253. -NEDBANK GRP LTD SPON ADR	A	Dividend	J	T					
254. -NESTLE SPON ADR REP REG SHR	A	Dividend	J	T					
255. -NETEASE.COM INC ADS	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 20 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
256. -NEWMARKET CORP (HLDG CO)	A	Dividend	J	T					
257. -NEXTERA ENERGY INC COM	A	Dividend	K	T					
258. -NIPPON TELEGRAPH&TELEPHONE ADS	A	Dividend	J	T					
259. -NOBLE ENERGY INC	A	Dividend	J	T					
260. -NORDSON CP	A	Dividend	J	T					
261. -O'REILLY AUTOMOTIVE INC NEW		None	J	T					
262. -OCCIDENTAL PETROLEUM CORP DE	A	Dividend	J	T					
263. -OIL CO LUKOIL SPN ADR	A	Dividend	J	T					
264. -OLD DOMINION FREIGHT LINE		None	J	T					
265. -OLIN CORPORATION		None	J	T					
266. -ORACLE CORP	A	Dividend	K	T					
267. -ORASCOM CONSTR INDS SPON		None	J	T					
268. -ORIFLAME COSMETICS SA SPON ADR	A	Dividend	J	T					
269. -PNC FINL SVCS GP	A	Dividend	J	T					
270. -PPG INDUSTRIES INC	A	Dividend	J	T					
271. -PPC LIMITED UNSPON ADR	A	Dividend	J	T					
272. -PTT EXPLO & PRODTN SPONS ADR	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
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FINANCIAL DISCLOSURE REPORT
Page 21 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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

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

A. Description of Assets (including trust assets)	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)
273. -PT SEMEN GRESIK PERSERO ADR	A	Dividend	J	T					
274. -PT UNITED TRACTORS ADR	A	Dividend	J	T					
275. -PT BK MANDIRI PERSERO TBK UNSP	A	Dividend	J	T					
276. -PT ASTRA INTERNATIONAL TBK ADR	A	Dividend	J	T					
277. -PANASONIC CORP - SPON ADR	A	Dividend	J	T					
278. -PEPSICO INC NC	A	Dividend	J	T					
279. -PT TELEKOMUNIKASI INDONESIA	A	Dividend	K	T					
280. -PFIZER INC	A	Dividend	J	T					
281. -PHILIP MORRIS INTL INC	A	Dividend	J	T					
282. -PHILIPPINE LG DIST TEL SPN ADR	A	Dividend	J	T					
283. -PHILLIPS 66 COM	A	Dividend	J	T					
284. -PRECISION CASTPARTS CORP	A	Dividend	K	T					
285. -PRICESMART INC	A	Dividend	J	T					
286. -PROCTER & GAMBLE	A	Dividend	J	T					
287. -PUBLIC STORAGE	A	Dividend	J	T					
288. -QUALCOMM INC	A	Dividend	J	T					
289. -RANGE RESOURCES CORP	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 22 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
290. -RBC BEARINGS INC		None	J	T					
291. -REGIONS FINANCIAL CORP NEW	A	Dividend	J	T					
292. -REYNOLDS AMERICAN INC	A	Dividend	J	T					
293. -RITCHIE BROTHERS AUCTIONEERS	A	Dividend	J	T					
294. -ROCHE HOLDINGS ADR	A	Dividend	J	T					
295. -ROHM CO LTD UNSPONS ADR	A	Dividend	J	T					
296. -ROSS STORES INC	A	Dividend	J	T					
297. -ROYAL DSM NV SPONSORED ADR	A	Dividend	J	T					
298. -ROYAL DUTCH SHELL PLC CL B	A	Dividend	J	T					
299. -SK TELECOM CO LTD	A	Dividend	J	T					
300. -SANLAM LTD ADR	A	Dividend	J	T					
301. -SANOFI ADR	A	Dividend	J	T					
302. -SBERBANK RUSSIA SPONSORED ADR	A	Dividend	J	T					
303. -SEKISUI HOUSE LTD ADR	A	Dividend	J	T					
304. -SEMPRA ENERGY	A	Dividend	J	T					
305. -SERVICE CORP INTL	A	Dividend	J	T					
306. -SEVEN & I HLDGS CO LTD ADR	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 23 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
307. -SHERWIN WILLIAMS COMPANY OHIO	A	Dividend	J	T					
308. -SHINHAN FINANCIAL GROUP CO LTD	A	Dividend	J	T					
309. -SHIRE PLC ADR	A	Dividend	J	T					
310. -SHISEIDO LTD SPON ADR	A	Dividend	J	T					
311. -SHOPRITE HLDGS LTD SPONSORED A	A	Dividend	J	T					
312. -SIEMENS AKTIENGESELLSCHAFT	A	Dividend	J	T					
313. -SIMON PPTY GROUP INC	A	Dividend	J	T					
314. -SIRONA DENTAL SYSTEMS INC		None	J	T					
315. -SNAP-ON INC	A	Dividend	J	T					
316. -STANDARD BANK GROUP LTD SPON	A	Dividend	J	T					
317. -STARBUCKS CORP WASHINGTON	A	Dividend	J	T					
318. -STRYKER CORP	A	Dividend	J	T					
319. -STURM RUGER & CO	A	Dividend	J	T					
320. -SUMITOMO MITSUI TR HLDGS INC	A	Dividend	J	T					
321. -SUNTRUST BKS	A	Dividend	J	T					
322. -SWISSCOM AG ADR	A	Dividend	J	T					
323. -TNT EXPRESS NV		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
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 24 of 32

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
324. -TAIWAN SMCNDCTR MFG CO LTD ADR	A	Dividend	J	T					
325. -TALISMAN ENERGY INC	A	Dividend	J	T					
326. -TECHNE CP	A	Dividend	J	T					
327. -TEJON RANCH CO		None	J	T					
328. -TEJON RANCH CO WT EXP		None	J	T					
329. -TELECOM ITALIA SPA(NEW)SVGS SH	A	Dividend	J	T					
330. -TEMPUR-PEDIC INT'L INC		None	J	T					
331. -TENET HEALTHCARE CORP COM NEW		None	J	T					
332. -TESCO PLC SPONSORED ADR	A	Dividend	J	T					
333. -TEVA PHARMACEUTICALS ADR	A	Dividend	J	T					
334. -THERMO FISHER SCIENTIFIC INC	A	Dividend	J	T					
335. -TIGER BRANDS LTD SPON ADR NEW	A	Dividend	J	T					
336. -TOWERS WATSON & CO CL A		None	J	T					
337. -TOYOTA MOTOR CP ADR NEW	A	Dividend	J	T					
338. -TREDEGAR CORPORATION	A	Dividend	J	T					
339. -TURKCELL ILETISM HIZM AS NEW		None	J	T					
340. -TWENTY-FIRST CENTURY FOX CL A	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
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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
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3. Value Method Codes (See Column C2)
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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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)
341. -UNILEVER NV NY SH NEW	A	Dividend	J	T					
342. -UNION PACIFIC CORP	A	Dividend	K	T					
343. -UNITED CONTINENTAL HLDGS INC		None	J	T					
344. -UNITED TECHNOLOGIES CORP	A	Dividend	J	T					
345. -VALE S.A. SP	A	Dividend	J	T					
346. -VALLOUREC SA NEW SPON ADR	A	Dividend	J	T					
347. -VERIZON COMMUNICATIONS	B	Dividend	K	T					
348. -VIVENDI SA UNSPON ADR	A	Dividend	J	T					
349. -VMWARE INC CLASS A		None	J	T					
350. -VODAFONE GROUP PLC	A	Dividend	J	T					
351. -VODACOM GROUP LIMITED	A	Dividend	J	T					
352. -VOLKSWAGEN AG SPON ADR		None	J	T					
353. -WABCO HLDGS INC		None	J	T					
354. -WACOAL CP ADR	A	Dividend	J	T					
355. -WAL MART STORES INC	A	Dividend	J	T					
356. -WEICHAI PWR CO LTD UNSPON ADR	A	Dividend	J	T					
357. -WELLS FARGO & CO NEW	A	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
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FINANCIAL DISCLOSURE REPORT Page 26 of 32	Name of Person Reporting deGravelles, John W.	Date of Report 03/13/2014

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)
358. -WHOLE FOODS MARKETS INC	A	Dividend	J	T					
359. -WOLTERS KLUWER NV SPON ADR	A	Dividend	J	T					
360. -WOLVERINE WORLD WIDE	A	Dividend	J	T					
361. -WOOLWORTHS HLDGS LTD	A	Dividend	J	T					
362. -WORLD FUEL SERVICES CORP	A	Dividend	J	T					
363. -WYNN MACAU LTD UNSPON ADR	A	Dividend	J	T					
364. -YPF SOCIEDAD ADS REP 1 CL-D SH	A	Dividend	J	T					
365. -AON PLC SHS CL-A	A	Dividend	J	T					
366. -AXIS CAPITAL HOLDINGS LTD	A	Dividend	J	T					
367. -COVIDIEN PLC	A	Dividend	J	T					
368. -EATON CORP PLC SHS	A	Dividend	J	T					
369. -INVESCO LTD	A	Dividend	J	T					
370. -MICHAEL KORS HOLDINGS LTD		None	J	T					
371. -MONTPELIER RE HLDGS LTD	A	Dividend	J	T					
372. -WHITE MOUNTAIN GRP BERMUDA	A	Dividend	J	T					
373. -ACE LTD	A	Dividend	J	T					
374. -WEATHERFORD INTERNATIONAL LTD		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
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
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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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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375. -UBS AG NEW	A	Dividend	J	T					
376. -CHECK POINT SOFTWARE TECH LTD		None	J	T					
377. -ASML HOLDING NV NY REG NEW	A	Dividend	J	T					
378. -CORE LABORATORIES N V	A	Dividend	J	T					
379. -LYONDELLBASELL NV CL-A	A	Dividend	K	T					
380. -NIELSEN HOLDINGS NV		None	J	T					
381. -INVESCO PREMIER INST	A	Dividend	K	T					
382. -FRANKLIN GLD & PREC METALS ADV		None	M	T					
383. -ING GLOBAL REAL ESTATE FD I	B	Dividend	M	T					
384. -ADR BANCO SANTANDER	A	Dividend							
385. -ALLERGAN INC	A	Dividend							
386. -ALLIANZ SE ADS	A	Dividend							
387. -AMER INTL GP INC NEW	A	Dividend							
388. -AMERICA MOVIL SA DE CV ADR	A	Dividend							
389. -AMERIPRISE FINCL INC	A	Dividend							
390. -AMERISOURCEBERGEN CORP	A	Dividend							
391. -ANGLOGOLD ASHANTI LIMITED	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)
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Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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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392. -ANHEUSER BUSCH INBEV SA SPON	A	Dividend							
393. -AUTOMATIC DATA PROCESSING INC	A	Dividend							
394. -AVALONBAY COMM INC	A	Dividend							
395. -BLACKBAUD INC	A	Dividend							
396. -BOSTON PROPERTIES INC	A	Dividend							
397. -CAPITAL ONE FINANCIAL CORP	A	Dividend							
398. -CENTURYLINK INC	A	Dividend							
399. -CISCO SYS INC	A	Dividend							
400. -COHEN & STEERS INTL REALTY I	B	Dividend							
401. -COMP DE BEB AMBEV SP ADR	A	Dividend							
402. -DEERE & CO	A	Dividend							
403. -DU PONT EI DE NEMOURS & CO	A	Dividend							
404. -EAST JAPAN RY CO ADR	A	Dividend							
405. -ENERGIZER HLDGS INC	A	Dividend							
406. -EOG RESOURCES INC	A	Dividend							
407. -FIFTH 3RD BANCORP OHIO	A	Dividend							
408. -GOLD FIELDS LTD. SP. ADR	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	
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409. -GRUPO TELEVISA S.A.GLOBAL DEP	A	Dividend							
410. -HATTERAS FINL CORP COM	A	Dividend							
411. -HEICO CORP CLASS A	A	Dividend							
412. -HILLENBRAND INC	A	Dividend							
413. -INTL BUSINESS MACHINES CORP	A	Dividend							
414. -JOY GLOBAL INC	A	Dividend							
415. -KEYCORP NEW	A	Dividend							
416. -LOWES COMPANIES INC	A	Dividend							
417. -MONDELEZ INTL INC COM	A	Dividend							
418. -NATIONAL OILWELL VARCO INC	A	Dividend							
419. -NATL GRID TRANSCO PLC ADS	A	Dividend							
420. -NATL INSTRUMS CP	A	Dividend							
421. -NEWCREST MINING LTD SPONS ADR	A	Dividend							
422. -NINTENDO CO LTD ADR NEW	A	Dividend							
423. -NU SKIN ENTERPRISE INC A	A	Dividend							
424. -NUCOR CORPORATION	A	Dividend							
425. -PACCAR INC	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	
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FINANCIAL DISCLOSURE REPORT

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

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
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426. -ROGERS COMM INC CL B (BC)	A	Dividend							
427. -SANDISK CORP	A	Dividend							
428. -SCHLUMBERGER LTD	A	Dividend							
429. -SILGAN HLDGS INC	A	Dividend							
430. -STATE STREET CORP	A	Dividend							
431. -TARGET CORPORATION	A	Dividend							
432. -THE ADT CORPORATION COM	A	Dividend							
433. -TRAVELERS COMPANIES INC COM	A	Dividend							
434. -U S BANCORP COM NEW	A	Dividend							
435. -WILEY JOHN & SON CL A	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
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	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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

The asset listed on Line 4 of Part VII is a Subchapter S Corporation. The income from this S Corporation has been reported in Part III. Apart from the income reported in Part III, this asset has produced no other income.

Name of Person Reporting	Date of Report
deGravelles, John W.	03/13/2014

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 W. deGravelles

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

1945

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		166	001	Notes payable to banks-secured (auto)		38	229
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	9	776	332	Notes payable to relatives			
Unlisted securities – see schedule	3	279	379	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends		382	327	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned – personal residence		700	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		105	000				
Cash value-life insurance							
Other assets itemize:							
Prepaid state and federal taxes		843	131				
				Total liabilities		38	229
				Net Worth	15	213	941
Total Assets	15	252	170	Total liabilities and net worth	15	252	170
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	1	010	475	Are any assets pledged? (Add schedule)	Yes		
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 and State Income Tax		595	500				
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Allianz Valuemark III annuity	$ 754,220
Consulting Group Emerging Market	26,087
Consulting Group Government MMKT	4,474
Consulting Group International Equity Fund	26,654
Consulting Group Large Cap Growth Fund	56,787
Consulting Group Large Cap Value Equity Fund	55,716
Consulting Group Small Cap Growth Fund	26,744
Consulting Group Small Cap Value Equity Fund	26,416
Eaton Vance Tax-Managed Growth 1.1 Fund	59,458
Lincoln American Legacy Design 2 Annuity	599,881
Morgan Stanley Managed Bond Account #1	3,619,300
Morgan Stanley Managed Bond Account #2	313,957
Morgan Stanley Managed Stock Account	2,495,794
Prudential Annuity	232,226
Transamerica Retirement Plus Annuity	1,457,846
Unit Quality Municipal National LT 109 MPS (UIT)	20,772
Total Listed Securities	$ 9,776,332

Unlisted Securities	
deGravelles Enterprises, LLC	$ 470,087
deGravelles Family II, LLC	145,600
deGravelles Family III, LLC	688,000
John W. deGravelles Law, LLC	1,975,692
Total Unlisted Securities	$ 3,279,379

Pledged Assets

The Morgan Stanley Managed Bond Account #2 is pledged against my law practice's line of credit, which is listed as a contingent liability above.

AFFIDAVIT

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

3/13/2014
(DATE)

(NAME)

(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Randolph Daniel Moss
   Raymond Daniel Moss (until 1977)

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.

   Office: Wilmer Cutler Pickering Hale and Dorr, LLP
   1875 Pennsylvania Avenue, N.W.
   Washington, D.C. 20006

   Residence: Bethesda, Maryland

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

   1961; Springfield, Ohio

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

   1983 – 1986, Yale Law School; J.D., 1986

   1979 – 1983, Hamilton College; A.B. (*summa 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.

2001 – present, 1989 – 1996
Wilmer Cutler Pickering Hale and Dorr, LLP
(previously Wilmer, Cutler & Pickering)
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Member of Management Committee (2012 – present)
Partner (2001 – present, 1994 – 1996)
Associate (1989 – 1993)

1996 – 2001
Office of Legal Counsel, United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Assistant Attorney General (August 2000 – January 2001)
Acting Assistant Attorney General (1998 – 2000)
Deputy Assistant Attorney General (1996 – 1998)
Special Counsel to the Attorney General (February – March 1996)

1988 – 1989
Associate Justice John Paul Stevens
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20002
Law Clerk

1986 – 1987
Judge Pierre N. Leval
United States District Court for the Southern District of New York
40 Centre Street, Foley Square
New York, NY 10007
Law Clerk

Fall 1986
Yale Law School John M. Olin Center for Studies in Law, Economics and Public Policy
127 Wall Street
New Haven, Connecticut 06511
John M. Olin Fellow

1985 – 1986, approximately 1984 – 1985
Yale Law School
127 Wall Street
New Haven, Connecticut 06511
Teaching Fellow for Professor Harold Koh (1985 – 1986)
Research Assistant for Professor Paul Gewirtz (approximately 1984 – 1985)

Summer 1985
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004
Summer Associate

Summer 1985
Arnold & Porter
Suite 4400
3700 17th Street
Denver, Colorado 80202
Summer Associate

Summer 1984
Miller & Chevalier
655 15th Street, N.W.
Washington, D.C. 20005
Summer Associate

Summer 1983
Self-employed
Rockville, Maryland
House Painter

Other affiliations (uncompensated):

2009 – present
Glen Echo Park Partnership for Arts and Culture, Inc.
7300 MacArthur Boulevard
Glen Echo, Maryland 20812
Board Member

2006 – 2009
Yale Law School Association Executive Committee
127 Wall Street
New Haven, Connecticut 06511
Term 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 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.

Best Lawyers in America for Commercial Litigation (2010 – 2014)

Benchmark Litigation (2010, 2012 – 2014)

Washingtonian Magazine Top Lawyers in Washington, D.C. (National Security, 2013, 2011, 2009), (Constitutional Law, 2004)

Super Lawyers, Washington, D.C. (2007 – 2013)

Benchmark Appellate, Washington, D.C. (2012 – 2013)

Chambers USA: America's Leading Lawyers for Business (2009 – 2012)

Paul P. Brountas Award, WilmerHale (2009)

Edmund J. Randolph Award for Outstanding Service to the Department of Justice (2001)

Yale Law Journal Editor (1985 – 1986)

Coker Fellow in Instruction, Yale Law School (1985 – 1986)

Phi Beta Kappa (1983)

Departmental Honors in Philosophy, Hamilton College (1983)

Patterson Prize for Excellence in Philosophy, Hamilton 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

D.C. Bar Association

Fellows of the American Bar Foundation

Maryland State Bar Association

Montgomery County Bar Association

The Supreme Court Historical Society

1952

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, 1987
District of Columbia, 1989
Maryland, 2010

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.

State of New York (1987)
District of Columbia (1989)
State of Maryland (2010)
Supreme Court of the United States (1994)
United States Court of Appeals for the District of Columbia (2004)
United States Court of Appeals for the Federal Circuit (2006)
United States Court of Appeals for the Second Circuit (2004)
United States Court of Appeals for the Third Circuit (2012)
United States Court of Appeals for the Fourth Circuit (2011)
United States Court of Appeals for Fifth Circuit (1994)
United States Court of Appeals for Eighth Circuit (2003)
United States Court of Appeals for the Ninth Circuit (1992)
United States Court of Appeals for the Tenth Circuit (1993)
United States Court of Appeals for Eleventh Circuit (2003)
United States District Court for the District of Columbia (1990)
United States District Court for the Southern District of New York (1988)
United States District Court for the District of Maryland (1994)
United States Court of International Trade (2004)

Although it is possible that a gap in time may have occurred in my renewal of membership in a federal court bar, I have not identified any lapses in membership.

11. **Memberships**:

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

American Constitution Society (approximately 2002, 2004 – 2008, 2010 – 2011)
Convention Host Committee (approximately 2008 – 2011, 2013)

Brookmont Civic League (approximately 1993 – present)

Glen Echo Park Partnership for the Arts and Culture (2009 – present)
Board Member

Hockey North America, D.C. Moose (approximately 2002 – 2008)

Markel Task Force on National Security in the Information Age (2004 – 2006)
Associate

Mohican Hills Swimming Pool (approximately 1994 – 2012)

Montgomery Youth Hockey (approximately 2005 – 2013)
Coach/Assistant Coach

Yale Law School Association Executive Committee (2006 – 2009)
Term 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 listed organizations currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

Over the last eight years, my name has appeared on numerous "client alerts" that have been distributed by WilmerHale. My level of involvement in particular client alerts has varied. I typically reviewed alerts before they were distributed

and, at times, made edits and revisions. Some of the alerts, however, may have been distributed without my review. Out of an abundance of caution, I have listed all of these alerts below:

"NIST and DHS Release Final Cybersecurity Framework, Roadmap, and Voluntary Program for Cybersecurity Assistance," (February 13, 2014) (with Jonathan G .Cedarbaum, Benjamin Powell, Jamie Gorelick, Jason Chipman and Leah Schloss). Copy supplied.

"Defense Department and GSA Issue Recommendation for Improving Cybersecurity in Government Contracting," (January 27, 2014) (with Jonathan G. Cedarbaum, Benjamin A. Powell, Barry J. Hurewitz, Gregory Petkoff, Joe D. Smith and Leah Schloss). Copy supplied.

"False Claims Act: 2013 Year-in-Review," (January 7, 2014). Copy supplied. Although I am listed as an author on the WilmerHale website, I was not among the actual contributors to this client alert, as noted in the report.

"What You Should Know About DOD's Cybersecurity Rule," (November 25, 2013) (with Benjamin A. Powell, Jonathan G. Cedarbaum, Barry J. Hurewitz and Jason C. Chipman). Copy supplied.

"Defense Department Publishes Final Rule Implementing Enhanced Information Protection and Cyber Incident Reporting Requirements," (November 21, 2013) (with Benjamin A. Powell, Jonathan G. Cedarbaum, Barry J. Hurewitz and Jason C. Chipman). Copy supplied.

"NIST and DoD Issue Cybersecurity Guidance and Rules," (October 24, 2013) (with Jonathan G. Cedarbaum, Benjamin A. Powell, Jason C. Chipman and Leah Schloss). Copy supplied.

"NIST Issues Discussion Draft of Preliminary Cybersecurity Framework," (August 30, 2013) (with Jonathan G. Cedarbaum and Leah Schloss). Copy supplied.

"Supreme Court Agrees to Address Scope of Recess Appointments Power," (June 24, 2013) (with Jonathan G. Cedarbaum, Reginald J. Brown and Eric J. Mogilnicki). Copy supplied.

"GSA-Joint Cybersecurity Working Group Issues Request for Information on Cybersecurity Standards in Government Contracts," (May 13, 2013) (with Jonathan G. Cedarbaum and Leah Schloss). Copy supplied.

"President Obama Issues Cybersecurity Executive Order," (February 13, 2013) (with Jamie Gorelick, Jonathan G. Cedarbaum, Benjamin A. Powell

and Erika L. Robinson). Copy supplied.

"DC Circuit Invalidates Obama Recess Appointments," (January 25, 2013) (with Reginald J. Brown, Eric J. Mogilnicki, Jonathan G. Cedarbaum, Seth P. Waxman and Russell J. Bruemmer). Copy supplied.

"Recent Developments Relating to Patent Term Adjustments," (January 23, 2013) (with Brian Boynton, Jane M. Love, Ph.D. and Donald R. Steinberg). Copy supplied.

"President Signs New Cybersecurity Provisions in Defense Authorization Act," (January 3, 2013) (with Jamie Gorelick, Jonathan G. Cedarbaum, Benjamin A. Powell, Jason C. Chipman and Leah Schloss). Copy supplied.

"False Claims Act: 2012 Year-in-Review," (January 2, 2013). Copy supplied. Although I am listed as an author on the WilmerHale website, I was not among the actual contributors to this client alert, as noted in the report.

"Affordable Care Act Litigation: The Next Round," (October 18, 2012) (with Jonathan G. Cedarbaum, Thomas L. Strickland, Karen F. Green and David W. Ogden) (also reported in Bloomberg BNA, Health Insurance Report in substantially similar form, October 31, 2012). Copies supplied.

"Senate to Consider Compromise Cybersecurity Legislation," (July 23, 2012) (with Jonathan G. Cedarbaum, Jamie Gorelick, Benjamin A. Powell and Jason C. Chipman). Copy supplied.

"*U.S. v. Nosal* – Implications for CFAA Cases," (April 12, 2012) (with Jonathan G. Cedarbaum, Benjamin A. Powell, Patrick J. Carome, Steven P. Lehotsky and Jason C. Chipman). Copy supplied.

"En Banc Ninth Circuit's Nosal Decision Restricts Computer Fraud and Abuse Act's Reach," (April 11, 2012) (with Jonathan G. Cedarbaum, Benjamin A. Powell, Patrick J. Carome and Jason C. Chipman). Copy supplied.

"Senate Omnibus Cybersecurity Bill Emphasizes Critical Infrastructure Protection, Information-Sharing," (February 14, 2012) (with Jonathan G. Cedarbaum, Benjamin A. Powell, David W. Ogden, David J. Ross and Jason C. Chipman). Copy supplied.

"Cybersecurity and the Law: What to Expect in 2012," (January 17, 2012) (with Jonathan G. Cedarbaum, Benjamin A. Powell and Jason C. Chipman). Copy supplied.

"Considering The Scope Of CFAA," (November 18, 2011) (with Jonathan G. Cedarbaum, Benjamin A. Powell, Patrick J. Carome, Steven P. Lehotsky and Jason C. Chipman). Copy supplied.

"En Banc Ninth Circuit to Consider Scope of Computer Fraud and Abuse Act," (November 9, 2011), (with Jonathan G. Cedarbaum, Benjamin A. Powell, Patrick J. Carome and Jason C. Chipman). Copy supplied.

"Ninth Circuit Rules on Corporate Liability for International Human Rights Violations," (October 28, 2011) (with Jonathan G. Cedarbaum, Paul R.Q. Wolfson, David W. Ogden, Gary Born and Suzanne A. Spears). Copy supplied.

"Supreme Court to Rule on Corporate Liability for International Human Rights Violations," (October 21, 2011) (with Paul R.Q. Wolfson, Jonathan G. Cedarbaum, David W. Ogden, Gary Born and Suzanne A. Spears). Copy supplied.

"Obama Administration Proposes Cybersecurity Legislation," (May 17, 2011) (with Benjamin A. Powell). Copy supplied.

"Supreme Court Agrees to Hear Constitutional Challenge to PCAOB," (May 19, 2009) (with Howard M. Shapiro and William R. McLucas). Copy supplied.

"Congress to Establish Financial Crisis Inquiry Commission," (May 7, 2009) (with Reginald J. Brown, Jamie Gorelick, William R. McLucas, Howard M. Shapiro and Matthew A. Chambers). Copy supplied.

"Attorney General Issues FOIA Guidance," (March 31, 2009) (with Patrick J. Carome). Copy supplied.

"President Orders Presumption of Disclosure in FOIA Matters," (January 28, 2009) (with Patrick J. Carome). Copy supplied.

"Statute Attempts to Fix Perceived Constitutional Problem in the Law Governing the Appointment of Administrative Patent and Administrative Trademark Judges," (August 19, 2008) (with Donald R. Steinberg). Copy supplied.

"Proposed Legislation Seeks to Restrict State Secrets Privilege," (February 4, 2008) (with Jamie Gorelick). Copy supplied.

"District of Columbia Prescription Drug Excessive Pricing Act of 2005 Successfully Challenged, Declared Unconstitutional," (January 5, 2006)

(with David W. Ogden). Copy supplied.

The Least Vulnerable Branch: Ensuring the Continuity of the Supreme Court, 53 Catholic U. L. Rev. 1015 (Summer 2004) (with Edward Siskel). Copy supplied.

Case Alert, *Analysis of Supreme Court Decision Upholding Constitutionality of New Campaign Finance Law* (prepared by WilmerHale) (approximately December 2003). Copy supplied.

Case Alert, *Analysis of Supreme Court Decision Upholding Constitutionality of New Campaign Finance Law* (with Seth Waxman, Frank Wertheimer, and Roger Witten) (May 5, 2003). Copy supplied.

Executive Branch Legal Interpretation: A Perspective From the Office of Legal Counsel, 52 Admin. L. Rev. 1303 (2000). Copy supplied.

Note, *Participation and Department of Justice School Desegration Decrees*, 95 Yale L. J. 1811 (1986). Copy supplied.

Letter to the Editor, New York Times, November 2, 1986. Copy supplied.

Why the United States Has Failed to Evolve: An Analysis of Current Western Interest Intermediation Systems, 6 Hamilton Social Science Rev. 24 (1983). Copy supplied.

Although I have not been able to locate a copy, I believe that I wrote an article in my college newspaper regarding asbestos found in a dormitory in approximately 1980.

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

Signatory to Amicus Brief by Former Senior Justice Department Officials and Former Counsels to the President on Jurisdiction in *United States v. Windsor*, No. 12-307 (2013), 2013 WL 840016.

I served as an associate member of the Markel Task Force on National Security in the Information Age from 2004 to 2006. During this time, the Task Force issued the following report: *Implementing a Trusted Information Sharing Environment: Using Immutable Audit Logs to Increase Security, Trust, and Accountability*, Markel Task Force on National Security in the Information Age (2006). Copy supplied.

Joint Statement of Principles to Guide the Office of Legal Counsel, December 21, 2004, reprinted in 81 Ind. L. J. 1348 (2006).

Preserving Our Institutions: The Continuity of Congress, Continuity in Government Commission, American Enterprise Institute and Brookings Institution, October 16, 2002. Copy supplied. Although not a member of the Commission, I did consult in the creation of this report. I also served as an advisor to the Continuity in Government Commission and those involved in the project on the continuity of Congress, the Presidency, and/or the Supreme Court, including in briefing Congressional staffers. I have been unable to locate any notes, transcripts, or recordings relating to this advice.

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.

Congressional Testimony:

Confirmation Hearing to Serve as the Assistant Attorney General for the Office of Legal Counsel, United States Department of Justice, Committee on the Judiciary, United States Senate, February 22, 2000. Transcript and questions for the record supplied.

Testimony Concerning S. 1214, The Federalism Accountability Act of 1999, Committee on Governmental Affairs, United States Senate, July 14, 1999. Transcript and written statement supplied.

Testimony Concerning S.J. Res. 14, A Proposed Flag Desecration Constitutional Amendment, Committee on the Judiciary, United States Senate, April 28, 1999. Transcript and written statement supplied.

Testimony Concerning "Clinton-Gore v. State and Local Governments, Subcommittee on National and Economic Growth, Natural Resources, and Regulatory Affairs, Committee on Government Reform and Oversight, United States House of Representatives, July 28, 1998. Transcript supplied.

Testimony Concerning H.R. 856, To Provide a Process Leading to Full Self-Government for Puerto Rico, and S. 472, To Provide for Referenda in Which the Residents of Puerto Rico May Express Democratically Their Preferences Regarding the Political Status of the Territory, and for Other Purposes, Committee on Energy and Natural Resources, United States Senate, July 14, 1998. Transcript supplied.

Testimony Concerning S. 1668, Whistleblower Protections for Classified

Disclosures, Permanent Select Committee on Intelligence, United States House of Representatives, May 20, 1998. Written statement supplied.

Testimony Concerning the Constitutionality of Proposed Limitations on Tobacco Industry, Committee on the Judiciary, United States Senate (with David W. Ogden, Counselor to the Attorney General), May 13, 1998. Written statement and transcript supplied.

Testimony Concerning Whistleblower Protections for Classified Disclosures, Select Committee on Intelligence, United States Senate, February 11, 1998. Transcript and written statement supplied.

Other Statements:

January 2005; February 3, 2004: "Civil Litigation Update," National Vaccine Advisory Committee, Washington, D.C. I addressed vaccine liability issues. Notes supplied.

March 16, 2004, September 4, 2002, June 6, 2002: Presenter, "Update on Thimerosal Lawsuits," Meetings of the Advisory Commission on Childhood Vaccines, Rockville, Maryland. Minutes supplied where available.

National Commission on Terrorist Attacks Upon the United States, The 9/11 Commission Report. On February 6, 2004, I provided information to the 9/11 Commission. Copy of relevant excerpts of the report supplied.

It is possible that I made additional presentations to the Advisory Commission on Childhood Vaccines and/or the National Vaccine Advisory Commission and may have made other presentations relating to the National Vaccine Injury Compensation Program.

Published Opinions of the Office of Legal Counsel:

Effect of Alienage Restriction in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on the Provision of Stafford Act Assistance in the Federated States of Micronesia and the Republic of the Marshall Islands, Mem. Op. for the General Counsel, Federal Emergency Management Agency, Jan. 19, 2001. Copy supplied.

Authority to Solicit Gifts, Mem. Op. for the Director, Office of Government Ethics, Jan. 19, 2001. Copy supplied.

Applicability of the Antideficiency Act to a Violation of a Condition or Internal Cap Within An Appropriation, Mem. Op. for the Ass't Attorney General for Administration, Jan. 19, 2001. Copy supplied.

Reimbursing Transition-Related Expenses Incurred Before the Administrator of General Services Ascertained Who Were the Apparent Successful Candidates for the Offices of President and Vice President, Mem. Op. for the General Counsel, General Services Administration, Jan. 17, 2001. Copy supplied.

Whether the President May Have Access to Grand Jury Materials in the Course of Exercising his Discretion to Grant Pardons, Mem. Op. for the Pardon Attorney, Dec. 22, 2000. Copy supplied.

Authorization for Continuing Hostilities in Kosovo, Mem. for the Attorney General, Dec. 19, 2000. Copy supplied.

Authority of the General Services Administration to Provide Assistance to Transition Teams of Two Presidential Candidates, Mem. Op. for the Counsel to the President, Nov. 28, 2000. Copy supplied.

Payment of Attorney's Fees in Litigation Involving Successful Challenges to Federal Agency Action Arising Under the Administrative Procedure Act and the Citizen-Suit Provisions of the Endangered Species Act, Mem. Op. for the Ass't Attorney General, Environment and Natural Resources Division, Nov. 27, 2000. Copy supplied.

State Taxation of Income of Certain Native American Armed Forces Members, Mem. Op. for the General Counsel, Department of Defense, Nov. 22, 2000. Copy supplied.

Use of Agency Resources to Support Presidential Transition, Mem. Op. for the General Counsel, General Services Administration, Nov. 22, 2000. Copy supplied.

Definition of Candidate Under 18 U.S.C. § 207(j), Mem. for the Director, Office of Government Ethics, Nov. 6, 2000. Copy supplied.

Section 235A of the Immigration and Nationality Act, Mem. for the General Counsel, Immigration and Naturalization Service, Oct. 23, 2000. Copy supplied.

Sharing Title III Electronic Surveillance Material With the Intelligence Community, Mem. for the Counsel, Office of Intelligence Policy and Review, Oct. 17, 2000. Copy supplied.

A Sitting President's Amenability to Indictment and Criminal Prosecution, Mem. for the Attorney General, Oct. 16, 2000. Copy supplied.

Applicability of Government Corporation Control Act to Gain Sharing Benefit Agreement, Mem. Op. for the General Counsel, National Aeronautics and Space Administration and the General Counsel, Office of Management and Budget, Sept. 18, 2000. Copy supplied.

Administration of Coral Reef Resources in the Northwest Hawaiian Islands, Mem. Op. for the Solicitor, Department of the Interior; the General Counsel, National Oceanic and Atmospheric Administration; and the General Counsel, Council on Environmental Quality, Sept. 15, 2000. Copy supplied.

Application of 18 U.S.C. § 209 to Employee-Inventors Who Receive Outside Royalty Payments, Mem. Op. for the Director of Government Ethics, Sept. 7, 2000. Copy supplied.

Constitutionality of 18 U.S.C. § 1120, Mem. Op. for the Ass't Attorney General, Criminal Division, Aug. 31, 2000. Copy supplied.

Whether a Former President May Be Indicted and Tried for the Same Offense for Which He Was Impeached by the House and Acquitted by the Senate, Mem. for the Attorney General, Aug. 18, 2000. Copy supplied.

Division of Power and Responsibilities Between the Chairperson of the Chemical Safety and Hazard Investigation Board and the Board as a Whole, Mem. Op. for the General Counsel, Chemical Safety and Hazard Investigation Board, June 26, 2000. Copy supplied.

EPA Assessment of Penalties Against Federal Agencies for Violation of the Underground Storage Tank Requirements of the Resource Conservation and Recovery Act, Mem. Op. for the General Counsel, Department of Defense and the General Counsel, Environmental Protection Agency, June 14, 2000. Copy supplied.

Continuation of Federal Prisoner Detention Efforts in the Face of a USMS Appropriations Deficiency, Mem. for the General Counsel, United States Marshals Service, April 5, 2000. Copy supplied.

Date of Appointment for Purpose of Calculating the Term of an Interim United States Attorney, Mem. for the Deputy Attorney General, March 16, 2000. Copy supplied.

Enforcement of INA Employer Sanctions Provisions Against Federal Government Entities, Mem. Op. for the General Counsel, Immigration and Naturalization Service, March 15, 2000. Copy supplied.

Starting Date for Calculating the Term of an Interim United States Attorney, Mem. for the Deputy Attorney General, March 10, 2000. Copy supplied.

Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order, Mem. for the Counsel to the President, Jan. 29, 2000. Copy supplied.

Participation by Processor-Owned Catcher Vessels in Inshore Cooperatives Under the American Fisheries Act of 1998, Mem. Op. for the General Counsel, Department of Commerce, Dec. 10, 1999. Copy supplied.

Tribal Restrictions on Sharing of Indigenous Knowledge on Uses of Biological Resources, Mem. for the Ass't Attorney General, Environment & Natural Resources Division, Oct 12, 1999. Copy supplied.

Office of Personnel Management Petitions for Reconsideration of Non-Precedential Merit Systems Protection Board Decisions, Mem. for the General Counsel, Federal Retirement Thrift Investment Board, Sept. 13, 1999. Copy supplied.

Restrictions on Travel by Voice of America Correspondents, Mem. for the Deputy Legal Adviser, Department of State, Sept. 10, 1999. Copy supplied.

Internal Revenue Service Request for Documents in Defense Department Possession, Mem. for the Acting General Counsel, Department of the Treasury and the General Counsel, Department of Defense, Sept. 1, 1999. Copy supplied.

Authority of the United States to Enter Settlements Limiting the Future Exercise of Executive Branch Discretion, Mem. for Raymond C. Fisher, Assoc. Attorney General, June 15, 1999. Copy supplied.

Accessibility Guidelines and Federal Lease Renewals, Mem. for the Deputy General Counsel U.S. Architectural and Transportation Barrier Compliance Board, May 26, 1999. Copy supplied.

Relationship Between Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and Statutory Requirement for Confidentiality of Census Information, Mem. for the General Counsel, Department of Commerce, May 18, 1999. Copy supplied.

Whether and Under What Circumstances Government Reproduction of Copyrighted Materials is a Noninfringing "Fair Use" Under Section 107 of the Copyright Act of 1976, Mem. for the General Counsel, Department of Commerce, Apr. 30, 1999. Copy supplied.

Proposed Settlement of Diamond v. Department of Health & Human Services, Mem. for Harriet S. Raab, General Counsel, Department of Health & Human Services, Dec. 4, 1998. Copy supplied.

Presidential Determination Allowing Financial Assistance to Tibet, Mem. Op. for the General Counsel, Export-Import Bank, Nov. 6, 1998. Copy supplied.

Lack of Authority of the Office of the United States Trade Representative to Represent Private Industry in Proceedings Before the United States International Trade Commission, Letter to the Deputy General Counsel, Office of the U.S. Trade Representative, Sept. 24, 1998. Copy supplied.

Whether the Fifth Amendment Prohibits Disclosure of the Results of a Court-Ordered Mental Examination to the Government During the Guilt Phase of a

Trial, Mem. for the Ass't Attorney General, Criminal Division, Sept. 21, 1998. Copy supplied.

Construction of State Reporting Requirements in Section 404 of the Personal Responsibility and Work Opportunity Reconciliation Act, Mem. for the General Counsel, Immigration and Naturalization Service, Aug. 18, 1998. Copy supplied.

Appropriate Source for Payment of Judgments and Settlements in United States v. Winstar Corp. and Related Cases, Mem. for Neal S. Wolin, Deputy General Counsel, Department of the Treasury, July 22, 1998. Copy supplied.

Access to Criminal History Records by Non-Governmental Entities Performing Authorized Criminal Justice Functions, Letter Op. for the Deputy Director of the Federal Bureau of Investigation, June 12, 1998. Copy supplied.

Funds Available for Payment of Natural Resource Damages Under the Oil Pollution Act of 1990, Mem. for Ass't Attorney General, Civil Division, Sept. 25, 1997. Copy supplied.

Immunity of Smithsonian Institution from State Insurance Laws, Mem. Op. for the Ass't General Counsel, Smithsonian Institution, April 25, 1997. Copy supplied.

Delegation of the President's Power to Appoint Members of the National Ocean Research Leadership Council, Mem. Op. for the General Counsel, Department of the Navy, Jan. 29, 1997. Copy supplied.

Proposed Agency Interpretation of "Federal Means-Tested Public Benefits" Under Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Mem. Op. for the General Counsel, Department of Health and Human Services, Jan. 14, 1997. Copy supplied.

Authority to Exempt Programs Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Mem. Op. for the Ass't Attorney General, Office of Policy Development, Nov. 25, 1996. Copy supplied.

Letters:

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Cornelia Pillard to be a United States Judge on the United States Court of Appeals for the District of Columbia (July 17, 2013). Copy supplied.

Joint Letter to the Senate Intelligence Committee in Support of the Nomination of Caroline Krass to be General Counsel for the Central Intelligence Agency (December 6, 2013). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Stuart Delery to be the Assistant Attorney General, Civil Division, United States Department of Justice (May 13, 2013). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Michael Horowitz to be the Inspector General of the Department of Justice (October 17, 2011). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Virginia Seitz to be Assistant Attorney General, Office of Legal Counsel (March 15, 2011). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Donald Verrilli, Jr. to be the Solicitor General of the United States (February 10, 2011). Copy supplied.

Joint Letter from Former Supreme Court Law Clerks to the Senate Judiciary Committee in Support of the Nomination of Elena Kagan to be an Associate Justice, United States Supreme Court (June 23, 2010). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Sonia Sotomayor to be an Associate Justice, United States Supreme Court (August 5, 2009). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Christopher Schroeder to be the Assistant Attorney General for the Office of Legal Policy (June 23, 2009). Copy supplied.

Letter to the Senate Foreign Relations Committee in Support of Nomination of Harold Koh to be Legal Adviser to the Department of State (April 29, 2009). Copy supplied.

Letter to the Senate Judiciary Committee in Support of the Nomination of Dawn Johnsen to be Assistant Attorney General for the Office of Legal Counsel (February 23, 2009). Copy supplied.

Letter to the Senate Judiciary Committee in Support of the Nomination of David Kris to be Assistant Attorney General for the National Security Division (February 5, 2009). Copy supplied.

Letter to the Senate Intelligence Committee in Support of the Nomination of David Kris to be Assistant Attorney General for the National Security Division (February 5, 2009). Copy supplied.

Letter to the Senate Judiciary Committee in Support of the Nomination of Paul Clement to be the Solicitor General of the United States (April 15, 2005). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Peter Keisler to be Assistant Attorney General for the Civil Division (2003). Copy of Chairman Hatch's statement supplied. I believe that I may have also joined a letter in support of Mr. Keisler's nomination to be a United States Judge

on the United States Court of Appeals for the District of Columbia, but I am unsure about this and have not been able to locate copies of the letters sent in support of his nomination.

Letter to the Senate Judiciary Committee in Support of the Nomination of Miguel Estrada to be a United States Judge on the Court of Appeals for the District of Columbia Circuit (2002). Copy supplied.

Letter to Senator Paul Sarbanes and Senator Barbara Mikulski in Support of the Potential Nomination of Peter Keisler to be a United States Judge on the United States Court of Appeals for the Fourth Circuit (April 12, 2001). Copy supplied.

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

The following list reflects my best effort to identify the public speeches, talks and remarks that I have delivered. To compile the list, I consulted my own files and Internet sources. There may, however have been speeches, talks or remarks that I have been unable to recall or identify, and I have occasionally spoken at informal events for which I did not retain any record.

October 30, 2013, October 17, 2011, October 20, 2010, October 28, 2009 and October 23, 2007: Guest Lecturer, First Amendment Class, American University, Washington College of Law, Washington, D.C. Representative notes supplied.

October 8, 2013: Presenter, Constitution Day Event, "The Current State of Campaign Finance Law," Robert J. Dole Institute of Politics, Lawrence, Kansas. Video available at http://www.youtube.com/watch?v=qO2xjfm5tBY.

May 31, 2013: Co-facilitator, Constitution Project Discussion on the Recess Appointments Clause, Washington, D.C. I discussed the recess appointments clause and NLRB v. Noel Canning. I have been unable to locate any notes, record or transcript. The address of the sponsoring organization is the Constitution Project, 1200 18th Street, N.W., Suite 1000, Washington, D.C. 20036.

March 13, 2013: Panelist, Panel on Public Release of Office of Legal Counsel Opinions, sponsored by Citizens for Responsibility and Ethics in Washington and George Washington University Law School Professor Alan Morrison, Washington, D.C. Video supplied.

March 11, 2013: Panelist, Teleconference on the Cybersecurity Executive Order and Presidential Directive: Implications for Federal Agencies and Contractors. I discussed a recent Executive Order and Presidential Directive dealing with cybersecurity for critical infrastructure and government contractors. I have been unable to locate any notes, transcript or recording. The sponsoring organization is the American Bar Association Cybersecurity, Privacy and Data Protection Committee, 321 North Clark Street, Chicago, IL 60654.

November 11, 2012: Speaker, Memorial Service for Herman Marcuse, United States Department of Justice, Office of Legal Counsel, Washington, D.C. I discussed the career of a long-serving Office of Legal Counsel attorney, at his memorial service. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

January 23, 2012: Panelist, "The Supreme Court Cases Challenging the Constitutionality of the Affordable Care Act," O'Neill Institute for National and Global Health Law, Georgetown University Law Center, Washington, D.C. Video available at https://apps.law.georgetown.edu/webcasts/eventDetail.cfm?eventID=1629.

November 19, 2009: Panelist, "Patentable Subject Matter of the Bilski Oral Argument," Washington College of Law, Washington, D.C. Video available at http://media.wcl.american.edu/Mediasite/Play/ac95d68a5a734ae98122e856efcdbc75.

October 7, 2009: Panelist, "The 2009-2010 U.S. Supreme Court Term," Brookings Institution, Washington, D.C. Transcript supplied and audio available is available at http://www.brookings.edu/events/2009/10/07-supreme-court.

October 1, 2009: Panelist, American Bar Association Task Force on Federal Preemption of State Tort Laws. Notes supplied.

September 30, 2009: Guest Lecturer, Seminar on National Security and the Constitution, Harvard Law School, Cambridge, Massachusetts. I discussed the Constitution and separation of powers as applied to national security law. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Harvard University, Institute of Politics, 79 John F. Kennedy Street, Cambridge, MA 02138.

November 20, 2008: Panelist, "International and National Security Law: International Law and the Separation of Powers," Federalist Society Annual Convention, Washington, D.C. Audio available at http://www.fed-

soc.org/publications/detail/international-law-the-separation-of-powers-event-audiovideo.

November 19, 2008: Panelist, "Concurrent Vaccine Program/Vaccine Compensation Under the Act: A Mix of Science and Policy?" Judicial Conference of the United States Court of Federal Claims, Washington, D.C. Transcript supplied.

November 6, 2008: Guest Lecturer, Seminar on Office of Legal Counsel Lawyering, Georgetown University Law Center, Washington, D.C. I addressed the role of government lawyers. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Georgetown University Law Center, 600 New Jersey Avenue, N.W., Washington, D.C. 20001.

June 27, 2008: Panelist, "Briefing on U.S. Supreme Court Rulings," Brookings Institution, Washington, D.C. Transcript supplied and videos available at http://www.brookings.edu/events/2008/06/27-supreme-court, http://c-spanvideo.org/program/20072008SupremeCourtTerm.

May 8, 2008: Presenter, "Conference on Dynamics of Interagency Reform: Constitutional, Statutory, and Civil Liberties Implications," Project on National Security Reform and the Reserve Officers Association, Washington, D.C. Notes supplied.

March 13, 2008: Guest Lecturer, First Amendment Class, Stanford Law School. I believe that I addressed compelled speech and/or the Supreme Court's consideration of *Davis v. FEC*. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Stanford Law School, 559 Nathan Abbott Way, Stanford, CA 94305.

March 12, 2008: Presenter, "Constitutional Conversation," Stanford Law School Chapter of the American Constitution Society. Although I do not recall precisely what I addressed, I believe my remarks involved the Constitution and/or national security. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Stanford Law School Chapter of the American Constitution Society, 559 Nathan Abbott Way, Stanford, CA 94305.

November 19, 2007: Panelist, "Congress, the President and the Struggle Over Information," the Wilson Center, Washington, D.C. I have been unable to locate any notes, transcript or recording, but press coverage is supplied. The address of the sponsoring organization is the Wilson Center, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

October 9, 2007: Panelist, Discussion Following Preview of "Rendition," Brookings Institution, Washington, D.C. I addressed legal issues raised by the movie. I have been unable to locate any notes, transcript or recording. The

address of the sponsoring organization is the Brookings Institution, 1775 Massachusetts Avenue, N.W., Washington, D.C. 20036.

March 7, 2007: Study Group on National Security Law, Harvard University, Institute of Politics, Cambridge, Massachusetts. Along with Professor Goldsmith, I helped lead a discussion on national security law and the Constitution. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Harvard University, Institute of Politics, 1563 Massachusetts Avenue, Cambridge, MA 02138.

February 27, 2006: Panelist, "Lessons Learned from NAFTA (North American Free Trade Agreement) and the Softwood Dispute," American University Washington College of Law, Washington, D.C. Video available at http://media.wcl.american.edu/mediasite/play/c01b4a0b-2d62-4e10-9077-a45fea37157c.

December 20, 2005: Presenter, Immunization Policy, American College of Obstetricians and Gynecologists, Washington, D.C. Notes and presentation supplied.

November 17, 2005: Panelist, "Structure of Statutory Interpretation Within Executive Branch," American Bar Association, Washington, D.C. Notes supplied.

April 14, 2005: Panelist, "Government Compelled Speech," The Federalist Society's Free Speech and Election Practice Group, Washington, D.C. Notes supplied.

March 16, 2005: Introduction of the Honorable James Robertson, United States District Judge, D.C. Lawyers Chapter of the American Constitution Society, Washington, D.C. I introduced Judge Robertson at a luncheon. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is the American Constitution Society, 1333 H Street, N.W., Washington, D.C. 20005.

January 24, 2005: Panelist, "Liability Issues, Second NVAC Workshop on Strengthening the Supply of Vaccines in the U.S." Notes supplied.

December 6, 2004: Presenter, Federalist Papers Book Group, D.C. Lawyers Chapter of the American Constitution Society, Washington, D.C. I spoke about the Federalist Papers and Presidential Powers. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is the American Constitution Society, 1333 H Street, N.W., Washington, D.C. 20005.

September 17, 2004: Panelist, "The Role of Lawyers in the War of Terrorism," Sixth Annual Conference of the Duke Program in Public Law, Duke Law School,

Durham, North Carolina. Video available at http://law.duke.edu/video/role-lawyers-war-terrorism/.

June 17, 2004: Presenter, Luncheon Program, "Executive Privilege in the Age of Terrorism," District of Columbia Bar Association, Washington, D.C. Notes supplied.

January 28, 2004: Presenter, "Ensuring the Continuity of Government in Times of Crisis," Catholic University, Washington, D.C. Transcript supplied.

December 18, 2003: Panelist, "*McConnell v. FEC* and the Future of American Campaign Finance," American Constitution Society, Washington, D.C. I discussed *McConnell v. FEC*. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is The American Constitution Society, 1333 H Street, N.W., 11th Floor, Washington, D.C. 20005.

November 3, 2003: Presenter, "The First Amendment and Commercial Speech on the Internet," Institute for Law and Technology, Center for American and International Law, Plano, Texas. Notes supplied.

June 23 or 24, 2003: Presenter, "National Forum on Corporate Compliance with the Bipartisan Campaign Reform Act of 2002," American Conference Institute, Washington, D.C. Notes supplied.

May 12, 2003: Panelist, "Future of Campaign Finance," Cato Institution and Federalist Society, Washington, D.C. Video available at http://c-spanvideo.org/program/CampaignFinanceReform130.

February 2003: Panelist, Federal Bar Council Annual Meeting, Maui, Hawaii. I spoke on two panels, one addressing federalism and the other addressing campaign finance and the Constitution. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is the Federal Bar Council, 123 Main Street, Suite L100, White Plains, NY 10601.

January 15, 2003: Discussion, Eighth Grade Class, Georgetown Day School. I met at my office with eighth grade students to discuss Fourth Amendment rights relating to searches and wire taps during a time of national crisis. I have been unable to locate any notes, record or transcript. The event was sponsored by the Georgetown Day School, 4530 MacArthur Boulevard, Washington, D.C. 20007.

November 16, 2002: Panelist, "Whither Federalism? The Impact of Globalization and the War on Terror," Federalist Society Annual Convention, Washington, D.C. I addressed federalism and national security. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Federalist Society, 1015 18th Street, N.W., Suite 425, Washington, D.C. 20036.

October 24, 2002: Panelist, "*Eldred v. Ashcroft*: The Constitutionality of the Copyright Term Extension Act, New York Chapter of the Copyright Society, New York, NY. Notes supplied.

July 29, 2002: Panelist, "Campaign Finance and the Constitution: Reacting to Reform: Law and Politics After McCain-Feingold-Shays-Meehan" Roll Call and Perkins Coie Political Law Group, Washington, D.C. Video available at http://c-spanvideo.org/program/Financeandt.

March 1, 2002: Panelist, "Campaign Finance Legislation, Politics and the Constitution," American Enterprise Institute/Brookings Institution, Washington, D.C. Video available at http://c-spanvideo.org/program/CampaignFinanceReform121.

February 2002: Guest Lecturer, "The Law of Counterterrorism," University of Maryland School of Law, Baltimore, Maryland. I discussed national security law and the role of government lawyers in counterterrorism. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is the University of Maryland School of Law, 500 West Baltimore Street, Baltimore, MD 21201.

November 18, 2000: Panelist, "Federalism and Separation of Powers Group: Federalism After the Election: Opportunities and Challenges," Federalist Society Annual Convention, Washington, D.C. Notes supplied.

July 30, 1999: Panelist, Panel Discussion on the 1998 Supreme Court Term, Senate Judiciary Staff, Washington, D.C. Notes supplied.

I also recall participating in a webinar sometime in the last five years, but I cannot recall the details and have been unable to locate any 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.

Through on-line database searches and a review of my own files, I have located the following instances in which I was apparently quoted from an interview in a publication. In some instances, the same article also appeared in affiliated publications. Also listed below is any instance that I have been able to locate in which I have been quoted, or in which my voice or image appeared, on a radio or television broadcast.

"Jonathan Yarowsky Joins WilmerHale's Washington D.C. Office," WilmerHale Press Release, July 10, 2013. Copy supplied.

"Experienced Life Sciences Regulatory Attorney Bruce Manheim Joins WilmerHale," WilmerHale Press Release, March 18, 2013. Copy supplied.

"Former Government Policy Advisors Strengthens WilmerHale Financial Institutions Practice: Katrina Carroll, Jeremy Newell Bring Federal Experience to Financial Team," WilmerHale Press Release, March 13, 2013. Copy supplied.

Lisa Keen, "Hospital Memo Will Take Months To Implement," Windy City Times, April 28, 2010. Copy supplied.

Seth Stern, "Executive Counsel: Meet the President's New Lawyers—and Their New Lawyers," Harvard Law Today, July 1, 2009. Copy supplied.

"Federal Court Declares Vaccines Do Not Cause Autism," PR Newswire, February 12, 2009. Copy supplied.

Every Child By Two, Vaccine Court Ruling Briefing, February 12, 2009. Transcript supplied.

Joe Palazzolo, "Obama Names Choices For Key DOJ Posts," The National Law Journal, January 5, 2009. Copy supplied.

Joe Palazzolo, "DOJ Notebook: Ogden Tops List For No. 2 Slot," The National Law Journal, December 22, 2008. Copy supplied.

Press Conference, Every Child By Two, National Vaccine Injury Compensation Program and Autism Cases, May 7, 2008. I have no notes, transcript or recording.

Erin Daly, "Autism Case Sparks Debate Over Vaccine Program," Law360, June 12, 2007. Copy supplied.

Tony Mauro, "A Shot Of Redemption," Legal Times, June 4, 2007. Copy supplied.

Press Conference, Every Child By Two and the Sabin Vaccine Institute, Briefing on the Autism Omnibus Proceedings, June 4, 2007. Transcript supplied.

Nina, Totenberg, "High Court Takes Up Campaign-Ad Issue," National Public Radio, Morning Edition, April 25, 2007. Copy supplied.

Peter Overby, "Court Rejects Vermont's Campaign-Finance Law," NPR (June 27, 2006). Audio available at http://www.npr.org/templates/story/story.php?storyId=5514385.

1972

Peter Overby, "Vermont Campaign Finance Law Rejected by Supreme Court," National Public Radio, Morning Edition, June 27, 2006. Copy supplied.

"High Court Says Beef is What's for Dinner," May 24, 2005. Copy supplied.

Tony Mauro, "Supreme Court Rules Beef Ads Are Government Speech," The National Law Journal, May 23, 2005. Copy supplied.

"California Farmers Applaud Supreme Court Ruling on Beef," PR Newswire, May 23, 2005. Copy supplied.

Jess Bravin, "Interrogation Policy Proves Elusive – Justice Department Effort To Give Guidance On Handling Terrorism Detainees Is Delayed," The Wall Street Journal, December 13, 2004. Copy supplied.

Vanessa Blum, "Culture Of Yes: Signing Off On A Strategy; From Torture To Detention, Lawyers For Bush Haven't Objected to Much," The National Law Journal, June 14, 2004. Copy supplied.

I believe that I may have been interviewed by Nina Totenberg in approximately 2003 regarding campaign finance litigation, but I have been unable to locate any record of the interview.

Jonathan Groner, "How Past Scandals Propelled Reforms," Legal Times, December 15, 2003. Copy supplied.

Susan Crabtree, "Hard Ban On Soft $," Daily Variety, December 11, 2003. Copy supplied.

Fred Barbash, "Supreme Court Upholds Political Money Law: 'Soft Money' Ban, Ad Limits Maintained," Washington Post, December 10, 2003. Copy supplied.

Jan Crawford Greenberg, "Embattled Judicial Nominee Withdraws," Chicago Tribune, September 5, 2003. Copy supplied.

Tony Mauro, "Judging Reform: Eight Lawyers; Four Hours And A Lunch Break," Legal Times, September 1, 2003. Copy supplied.

Viveca Novak, "Justice Rehnquist, Secret Feminist?" Time Magazine, June 1, 2003. Copy supplied.

Stephen Dinan and Frank Murray, "NRA Asks High Court to Block Ruling on Interest Group Ads," The Washington Times, May 13, 2003. Copy supplied.

Tony Mauro, "Something For Everyone To Hate," Legal Times, May 12, 2003. Copy supplied.

Vanessa Blum, "For OLC; A Contrarian In Step With Bush," Legal Times, May 5, 2003. Copy supplied.

"A Thunderclap, at 1,600 Pages," The National Law Journal, May 5, 2003. Copy supplied.

David Montgomery, "A Man on Hold: While the Senate Debates, Judicial Nominee Miguel Estrada Waits. And Waits," The Washington Post, March 14, 2003. Copy supplied.

Jan Crawford Greenberg, "From Humble Beginnings To Senate Storm; Nominee Miguel Estrada Is Seen As Conservative, Driven And An Impressive Lawyer. His Mother Says He's Not 'The Kind Of Person That Stirs Controversy,'" Chicago Tribune, March 2, 2003. Copy supplied.

Deirdre Davidson, "McConnell Case: Lawyers Jockey For Edge," The National Law Journal, November 11, 2002. Copy supplied.

John Woods, "Constitutional Scholar Takes Over As Fordham Law Dean," Law.com, July 29, 2002. Copy supplied.

Frank J. Murray, "Counsel Approached Justice Aide For Advice To Get Clinton To Plead; Indictment Of Former, But Not Current, President Was Possible," The Washington Times, July 28, 2002. Copy supplied.

Jonathan Groner, "Privilege Fight Looms Over Estrada," Legal Times, June 3, 2002. Copy supplied.

David G. Savage, "At 82, Justice Stevens Is Still A Lively Force," Los Angeles Times, April 20, 2002. Copy supplied.

Inadmissible, The Legal Times, March 11, 2002. I was quoted regarding the Independent Counsel investigation of President Clinton, but have been unable to locate a copy of the article. The article may have addressed whether someone who has been acquitted in an impeachment is subject to subsequent prosecution.

Peter Slevin, "Ashcroft Blocks FBI Access To Gun Records; Critics Calls Attorney General's Decision Contradictory In Light of Terror Probe Tactics," The Washington Post, December 7, 2001. Copy supplied.

Jim Oliphant, "Justice During Wartime," Legal Times, November 19, 2001. Copy supplied.

Jonathan Groner, "When Labels Don't Fit," Legal Times, June 25, 2001. Copy supplied.

Robert Pear, "The New Administration: The Regulations; As President Bush Settles In, Rules About To Be Published Might Perish," The New York Times, January 23, 2001. Copy supplied.

Mark Tushnet, "Non-Judicial Review," 40 Harvard Journal on Legislation 453, Telephone Interview, January 21, 2001. This article attributes the information to a series of interviews with different former members of the Office of Legal Counsel, and I do not recall the details of my interview with the author. Copy supplied.

I believe I participated in a television debate in approximately 1995 regarding the Tenth Amendment and the Brady Handgun Control Act. I have been unable to locate any record of the debate.

"Why Watson Quit As Project Head," Science, April 17, 1992. Copy supplied.

"Students Hit Campaign Trail," Clinton Courier, March 9, 1983. Copy supplied.

While in College, I believe I did a radio interview regarding Gary Hart's presidential campaign, but I have been unable to locate any record of the interview. It is possible I did other interviews, as well, in college or law school regarding that campaign.

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

I have not served as a judge.

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

1. 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.

2000 – 2001
Assistant Attorney General, Office of Legal Counsel, United States Department of Justice. I was appointed by President Clinton.

1998 – 2000
Acting Assistant Attorney General, Office of Legal Counsel, United States Department of Justice. I was designated by the Attorney General.

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.

In 2012 and 2008, I did volunteer work on the Obama-Biden presidential campaigns on election law issues. I did similar volunteer work for the Democratic Congressional Campaign Committee in 2006, and did volunteer and paid work (through my law firm) on similar issues for the Kerry-Edwards campaign in 2004. In this capacity, I was a co-chair of the Research, Analysis and Writing teams for these campaigns in 2004, 2006, and 2008 (although the exact name of the teams may have varied). In 2012, I played a similar role and was a member of the Senior Legal Counsel team. I also briefly helped research candidate positions for the Obama-Biden campaign in 2008, and was a member of a vice-presidential public records vetting team for the Kerry campaign in 2004.

In 2007 or 2008, I did volunteer work as part of an informal group advising the Clinton presidential campaign on legal policy issues.

In 2002, I did volunteer work at a polling place for the Chris Van Hollen for Congress campaign.

I also served as a volunteer on Senator Gary Hart's presidential campaign in 1983 to 1984. I did volunteer work at the campaign's Washington D.C. headquarters, was the coordinator for Hamilton College, and was the coordinator for the Fourth Congressional District of Connecticut and Yale University.

I have also co-hosted fundraisers for various candidates: John Hickenlooper for Governor of Colorado (January 15, 2014); Anthony Brown for Governor of Maryland (December 9, 2013); Juliette Kayyem for Governor of Massachusetts (September 25, 2013 and October 29, 2013); and Chris Van Hollen for Congress (2002 and other events since then, including his annual event at Glen Echo Park).

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 served as a law clerk to Justice John Paul Stevens for the United States Supreme Court.

From 1986 to 1987, I served as a law clerk for then-District Court Judge Pierre N. Leval for the United States District Court for the Southern District of New York.

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.

1996 – 2001
Office of Legal Counsel, United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Assistant Attorney General (2000 – 2001)
Acting Assistant Attorney General (1998 – 2000)
Deputy Assistant Attorney General (1996 – 1998)
Special Counsel to the Attorney General (1996)

1978

1989 – 1996, 2001 – present
Wilmer Cutler Pickering Hale and Dorr, LLP
(previously Wilmer, Cutler & Pickering)
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Partner (1994 – 1996, 2001 – present)
Associate (1989 – 1993)

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 in such a position.

b. Describe:

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

After completing my clerkships, I began private practice in 1989 at Wilmer, Cutler & Pickering (now known as Wilmer Cutler Pickering Hale and Dorr, LLP). I worked as an associate with the firm from late 1989 through 1993 and became a partner in 1994. During this period of time, I was a member of the firm's litigation department, and my practice focused on civil litigation before federal and state courts. I also worked on a trial before an administrative agency and a binding arbitration and represented pro bono clients in various matters. My substantive areas of practice involved administrative law, complex civil litigation, antitrust, and constitutional law.

In February 1996, I left Wilmer, Cutler & Pickering to join the Office of Legal Counsel at the United States Department of Justice. From February to March 1996, I served as a Special Assistant to the Attorney General in the Office of Legal Counsel. In March 1996, I became a Deputy Assistant Attorney General in the Office of Legal Counsel; in July 1998, I became the Acting Assistant Attorney General for the Office of Legal Counsel; and in 2000, I became the Assistant Attorney General for the Office of Legal Counsel. I provided advice, and supervised others in providing advice, within the Executive Branch on a broad range of statutory and constitutional questions. My principal areas of practice while at the Office of Legal Counsel included constitutional law, administrative law, national security and immigration.

In 2001, I returned to Wilmer Cutler & Pickering (now known as Wilmer Cutler Pickering Hale and Dorr, LLP) as a partner. Since returning to the firm from government service, my practice has focused on complex civil

litigation, appellate litigation, constitutional law, administrative law, and national security. For a period of time, I served as co-chair of the firm's Government and Regulatory Litigation Group, and, more recently, have served as chair of the firm's Regulatory and Government Affairs Department. I have also served as a member of the firm's management committee. I have represented clients in litigation before federal and state trial level and appellate courts on a broad range of matters.

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

During my time as an associate and a partner at Wilmer, Cutler & Pickering, I have represented numerous corporate clients and, on occasion, private individuals. I also have represented state and federal governmental entities and trade associations. My clients have included, for example, Boeing, the California Table Grape Commission, Disney, the FDIC, Google, Growth Energy, the Trans-Alaska Pipeline Liability Fund, and Verizon.

From 1996 to 2001, I served in the Office of Legal Counsel at the United States Department of Justice. While at the Office of Legal Counsel, I provided advice, and supervised others in providing advice, within the Executive Branch on a broad range of statutory and constitutional questions. Our clients included the Attorney General and various Department of Justice components, the Counsel to the President, and the General Counsels of the Executive Branch departments and 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.

I estimate that over the course of my career, approximately 75% of my practice has been in litigation. I estimate that from 1989 to 1996 and from 2001 to the present, approximately 90% of my practice has been in litigation. From 1996 to 2001, I served in the Office of Legal Counsel at the U.S. Department of Justice. In that capacity, I was not counsel for the United States in any litigation, but I was at times asked to advise on matters in litigation. From 1989 to 1996, I appeared in court occasionally. Since returning to private practice in 2001, I have appeared in court on many occasions.

The percentages listed below are estimates of the allocation of my time.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 5%

3. other courts: 2%
4. administrative agencies: 3%

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

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 served as lead counsel in one bench trial that went to judgment in the District Court for the Eastern District of California. In a similar case, I served as associate counsel in a jury trial, but that case settled after the jury was empaneled but before the opening arguments were completed. I also have served as associate counsel in a binding arbitration that was tried to decision, as well as in an administrative hearing that was tried to decision.

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 appeared as counsel on the following briefs filed in the Supreme Court, all of which are supplied:

Pom Wonderful LLC v. The Coca-Cola Company, Reply Brief for Petitioner, April 11, 2014. Copy supplied.

Google Inc. v. Joffe, et al., Petition for a Writ of Certiorari, 2014 WL 1285848.

Pom Wonderful LLC v. The Coca-Cola Company, Brief for Petitioner, 2014 WL 768307.

Paula Petrella v. Metro-Goldwyn-Mayer, Inc., et al., Brief for the Motion Picture Association of America, Inc., the Association of American Publishers, Inc., the National Cable & Telecommunications Association, and the Software & Information Industry Association as Amici Curiae in Support of Respondents, 2013 WL 6827756.

Pom Wonderful LLC v. The Coca-Cola Company, Supplemental Brief for Petitioner, 2013 WL 6493507.

1981

Shaun McCutcheon, et al. v. Federal Election Commission, Brief of Amici Curiae Representatives Chris Van Hollen and David Price in Support of Appellee, 2013 WL 3874430.

Grocery Manufacturers Association, et al., v. U.S. EPA and Growth Energy, et al.; Alliance of Automobile Manufacturers, et al. v. U.S. EPA and Growth Energy, et al.; American Fuel & Petrochemical Manufacturers, et al. v. U.S. EPA and Growth Energy, et al., Brief in Opposition of Growth Energy, 2013 WL 2316708.

Pom Wonderful LLC v. The Coca-Cola Company, Reply Brief in Support of Petition for a Writ of Certiorari, 2013 WL 859988.

Madison County and Oneida County, New York v. Oneida Indian Nation of New York, Brief in Opposition, 2013 WL 205941.

Pom Wonderful LLC v. The Coca-Cola Company, Petition for a Writ of Certiorari, 2012 WL 10159199.

The California Table Grape Commission v. Delano Farms Company, et al., Reply Brief for Petitioner, 2012 WL 5353866.

Andrew P. Sidamon-Eristoff, as Treasurer of the State of New Jersey, et al. v. New Jersey Food Council, et al., Brief for Respondent American Express Prepaid Card Management Corporation in Opposition, 2012 WL 4467621.

Supap Kirtsaeng, d/b/a Bluechristine99 v. John Wiley & Sons, Inc., Brief for the Motion Picture Association of America, Inc. and the Recording Industry Association of America as Amici Curiae in Support of Respondent, 2012 WL 3945857.

Tash Hepting, et al. v. AT&T Corp., et al., Brief in Opposition for Carrier Respondents, 2012 WL 3838169.

American Express Travel Related Services Company, Inc. v. Andrew P. Sidamon-Eristoff, Reply Brief in Support of Petition for a Writ of Certiorari, 2012 WL 3838171.

The California Table Grape Commission v. Delano Farms Company, et al., Reply Brief for Petitioner, 2012 WL 3756870.

American Express Travel Related Services Company, Inc. v. Andrew P. Sidamon-Eristoff, Petition for a Writ of Certiorari, 2012 WL 3041167.

American Tradition Partnership, Inc., et al. v. Steve Bullock, Attorney General of Montana, et al., Brief of Amici Curiae Former Federal Election Commission Officials and Former State and Local Election and Campaign Finance Officials in Opposition to Petition for a Writ of Certiorari, 2012 WL 1853625.

1982

The California Table Grape Commission v. Delano Farms Company, et al., Petition for a Writ of Certiorari, 2012 WL 1708822.

Lawrence Golan, et al. v. Eric H. Holder, Jr., et al., Brief for the Motion Picture Association of America as Amicus Curiae Supporting Respondents, 2011 WL 3561888.

Oneida Indian Nation of New York, et al. v. County of Oneida, County of Madison, State of New York, Reply Brief in Support of Petition for a Writ of Certiorari, 2011 WL 3316105.

Oneida Indian Nation of New York, et al. v. County of Oneida, County of Madison, State of New York, Petition for a Writ of Certiorari, 2011 WL 1979646.

Green Party of Connecticut, et al. v. Alfred P. Lenge, et al., Brief in Opposition for Respondents Audrey Blondin, Common Cause of Connecticut, Connecticut Citizen Action Group, and Tom Sevigny, 2011 WL 670162.

Costco Wholesale Corporation v. Omega, S.A., Brief for the Motion Picture Association of America, Inc. and the Recording Industry Association of America as Amici Curiae in Support of Respondent, 2010 WL 3518659.

Delano Farms Company, The Susan Neill Company, and Lucas Bros. Partnership v. California Table Grape Commission, Brief in Opposition to Petition for a Writ of Certiorari, 2010 WL 3161883.

Republican National Committee, et al. v. Federal Election Commission, et al., Motion to Affirm for Intervenor-Defendant Representative Christopher Van Hollen, Jr., 2010 WL 2132036.

Bernard L. Bilski and Rand A. Warsaw v. David J. Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Brief for Bank of America Corporation, Barclays Capital Inc., The Clearing House Association L.L.C., The Financial Services Roundtable, Google Inc., MetLife, Inc., and Morgan Stanley as Amici Curiae in Support of Respondent, 2009 WL 3199628.

Citizens United v. Federal Election Commission, Supplemental Brief of Amici Curiae Senator John McCain, Senator Russell Feingold, Former Representative Christopher Shays, and Former Representative Martin Meehan in Support of Appellee, 2009 WL 2365214.

Citizens United v. Federal Election Commission, Brief of Amici Curiae Senator John McCain, Senator Russell Feingold, Former Representative Christopher Shays, and Former Representative Martin Meehan in Support of Appellee, 2009 WL 507015.

1983

Jack Davis v. Federal Election Commission, Brief for Democracy 21, the Campaign Legal Center, Brennan Center for Justice at NYU School of Law, and Public Citizen, Inc. as Amici Curiae in Support of Appellee, 2008 WL 859387.

Fred O. Dickinson, III, et al., v. Mary Ann Collier, et al., Brief for Amicus Curiae Imagitas, Inc. in Support of Petitioners, 2007 WL 3307509.

Senator John McCain, Representative Tammy Baldwin, Representative Christopher Shays, and Representative Martin Meehan v. Wisconsin Right To Life, Inc., Reply Brief for Appellants, 2007 WL 1156122.

Senator John McCain, Representative Tammy Baldwin, Representative Christopher Shays, and Representative Martin Meehan v. Wisconsin Right To Life, Inc., Brief for Appellants, 2007 WL 579240.

Federal Election Commission v. Wisconsin Right To Life, Inc., Jurisdictional Statement, 2007 WL 128362.

Douglas B. Moylan, Attorney General of Guam v. Felix P. Camacho, Governor of Guam, Reply Brief for Petitioner, 2006 WL 3845903.

The Christian Civic League of Maine, Inc. v. Federal Election Commission, Motion to Affirm of Intervenor-Appellees Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin Meehan, and Representative Tom Allen, 2006 WL 3862423.

Douglas B. Moylan, Attorney General of Guam v. Felix P. Camacho, Governor of Guam, Brief for Petitioner, 2006 WL 3350573.

Douglas B. Moylan, Attorney General of Guam v. Felix P. Camacho, Governor of Guam, Reply Brief in Support of Petition for a Writ of Certiorari, 2006 WL 2581848.

The Christian Civic League of Maine, Inc. v. Federal Election Commission, Motion to Dismiss or Affirm of Intervenor-Appellees Senator John McCain, Senator Russ Feingold, Represtenative Christopher Shays, Representative Martin Meehan, and Representative Tom Allen, 2006 WL 2365705.

Douglas B. Moylan, Attorney General of Guam v. Felix P. Camacho, Governor of Guam, Petition for a Writ of Certiorari, 2006 WL 2085272.

Neil Randall, et al. v. William H. Sorrell, et al., Brief for Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, and Representative Martin Meehan as Amici Curiae in Support of Respondents, 2006 WL 325180.

Wisconsin Right To Life, Inc. v. Federal Election Commission, Brief of Amici Curiae Senator John McCain, Representative Christopher Shays, and Representative Martin Meehan in Support of Appellee, 2005 WL 3543096.

1984

Donald Rumsfeld, et al. v. Forum for Academic and Institutional Rights, et al., Brief for Columbia University, Cornell University, Harvard University, New York University, the University of Chicago, the University of Pennsylvania, and Yale University as Amici Curiae in Support of Respondents, 2005 WL 2347168.

State Farm Mutual Automobile Insurance Company v. Inez Preece Campbell and Matthew C. Barneck, Special Administrator and Persona Representative of the Estate of Curtis B. Campbell, Brief for National Association of Mutual Insurance Companies and Property Casualty Insurers Association of America as Amici Curiae in Support of Petitioner, 2004 WL 1904368.

Ann M. Veneman, Secretary of Agriculture, et al. v. Livestock Marketing Association, et al.; Nebraska Cattlemen, Inc., et al. v. Livestock Marketing Association, et al., Brief for Amicus Curiae the California Agricultural Issues Forum Supporting Petitioners, 2004 WL 1900500.

Wyeth Holdings Corporation v. The University of Colorado Foundation, Inc., The University of Colorado, The Board of Regents of The University of Colorado, Robert H. Allen, and Paul A. Seligman, Reply Brief for Petitioner, 2004 WL 715865.

Wyeth Holdings Corporation v. The University of Colorado Foundation, Inc., The University of Colorado, The Board of Regents of The University of Colorado, Robert H. Allen, and Paul A. Seligman, Petition for a Writ of Certiorari, 2004 WL 304288.

Mitch McConnell, United States Senator, et al. v. Federal Election Commission, et al., Brief for Intervenor-Defendants Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin Meehan, Senator Olympia Snowe, and Senator James Jeffords, 2003 WL 21999280.

American Civil Liberties Union v. Federal Election Commission, et al., Intervenor-Appellees' Response to Jurisdictional Statements, 2003 WL 22428139.

Republican National Committee, et al. v. Federal Election Commission, et al.; National Right To Life Committee, Inc., et al. v. Federal Election Commission, et al., Intervenor-Appellees' Response to Jurisdictional Statements, 2003 WL 23696126.

Senator Mitch McConnell, et al. v. Federal Election Commission, et al.; National Rifle Association, et al. v. Federal Election Commission, et al., Intervenor-Appellees' Response to Jurisdictional Statements, 2003 WL 23689573.

Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin Meehan, Senator Olympia Snowe, and Senator James Jeffords v. Senator Mitch McConnell, et al., Jurisdictional Statement, 2003 WL 23689580.

National Rifle Association, et al. v. Federal Election Commission, et al., Intervenor-Defendants' Response to Application of the National Rifle Association for a Stay of Judgment of the District Court (May 13, 2003). Copy supplied.

Eric Eldred, et al., v. John D. Ashcroft, Brief For Amicus Curiae Motion Picture Association of America, Inc. in Support of Respondent, 2002 WL 1836658.

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. *Delano Farms Company v. California Table Grape Commission*, No. 07-cv-1610 (E.D. Cal.). The trial court's findings of fact and conclusions of law are not reported. Earlier decisions are reported at 940 F. Supp. 2d 1229 (E.D. Cal. 2013); 655 F.3d 1337 (Fed. Cir. 2011); 2010 WL 2952358 (E.D. Cal. 2010); 2009 WL 3586056 (E.D. Cal. 2009); 623 F. Supp. 2d 1144 (E.D. Cal. 2009).

    This case involved a challenge to the validity of patents on certain varieties of table grapes developed by the United States Department of Agriculture and exclusively licensed to the California Table Grape Commission. The case was filed in 2007 and was tried to judgment before the Honorable Sam E. Haddon in 2013. The judgment was in favor of the United States and the California Table Grape Commission, and the case is currently on appeal. Before trial, the case was assigned to the Honorable Lawrence O'Neill, and before that it was assigned to the Honorable Oliver Wanger. At an earlier stage of the litigation, the case was appealed to the Court of Appeals for the Federal Circuit (Judges Bryson, Schall, Prost). I was lead counsel for the California Table Grape Commission both at trial and on appeal.

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2. *Grocery Manufacturers Association, et al. v. Environmental Protection Agency*, 693 F.3d 169 (D.C. Cir. 2012), *rehearing denied*, 704 F.3d 1005, *cert. denied*, 133 S. Ct. 2880 (2013).

In 2010 and 2011, various trade associations brought petitions challenging two Environmental Protection Agency decisions approving the introduction of E15—a blend of gasoline and up to 15 percent ethanol—for use in certain motor vehicles and engines. The challengers argued that the EPA had exceeded its statutory authority by granting a partial waiver and permitting the use of E15 in some, but not all, cars and light duty trucks, and also argued that the EPA's decision was arbitrary and capricious. Growth Energy intervened in support of the decisions approving the introduction of E15. The Court of Appeals for the District of Columbia Circuit (then-Chief Judge Sentelle and Judge Tatel; Judge Kavanaugh, dissenting) held that the challengers lacked standing and, on that basis, dismissed the petitions. The United States Supreme Court subsequently denied petitions for writs of certiorari filed by the challengers. I was lead counsel for Growth Energy.

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3. *Celador International, Ltd. v. American Broadcasting Companies, Inc., et al.*, 499 Fed. Appx. 721 (9th Cir. 2012).

This was a contract dispute involving Celador's sale of rights to the game show "Who Wants to be a Millionaire?" The plaintiff argued, among other things, that it was entitled to half of ABC's profits from the program. The jury awarded Celador International $269 million in damages. Following post-trial motions, the district court declined to set aside the jury award, and the Court of Appeals for the Ninth

Circuit (Judges Trott, Kleinfeld and McKeown) affirmed. We represented the defendants in the case following the trial. I argued the motions for judgment as a matter of law and for a new trial on the liability issues, and I served as associate counsel on appeal.

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4. *The Boeing Company v. Raphael*, No. 10-cv-4839 (C.D. Cal.). 2011 WL 1748312 (C.D. Cal. 2011).

This is a challenge to a California statute that prescribed cleanup rules applicable to only one site in the state. Boeing challenged the law on multiple grounds, including that the state law was preempted by the Atomic Energy Act and that it violated the intergovernmental immunity doctrine. The district court (the Honorable John Walter) agreed and held the law invalid. The case is currently pending on appeal. At the invitation of the Court of Appeals, the United States filed a brief in the Ninth Circuit.

I have served as lead counsel for the Boeing Company at the trial court level and on appeal.

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5. *Delano Farms Company et al. v. California Table Grape Commission*, 546 F. Supp. 2d 859 (E.D. Cal. 2008), *affirmed,* 586 F.3d 1219 (9th Cir. 2009), *cert. denied,* 131 S. Ct. 159 (2010).

This was a constitutional challenge to a state program that requires table grape growers to pay assessments that are used to promote the interests of the table grape industry and the state through, among other things, advertising. The plaintiffs argued, in particular, that the requirement that they pay assessments that were used, in part, to pay for advertising and other efforts to promote the industry violated their First Amendment rights. The Table Grape Commission defended the constitutionality of the state law. The district court (the Honorable Oliver Wanger) granted summary judgment in favor of the Table Grape Commission and upheld the law. The Court of Appeals for the Ninth Circuit (Judges McKeown, Noonan, and Reinhardt) affirmed, and the United States Supreme Court denied a petition for a writ of certiorari. I was co-counsel for the Table Grape Commission at the trial-court level and on appeal, and I argued on behalf of the Table Grape Commission in the Ninth Circuit.

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6. *Universal City Studios LLLP v. Peters*, 308 F. Supp. 2d 1 (D.D.C. 2004), *affirmed*, 402 F.3d 1238 (D.C. Cir. 2005).

This was a challenge brought by Universal City Studios under the Administrative Procedure Act to the denial of claims for cable and satellite royalties. Metro-Goldwyn-Mayer Studios brought a similar challenge. The district court (the Honorable Rosemary Collyer) rejected the challenges. On appeal, in an opinion by then-Judge Roberts, the Court of Appeals for the District of Columbia Circuit (joined by Judges Sentelle and Williams) affirmed the district court's decision. As counsel for Universal City Studios, I had the lead day-to-day role before the district court, and I argued the case before the D.C. Circuit.

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7. *Paramount Land Company v. California Pistachio Commission*, 491 F.3d 1003 (9th Cir. 2007); No. 05-07156 (C.D. Cal.).

This was a challenge under the First Amendment and Equal Protection Clause of the U.S. Constitution to a California state law that created the California Pistachio Commission, established rules for electing members of the Commission, and imposed assessments on pistachio growers that were used to promote the California pistachio industry. The district court (the Honorable Margaret Morrow) granted a preliminary injunction in favor of some plaintiffs. 115 individual pistachio growers then moved to intervene and sought to extend the preliminary injunction to them. The district court extended the injunction to apply to two of the intervenors, but denied the motion as to the remaining 113 intervenors. It also subsequently granted our motion for judgment on the pleadings with respect to certain voting rights claims. On appeal of the grant of the preliminary injunction, the Court of Appeals for the Ninth Circuit (Judges Hall, McKeown, and Wardlaw) reversed and vacated the injunction. We represented the California Pistachio Commission, and I had the day-to-day lead in the district court after the court entered the initial preliminary injunction and was associate counsel before that and on appeal.

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8. *In re National Security Agency Telecommunications Records Litigation.* 633 F. Supp. 2d 949 (N.D. Cal. 2009), *reconsideration denied*, 2009 WL 2171061, *affirmed*, 671 F.3d 881 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 421 (2012).

These consolidated actions alleged that various telecommunications companies provided assistance to the government relating to national security activities. After the litigation was brought, Congress enacted legislation providing that, where the Attorney General certifies to one or more of five conditions, no civil action could be maintained for allegedly providing assistance "to an element of the intelligence community." The Attorney General filed the required certification, and the United States moved to dismiss the actions. The plaintiffs then challenged the legislation. The district court (the Honorable Vaughn Walker) rejected the challenge and dismissed the actions against the private defendants in 2009. The Court of Appeals (Judges McKeown, Pregerson and Hawkins) affirmed in 2011, and the Supreme Court denied certiorari in 2012. I was co-counsel for Verizon in the litigation and argued in the district court, along with others, in support of Verizon's motion to dismiss and in opposition to the plaintiffs' challenge to the legislation.

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Dozens of lawyers appeared in the consolidated litigation on behalf of the plaintiffs and intervenors. The following counsel appeared as "interim class counsel" against the AT&T, Verizon, BellSouth, Sprint Nextel and T-Mobile and other defendants:

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9. *McConnell v. Federal Election Commission.* 251 F.Supp.2d 176 (D.D.C 2003), *affirmed in part and reversed in part*, 540 U.S. 93 (2003).

These were twelve consolidated cases challenging the constitutionality of the Bipartisan Campaign Reform Act on numerous grounds. The opinion of the three-judge district court (Judges Henderson, Kollar-Kotelly and Leon) upheld the law in part and struck it down in part. The Supreme Court affirmed in part and reversed in part and upheld most of the provisions of the law. Along with co-counsel and others at my firm, I represented Senators McCain, Feingold, Snowe and Jeffords and Representatives Shays and Meehan in defending the law. I argued a portion of the case before the three-judge district court and was associate counsel in the Supreme Court.

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10. *In the Matter of the Complaint of American Trading Transportation Co., Inc.*, No. 90-2619 (C.D. Cal.); *Slaven v. BP America, Inc.*, No. 90-0722 (C.D. Cal.); *State Fish Company, Inc. v. BP America, Inc.*, No. 91-0344 (C.D. Cal.); *United States v. The Steam Tanker American Trader*, No. 91-3363 (C.D. Cal.); *California ex rel. Department of Fish and Game v. Trans-Alaska Pipeline Liability Fund*, No. 92-0836 (C.D. Cal.). Reported decisions include 973 F.2d 1468 (9th Cir. 1992); 786 F. Supp.

840 (C.D. Cal. 1991); 146 F.3d 1006 (9th Cir. 1998); 958 F. Supp. 1472 (C.D. Cal. 1997) and 786 F. Supp. 853).

These consolidated cases arose from on oil spill from the S/T AMERICAN TRADER off the coast of Huntington Beach, California in 1990. Along with others at my firm, I represented the Trans-Alaska Pipeline Liability Fund (the "Fund"), a non-profit entity established by an act of Congress to pay up to $100 million in claims for damages resulting from defined oil spills. The litigation involved various claims, cross-claims and counterclaims. I worked on the matter from 1991 until I left the firm to join the Justice Department in 1996. I appeared before the Honorable Robert J. Kelleher in the district court and Judges Tang, Schroeder and Beezer in the Court of Appeals for the Ninth Circuit. The Fund subsequently settled all claims against it and all claims it had against others.

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

I joined the Office of Legal Counsel at the United States Department of Justice in 1996 and was there until early 2001. While at the Office of Legal Counsel, I provided legal

advice to the Attorney General, the Counsel to the President, and the Executive Branch agencies and departments, rendered formal legal opinions, resolved interagency legal disputes, and reviewed Executive Orders and Attorney General Orders for form and legality, and I supervised others performing similar duties. In that capacity, I provided legal advice on a broad range of issues. I provided advice on questions of constitutional law, involving the appointments clause, the President's foreign affairs and national security powers, the constitutional allocation of power between State and Federal governments, the First Amendment, Article III, the recommendations clause, the bankruptcy and tax uniformity clauses, the emoluments clause and other constitutional provisions. In addition, I devoted substantial attention to issues of national security law. I also addressed numerous questions of statutory interpretation, such as questions under the Administrative Procedure Act and the Immigration and Nationality Act. These matters ranged from technical questions of appropriations law to questions of law enforcement authority. My publicly available opinions are listed in response to question 12(b), above.

The bulk of my work in private practice has involved litigation, including numerous matters that have not progressed to trial. Those matters have included litigation involving, among other areas, environmental law, contract law, antitrust, intellectual property, constitutional law, and administrative law. I have also assisted clients with investigations and have advised clients on a broad range of issues, including national security, cyber security, and constitutional and administrative law. Among other matters, I worked on proceedings relating to the impeachment of the Governor of Connecticut, advised clients and others on national security issues and continuity in government, worked on a range of issues relating to vaccine injury liability under the National Vaccine Injury Compensation Program, and worked on a legislative, litigation, and administrative matter involving the timeliness requirement for obtaining a patent term extension.

I engaged in lobbying activities on behalf of Iron Mountain (relating to privacy and data security protection) in 2005 and 2006; the National Association for Information Destruction (relating to proper disposal of sensitive information and to the security, confidentiality, integrity and destruction of sensitive information) in 2005 and 2006; PRISM International (relating to the National Archives and Records Administration's facility standards regulation) from 2003 to 2005; Wyeth (formerly American Home Products) (relating to the National Vaccine Injury Compensation Program and vaccines liability) from 2001 to 2007; and Qwest International (relating to critical infrastructure protection) in 2001 and 2002. In addition, I have on one or two occasions had a single lobbying contact, including attending a meeting hosted by the Office of Information and Regulatory Affairs on behalf of Growth Energy relating to the renewable fuel standards. I also registered in the State of Vermont to lobby on behalf of the Pharmaceutical Research and Manufacturers of American. I believe that this was on a question of federal law.

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.

While in law school, I taught a Street Law class at a high school in New Haven, Connecticut. I do not have a syllabus or a clear recollection of the class, but I recall helping the students conduct a mock trial.

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

    After withdrawing from my law firm, I would receive a return of capital and payment of my remaining share of partnership proceeds. In addition, I would be entitled to rollover my interest in the firm's defined benefits plan to a personal retirement account. The timing of these payments would be based on firm policy and the relevant ethics rules.

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

    I have no plans, commitments or agreements to pursue outside employment, if confirmed.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       The main conflicts of interest I would likely confront would involve my law firm. In addition, my wife is a lawyer in the Appellate Section of the Criminal Division

in the United States Department of Justice. Further, my wife and I have financial interests listed in my Net Worth Statement. I would handle all matters concerning recusal by consulting the rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges. In close cases, I would consult other judges and any person designated by the court or judicial organizations to provide advice on such questions as they arise. Among other steps, I would permanently recuse myself from any litigation I was involved in while at my law firm and would recuse myself from cases in which my law firm represents a party until all financial ties are severed and a proper cooling off period has passed. I would also recuse myself from cases involving former clients for an appropriate cooling off period.

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

In order to avoid any potential conflict of interest, I would consult the rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges. Based on these sources, I would compile a comprehensive list of matters, clients or other person so that I could readily identify potential conflicts of interest, and, in close cases, I would also consult other judges and any person designated by the court or judicial organization to provide advice on such questions as they arise.

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

Over the years, I have devoted hundreds of hours to pro bono matters, including assisting the disadvantaged. Prior to joining the Office of Legal Counsel, I represented an indigent death row inmate in Virginia and provided legal advice to the D.C. Bar Foundation. While in the government I served as the representative from the Office of Legal Counsel for the Combined Federal Campaign. Since returning to private practice, I have continued to devote substantial time to pro bono matters. I have worked on a number of pro bono matters defending the constitutionality of campaign finance laws. I have also represented an indigent defendant charged with various felonies, assisted public defenders with matters before the United States Supreme Court, and represented a person of limited means in a civil rights matter.

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 December 11, 2013, I submitted an application to the District of Columbia Federal Law Enforcement Nominating Commission for a position on the United States District Court for the District of Columbia. I interviewed with the Commission on December 17, 2013. On January 10, 2014, I interviewed with Congresswoman Eleanor Holmes Norton. On January 13, 2014, I was informed by the White House Counsel's Office that I was under consideration for nomination. Since then, I have been in contact with officials from the White House Counsel's Office and the Department of Justice. On March 28, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On April 3, 2014, 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.

2010

AO 10
Rev. 1/2014

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
MOSS, RANDOLPH D.	United States District Court for the District of Columbia	04/09/2014
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 04/03/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☑ Amended Report	01/01/2013 to 03/25/2014
7. Chambers or Office Address		
1875 Pennsylvania Avenue, N.W. Washington, D.C. 20006		

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	Wilmer Cutler Pickering Hale and Dorr LLP
2.	Board Member	Glen Echo Park Partnership for Arts and Culture, Inc.
3.	Trustee	Trust No. 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 10	Name of Person Reporting MOSS, RANDOLPH D.	Date of Report 04/09/2014

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	Wilmer Cutler Pickering Hale and Dorr, LLP partnerhip payments	$2,150,940.00
2. 2013	Wilmer Cutler Pickering Hale and Dorr, LLP partnership payments	$2,379,167.00
3. 2014	Wilmer Cutler Pickering Hale and Dorr, LLP partnership payments	$593,450.00
4.		

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

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 10	Name of Person Reporting MOSS, RANDOLPH D.	Date of Report 04/09/2014

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

Name of Person Reporting	Date of Report
MOSS, RANDOLPH D.	04/09/2014

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. BROKERAGE ACCOUNT #1									
2. - FIDELITY MUNICIPAL MONEY MARKET	A	Interest	P1	T	Exempt				
3. - VANGUARD LIMITED TERM TAX EXEMPT FUND	D	Int./Div.	K	T	Exempt				
4. - VANGUARD INTERMEDIATE TERM TAX EXEMPT FUND	D	Int./Div.	K	T	Exempt				
5. - AETNA COMMON STOCK	A	Dividend	K	T	Exempt				
6. - EXXON MOBIL CORP COMMON STOCK	B	Dividend	L	T	Exempt				
7. - IBM COMMON STOCK	A	Dividend	K	T	Exempt				
8. - BARON GROWTH FUND	C	Dividend	N	T	Exempt				
9. - BBH CORE SELECT FUND	B	Dividend	L	T	Exempt				
10. - FIDELITY CONTRAFUND	D	Dividend	M	T	Exempt				
11. - FIDELITY LOW PRICED STOCK FUND	D	Dividend	M	T	Exempt				
12. - FIDELITY SPARTAN TOTAL MARKET INDEX	C	Dividend	N	T	Exempt				
13. - ROYCE TOTAL RETURN FUND	D	Dividend	M	T	Exempt				
14. - SPDR S&P MIDCAP 400 ETF	B	Dividend	M	T	Exempt				
15. - S&P 500 ETF FUND	B	Dividend	L	T	Exempt				
16. - TWEEDY BROWNE GLOBAL VALUE	D	Dividend	M	T	Exempt				
17. - VANGUARD 500 INDEX FUND	C	Dividend	M	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
MOSS, RANDOLPH D.	04/09/2014

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)
18. - BLACKROCK GLOBAL ALLOCATION FUND	E	Dividend	N	T	Exempt				
19. - IVY ASSET STRATEGY FUND	B	Dividend	N	T	Exempt				
20. IRA #1									
21. - FIDELITY CASH RESERVES	A	Interest	J	T	Exempt				
22. - BLACKROCK GLOBAL ALLOCATION FUND	A	Dividend	K	T	Exempt				
23. 401(K) PLAN #1					Exempt				
24. - TDAMERITRADE MONEY MARKET PORTFOLIO CLASS A	A	Interest	J	T	Exempt				
25. - BBH CORE SELECT FUND	A	Dividend	M	T	Exempt				
26. - BLACKROCK EQUITY DIVIDEND FUND	A	Dividend	L	T	Exempt				
27. - FIDELITY LOW PRICED STOCK FUND	A	Dividend	K	T	Exempt				
28. - SPDR S&P MIDCAP 400 ETF	A	Dividend	K	T	Exempt				
29. - TWEEDY BROWNE GLOBAL VALUE FUND	A	Dividend	L	T	Exempt				
30. - BLACKROCK GLOBAL ALLOCATION FUND	A	Dividend	M	T	Exempt				
31. - IVY ASSET STRATEGY FUND	A	Dividend	M	T	Exempt				
32. - ABERDEEN EMERGING MARKETS FUND	A	Dividend	J	T	Exempt				
33. - ALLIANZ GI MICRO CAP FUND	A	Dividend	J	T	Exempt				
34. - AMANA GROWTH FUND	A	Dividend	J	T	Exempt				

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

Name of Person Reporting	Date of Report
MOSS, RANDOLPH D.	04/09/2014

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)	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)
35. - AMERICAN CENTURY MIDCAP VALUE FUND	A	Dividend	J	T	Exempt				
36. - ARTISAN MIDCAP FUND	A	Dividend	J	T	Exempt				
37. - FRANKLIN TEMPLETON EMERGING MARKETS DEBT OPPORTUNITY FUND	A	Dividend	J	T	Exempt				
38. - HANCOCK HORIZON DIVERSIFIED INTERNATIONAL FUND	A	Dividend	J	T	Exempt				
39. - MFS VALUE FUND	A	Dividend	J	T	Exempt				
40. - OPPENHEIMER GLOBAL FUND	A	Dividend	J	T	Exempt				
41. - VANGUARD INSTITUTIONAL INDEX FUND	A	Dividend	J	T	Exempt				
42. WILMERHALE CAPITAL ACCOUNT BALANCE	E	Interest	O	U	Exempt				
43. WILMERHALE DEFINED BENEFIT PLAN BALANCE	D	Int./Div.	O	W	Exempt				
44. CHEVRON CORP. COMMON STOCK	A	Dividend	J	T	Exempt				
45. SOURCE CAPITAL INC. COMMON STOCK	A	Dividend	J	T	Exempt				
46. NEWMONT MINING CORP. COMMON STOCK	A	Dividend	J	T	Exempt				
47. IBM COMMON STOCK	A	Dividend	K	T	Exempt				
48. SC FUNDAMENTAL LLC	C	Int./Div.	N	T	Exempt				
49. OBA BANK SAVINGS ACCOUNT	A	Interest	L	T	Exempt				
50. UTAH EDUCATIONAL SAVINGS PLAN #1									
51. - VANGUARD TOTAL STOCK MARKET INDEX	A	Dividend	J	T	Exempt				

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

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
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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

Name of Person Reporting	Date of Report
MOSS, RANDOLPH D.	04/09/2014

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. - VANGUARD DEVELOPED MARKET INDEX	A	Dividend	J	T	Exempt				
53. - VANGUARD EMERGING MARKET STOCK INDEX	A	Dividend	J	T	Exempt				
54. - VANGUARD SHORT TERM INVESTMENT GRADE INDEX	B	Dividend	K	T	Exempt				
55. - VANGUARD SHORT TERM BOND FUND	A	Dividend	K	T	Exempt				
56. - FDIC INSURED SAVINGS ACCOUNT	A	Dividend	L	T	Exempt				
57. COLLEGE SAVINGS PLAN OF MARYLAND - PORTFOLIO 2015		None	K	T	Exempt				
58. UTAH EDUCATIONAL SAVINGS PLAN #2									
59. - VANGUARD SHORT TERM INVESTMENT GRADE FUND	A	Dividend	J	T	Exempt				
60. - VANGUARD SHORT TERM BOND INDEX	A	Dividend	J	T	Exempt				
61. - FDIC INSURED SAVINGS ACCOUNT	A	Dividend	L	T	Exempt				
62. COLLEGE SAVINGS PLAN OF MARYLAND - PORTFOLIO FOR COLLEGE		None	K	T	Exempt				
63. SCHWAB CASH ACCOUNTS	A	Interest	K	T	Exempt				
64. CAPITAL ONE 360 SAVINGS CASH ACCOUNTS	B	Interest	M	T	Exempt				
65. Trust # 1									
66. - RENTAL PROPERTY #1 (ALEXANDRIA. VA)	E	Rent	N	W	Exempt				
67. - RENTAL PROPTERY #2 (ALEXANDRIA, VA)	E	Rent	N	W	Exempt				

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

A =$1,000 or less
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J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
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FINANCIAL DISCLOSURE REPORT Page 8 of 10	Name of Person Reporting MOSS, RANDOLPH D.	Date of Report 04/09/2014

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)	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)
68. - RENTAL PROPERTY #3 (HERNDON, VA)	E	Rent	M	W	Exempt				
69. CITIBANK CASH ACCOUNTS	A	Interest	L	T	Exempt				

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
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FINANCIAL DISCLOSURE REPORT Page 9 of 10	Name of Person Reporting MOSS, RANDOLPH D.	Date of Report 04/09/2014

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

FILER DOES NOT CONTROL THE UNDERLYING INVESTMENTS IN THE WILMERHALE DEFINED BENEFIT PLAN LISTED ON LINE 43 OF PART VII.

FINANCIAL DISCLOSURE REPORT Page 10 of 10	Name of Person Reporting MOSS, RANDOLPH D.	Date of Report 04/09/2014

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/ RANDOLPH D. MOSS

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

2020

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	2	003	500	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	4	129	704	Notes payable to relatives			
Unlisted securities – see schedule	1	331	077	Notes payable to others			
Accounts and notes receivable:		803	211	Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned – see schedule	1	825	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:							
WilmerHale Defined Benefit Plan (est.)		659	000				
Thrift Savings Plan		499	763				
				Total liabilities			0
				Net Worth	11	351	255
Total Assets	11	351	255	Total liabilities and net worth	11	351	255
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax		200	000				
Other special debt							

2021

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Aberdeen Emerging Markets Fund	$ 3,035
Acadian Emerging Markets Fund	35
Aetna Inc. stock	39,203
AllianzGI Micro Cap Fund	4,735
Amana Growth Fund	3,986
American Century Mid Cap Value Fund	4,042
Artisan Mid Cap Fund	4,340
Barron Growth Fund	259,654
BBH Core Select Fund	300,611
BlackRock Equity Dividend Fund	76,808
BlackRock Global Allocation Fund	564,352
Chevron Corp. stock	706
Exxon stock	75,664
Fidelity Contrafund	297,468
Fidelity Low-Priced Stock Fund	262,323
Fidelity Spartan Total Market Index Fund	298,385
Franklin Templeton Emerging Markets Debt Opportunities Fund	3,320
Hancock Horizon Diversified International Fund	3,561
IBM stock	60,128
Ivy Asset Strategy Fund	560,669
Loomis Sayles Global Bond Fund	4
Md. College Savings Plan Portfolio 2015	47,729
Md. College Savings Plan Portfolio for College	43,729
MFS Value Fund	3,921
Newmont Mining Corp. stock	620
Oppenheimer Global Fund	3,895
Royce Total Return Fund	149,704
RS Global Natural Resources Fund	58
Source Capital Inc. stock	1,898
SPDR S&P 500 ETF Trust	94,624
SPDR S&P MidCap 400 ETF	286,194
Tweedy, Browne Global Value Fund	295,261
Vanguard 500 Index Fund	203,198
Vanguard Developed Markets Index Fund -529	4,003
Vanguard Emerging Markets Stock Index Fund -529	1,206
Vanguard Institutional Index Fund	4,000
Vanguard Intermediate-Term Tax-Exempt Fund	18,685
Vanguard Limited-Term Tax Exempt Fund	43,086
Vanguard Short-Term Bond Index Fund -529	38,388
Vanguard Short-Term Investment-Grade Fund -529	54,053
Vanguard Total Stock Market Index Fund -529	12,423
Total Listed Securities	$ 4,129,704

2022

Unlisted Securities	
WilmerHale Capital Account	$ 966,442
SC Fundamental LLC	364,635
Total Unlisted Securities	$ 1,318,289

Real Estate Owned	
Personal residence	$ 1,250,000
Vacation home	575,000
Total Real Estate Owned	$ 1,825,000

AFFIDAVIT

I, Randolph Daniel Moss, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/11/14
(DATE)

Randolph D Moss
(NAME)

(NOTARY)

MARLAINE D. WILLIAMS
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires May 14, 2014

May 15, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
437 Russell 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

Dear Chairman Leahy and Ranking Member Grassley:

I have reviewed the questionnaire submitted to the Senate Judiciary Committee in connection with my nomination to the United States District Court for the District of Columbia on April 3, 2014. Since the submission of my questionnaire, I discovered that some pages were inadvertently omitted from the copy of one item I provided to the Committee, and I have located additional information that I had inadvertently overlooked in my previous search of my records and the Internet. 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.

Question 12(b):

In reviewing my materials earlier this week, I discovered that a number of pages of the following document were inadvertently omitted: *Testimony Concerning S. 1668, Whistleblower Protection for Classified Disclosure*, Permanent Select Committee on Intelligence, United States House of Representatives, May 20, 1998. A complete copy of this written statement is supplied herewith.

Question 16(e):

I inadvertently omitted a Motion for Leave to Intervene to File a Petition for a Writ of Certiorari and a proposed Petition for a Writ of Certiorari in *National Collegiate Athletic Association v. Keller*, a copy of which is supplied herewith. Unfortunately, because this filing was not reported on Westlaw or Lexis, and because the Supreme Court website only lists counsel of record, I missed this filing when I submitted my questionnaire.

I sincerely appreciate the Committee's consideration of my nomination and apologize for any inconvenience I may have caused.

Respectfully,

Randolph D. Moss

Enclosures

2026

Whistleblower Protections for Classified Disclosures

A Senate bill addressing the disclosure to Congress of classified "whistleblower" information concerning the intelligence community is unconstitutional because it would deprive the President of the opportunity to determine how, when and under what circumstances certain classified information should be disclosed to Members of Congress.

A House bill addressing the same subject is constitutional because it contains provisions that allow for the exercise of the President's constitutional authority.

May 20, 1998

STATEMENT BEFORE THE
PERMANENT SELECT COMMITTEE ON INTELLIGENCE
U.S. HOUSE OF REPRESENTATIVES

I am pleased to be here to present the analysis of the Department of Justice concerning the constitutionality of S. 1668 and H.R. 3829, two bills that address disclosure to Congress of classified "whistleblower" information concerning the intelligence community.

As the Department has previously indicated, it is our conclusion that S. 1668, like the Senate passed version of section 306 of last year's Intelligence Authorization bill, is unconstitutional.[1] It is unconstitutional because it would deprive the President of the opportunity to determine how, when and under what circumstances certain classified information should be disclosed to Members of Congress—no matter how such a disclosure might affect his ability to perform his constitutionally assigned duties. In contrast, H.R. 3829 is constitutional because it contains provisions that allow for the exercise of that authority.

I begin by briefly summarizing the principal provisions of S. 1668 and H.R. 3829. I then review the relevant constitutional history and doctrine. I conclude by applying the relevant constitutional principles to the two bills. Because other witnesses at the hearing today can best address the practical concerns posed by legislation in this area, my remarks are limited to the relevant constitutional considerations.

I.

A.

S. 1668 would require the President to inform employees of covered federal agencies (and employees of federal contractors) that their disclosure to Congress

[1] In addition, the Department of Justice took a similar position with respect to comparable legislation in a brief that it filed in the Supreme Court in 1989. *See* Brief for Appellees, *American Foreign Serv. Ass'n v. Garfinkel*, 488 U.S. 923 (1988) (No. 87-2127).

of classified information that the employee (or contractor) reasonably believes provides direct and specific evidence of misconduct "is not prohibited by law, executive order, or regulation or otherwise contrary to public policy." [2] The misconduct covered by the bill includes not only violations of law, but also violations of "any . . . rule[ ] or regulation," and it encompasses, among other things, "gross mismanagement, a gross waste of funds, [or] a flagrant abuse of authority." [3]

S. 1668 would thus vest any covered federal employee having access to classified information with a unilateral right to circumvent the process by which the executive and legislative branches accommodate each other's interests in sensitive information. Under S. 1668, any covered federal employee with access to classified information that—in the employee's opinion—indicated misconduct could determine how, when and under what circumstances that information would be shared with Congress. Moreover, the bill would authorize this no matter what the effect on the President's ability to accomplish his constitutionally assigned functions. As discussed below, such a rule would violate the separation of powers.[4]

B.

H.R. 3829 would amend the Central Intelligence Agency Act and the Inspector General Act of 1978 to provide a means for covered executive branch employees and contractors to report to the Intelligence Committees certain serious abuses or violations of law or false statements to Congress that relate to "the administration or operation of an intelligence activity," as well as any reprisal or threat of reprisal relating to such a report. Under H.R. 3829, any employee or contractor who wishes to report such information to Congress would first make a report to the inspector general for the Central Intelligence Agency or their agency, as appropriate. If the complaint appears credible, the relevant inspector general would be required to forward the complaint to the head of his or her agency, and the head of the agency would generally be required to forward the report to the Intelligence Committees. Moreover, if the inspector general does not transmit the complaint to the head of the agency, the employee or contractor would generally be

[2] Section 1(a)(1)(A)

[3] *Id.* 1(a)(2)(A), (C)

[4] The Supreme Court has employed three principles in resolving separation of powers disputes. First, where "[e]xplicit and unambiguous provisions of the Constitution prescribe and define . . . just how [governmental] powers are to be exercised," *INS v. Chadha*, 462 U.S. 919, 945 (1983), the constitutional procedures must be followed with precision. Second, where the effect of legislation is to vest Congress itself, its members, or its agents with "'either executive power or judicial power,'" the statute is unconstitutional. *Metropolitan Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 274 (1991) (citation omitted). Finally, legislation that affects the functioning of the Executive may be unconstitutional if it either "'impermissibly undermine[s]' the powers of the Executive Branch" or "'disrupts the proper balance between the coordinate branches [by] prevent[ing] the Executive Branch from accomplishing its constitutionally assigned functions.'" *Morrison v. Olson*, 487 U.S. 654, 695 (1988) (citations omitted). Because we conclude that S. 1668 would violate separation of powers under even the most lenient of these tests, there is no need to resolve whether one of the more stringent standards applies.

permitted to submit the complaint—under defined conditions—to the Committees directly.

Significantly, unlike S. 1668, H.R. 3829 provides that the head of the agency or the Director of Central Intelligence may determine "in the exceptional case and in order to protect vital law enforcement, foreign affairs, or national security interests" not to transmit the inspector general's report to the Intelligence Committees and not to permit the employee or contractor directly to contact the Intelligence Committees.[5] Whenever this authority is exercised, the head of the agency or the Director of Central Intelligence must promptly provide the Intelligence Committees with his or her reasons for precluding the disclosure. In this manner, H.R. 3829 would provide a mechanism for congressional oversight while protecting the executive interest in maintaining the strict confidentiality of classified information when necessary to the discharge of the President's constitutional authority. As a result, unlike S. 1668, H.R. 3829 is consistent with the constitutional separation of powers.

II.

A host of precedents, beginning at the founding of the Republic, support the view that the President has unique constitutional responsibilities with respect to national defense and foreign affairs.[6] As was recognized in the *Federalist Papers* and by the first Congresses, secrecy is at times essential to the executive branch's discharge of its responsibilities in these core areas. Indeed, Presidents since George Washington have determined on occasion, albeit very rarely, that it was

[5] *See id.* § 2(a), proposed new paragraph (5)(E) to be added to subsection (d) of section 17 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403q (1994 & Supp. II 1996), H.R. 3829, at § 2(b)(1), proposed new section 8H(c) to be added to the Inspector General Act of 1978, 5 U.S.C. app. § 8 (1994 & Supp. II 1996).

[6] The President's national security and foreign affairs powers flow, in large part, from his position as Chief Executive, U.S. Const. art. II, § 1, cl. 1, and as Commander in Chief, *id.* art. II, § 2, cl. 1. They also derive from the President's more specific powers to "make Treaties," *id.* art. II, § 2, cl. 2, to "appoint Ambassadors . . . and Consuls," *id.*, and to "receive Ambassadors and other public Ministers," *id.* art. II, § 3. *See The Federalist No. 64*, at 392–94 (John Jay) (Clinton Rossiter ed., 1961). The Supreme Court has repeatedly recognized the President's authority with respect to foreign policy. *See, e.g.*, *Department of the Navy v. Egan*, 484 U.S. 518, 529 (1988) (the Supreme Court has "recognized 'the generally accepted view that foreign policy was the province and responsibility of the Executive'") (quoting *Haig v. Agee*, 453 U.S. 280, 293–94 (1981)), *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 705 n.18 (1976) ("[T]he conduct of [foreign policy] is committed primarily to the Executive Branch"), *United States v. Louisiana*, 363 U.S. 1, 35 (1960) (the President is "the constitutional representative of the United States in its dealings with foreign nations"); *New York Times Co. v. United States*, 403 U.S. 713, 741 (1971) (Marshall, J., concurring) ("it is beyond cavil that the President has broad powers by virtue of his primary responsibility for the conduct of our foreign affairs and his position as Commander in Chief"), *id.* at 761 (Blackmun, J., dissenting) ("Article II . . . vests in the Executive Branch primary power over the conduct of foreign affairs and places in that branch the responsibility for the Nation's safety."), *see also United States v. Kin-Hong*, 110 F.3d 103, 110 (1st Cir. 1997) ("[O]ur constitutional structure . . . places primary responsibility for foreign affairs in the executive branch . . . ."), *Ward v. Skinner*, 943 F.2d 157, 160 (1st Cir. 1991) (Breyer, J.) ("[T]he Constitution makes the Executive Branch . . . primarily responsible" for the exercise of "the foreign affairs power"), *cert. denied*, 503 U.S. 959 (1992), *Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 210 (D.C. Cir. 1985) (Scalia, J.) ("[B]road leeway" is "traditionally accorded the Executive in matters of foreign affairs.")

necessary to withhold from Congress, if only for a limited period of time, extremely sensitive information with respect to national defense or foreign affairs.[7]

Perhaps the most famous of the Founders' statements on the need for secrecy is John Jay's discussion in the *Federalist Papers*. Jay observed:

> There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular assembly. The convention have done well, therefore, in so disposing of the power of making treaties that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such manner as prudence may suggest.[8]

Our early history confirmed the right of the President to decide to withhold national security information from Congress under extraordinary circumstances. In the course of investigating the failure of General St. Clair's military expedition of 1791, the House of Representatives in 1792 requested relevant documents from the executive branch.[9] President Washington asked the Cabinet's advice as to his proper response "because [the request] was the first example, and he wished that so far as it should become a precedent, it should be rightly conducted."[10] Washington's own view was that "he could readily conceive there might be papers of so secret a nature, as that they ought not to be given up."[11]

A few days later a unanimous Cabinet—including Secretary of State Thomas Jefferson, Secretary of the Treasury Alexander Hamilton, and Attorney General

[7] *See History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress*, 6 Op O.L.C. 751 (1982) (compiling historical examples of cases in which the President withheld from Congress information the release of which he determined could jeopardize national security).

[8] *The Federalist No. 64*, at 392–93 (John Jay) (Clinton Rossiter ed., 1961).

[9] For recent scholarly discussions of this episode and its significance for the development of separation of powers, *see* Gerhard Casper, *Separating Power* 28–31 (1997); David P. Currie, *The Constitution in Congress: The Federalist Period 1789–1801*, at 163–64 (1997).

An earlier episode had occurred in 1790 when, in response to a request from the House of Representatives, Secretary of State Thomas Jefferson furnished that body with a report on Mediterranean trade. The report also touched on advice provided by a confidential European source on the possibility of buying peace with Algiers, which was endangering that trade. Jefferson relayed the source's advice to the House, but stated that his or her "name is not free to be mentioned here." Report of Secretary of State Jefferson, Submitted to the House of Representatives (Dec. 30, 1790) and Senate (Jan. 3, 1791), *in* 1 *American State Papers. Foreign Relations* 105 (1791). Jefferson also submitted the report with a request that the Speaker treat it as a secret document; and when the report was received, the House's galleries were cleared. *See* Casper, *supra* at 47–50. The executive branch continues the practice of redacting identifying information on confidential sources when providing secret information to Congress.

[10] 1 *Writings of Thomas Jefferson* 303 (Andrew Lipscomb ed. 1903) (The Anas).

[11] *Id.*

Edmund Randolph—concurred. The Cabinet advised the President that, although the House "might call for papers generally," "the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public." [12] The Executive "consequently w[as] to exercise a discretion" in responding to the House request.[13] The Cabinet subsequently advised the President that the documents in question could all be disclosed consistently with the public interest.[14]

Although President Washington ultimately decided to produce the requested documents, they were actually produced only after the House, on April 4, 1792, substituted a new request apparently recognizing the President's discretion by asking only for papers "of a public nature." [15]

Two years later, President Washington adhered to his conclusion regarding the respective authorities of the executive and legislative branches. Acting upon the advice of Attorney General William Bradford and other Cabinet officers, Washington responded to an unqualified request from the Senate for correspondence between the Republic of France and the United States minister for France by providing the relevant correspondence, except for "those particulars which, in [his] judgment, for public considerations, ought not to be communicated." [16]

In 1796, when a controversy arose regarding whether President Washington could be required to provide the House of Representatives with records relating to the negotiation of the Jay Treaty, James Madison—who was then a Member of the House—conceded that even where Congress had a legitimate purpose for requesting information the President had authority "to withhold information, when of a nature that did not permit a disclosure of it at the time." [17]

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[12] *Id.* at 304.

[13] *Id.*

[14] *Id.* at 305

[15] 3 Annals of Cong. 536 (1792); *see also* Abraham D. Sofaer, *War, Foreign Affairs and Constitutional Power* 82–83 (1976), Casper, *supra* at 29.

[16] 4 Annals of Cong. 56 (1794), *see* Sofaer, *supra* at 83–85. The Cabinet officers whom Washington consulted and who all agreed that he could withhold at least part of the material from the Senate were Hamilton, Randolph and Knox. *Id.* at 83. Randolph also informed Washington that he had met privately with Madison and with Justice James Wilson (another influential Framer), who provided similar advice. *Id.* at 83–84 n.*. "[N]o further Senate action was taken to obtain the material withheld." *Id.* at 85.

[17] 5 Annals of Cong. 773 (1796). As President Washington observed in declining the House's request:

> The nature of foreign negotiations requires caution, and their success must often depend on secrecy, and even, when brought to a conclusion, a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely impolitic: for this might have a pernicious influence on future negotiations; or produce immediate inconveniences, perhaps danger and mischief, in relation to other Powers.

Id. at 760. Washington had previously sought and received advice from Alexander Hamilton, then in private practice in New York. Hamilton provided Washington with a draft answer to the House, which had stated in part: "A discretion in the Executive Department how far and where to comply in such cases is essential to the due conduct of foreign negotiations." Letter from Alexander Hamilton to George Washington (Mar. 7, 1796), *in* 20 The Papers of Alexander Hamilton at 68 (Harold C. Syrett ed., 1974).

Although the Executive's concerns with the confidentiality of diplomatic materials certainly loomed large in the 1796 dispute, it would overstate the point to view the entire controversy as turning exclusively on the issue of "executive privilege." Washington rested his position partly on the alternative ground that the Constitution gave the House no role in the treaty-making process. Moreover, it appears that the controversy "had a somewhat 'aca-

Congressional recognition of this power in the President extends well into recent times.[18] Moreover, since the Washington Administration, Presidents and their senior advisers have repeatedly concluded that our constitutional system grants the executive branch authority to control the disposition of secret information. Thus, then-Attorney General Robert Jackson declined, upon the direction of President Franklin Roosevelt, a request from the House Committee on Naval Affairs for sensitive FBI records on war-time labor unrest, citing (among other grounds) the national security.[19] Similarly, then- Assistant Attorney General William Rehnquist concluded almost thirty years ago that "the President has the power to withhold from [Congress] information in the field of foreign relations or national security if in his judgment disclosure would be incompatible with the public interest."[20]

The Supreme Court has similarly recognized the importance of the President's ability to control the disclosure of classified information. In considering the statutory question whether the Merit Systems Protection Board could review the revocation of an executive branch employee's security clearance, the Court in *Department of the Navy v. Egan* also addressed the President's constitutional authority to control the disclosure of classified information:

> The President . . . is the "Commander in Chief of the Army and Navy of the United States." U.S. Const., Art. II, § 2. His authority to classify and control access to information bearing on national security . . . flows primarily from this constitutional investment of power in the President and exists quite apart from any explicit congressional grant. . . . This Court has recognized the Government's "compelling interest" in withholding national security information from unauthorized persons in the course of executive business. . . . The authority to protect such information falls on the President as head of the Executive Branch and as Commander in Chief.[21]

Similarly, in discussing executive privilege in *United States v. Nixon*, a unanimous Supreme Court emphasized the heightened status of the President's privilege

demic' character because the Senate had received all the papers, and the House members apparently could inspect them at the Senate." Casper, *supra* at 65

[18] *See, e.g.*, S. Rep. No. 86-1761, at 22 (1960) (the Senate Committee on Foreign Relations, after failing to persuade President Kennedy to abandon his claim of executive privilege with respect to information relating to the U-2 incident in May, 1960, criticized the President for his refusal to make the information available but acknowledged his legal right to do so: "The committee recognizes that the administration has the legal right to refuse the information under the doctrine of executive privilege.").

[19] *See Position of the Executive Department Regarding Investigative Reports*, 40 Op. Att'y Gen. 45, 46 (1941)

[20] Memorandum from John R. Stevenson, Legal Adviser, Department of State, and William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: The President's Executive Privilege to Withhold Foreign Policy and National Security Information* at 7 (Dec. 8, 1969).

[21] *Department of the Navy v. Egan*, 484 U.S. at 527 (citations omitted)

in the context of "military, diplomatic, or sensitive national security secrets."[22] Although declining in the context of that criminal case to sustain President Nixon's claim of privilege as to tape recordings and documents sought by subpoena, the Supreme Court specifically observed that the President had not "place[d] his claim of privilege on the ground that they are military or diplomatic secrets. As to these areas of Art. II duties the courts have traditionally shown the utmost deference to Presidential responsibilities."[23]

Other statements by individual Justices and the lower courts reflect a similar understanding of the President's power to protect national security by maintaining the confidentiality of classified information.[24] Justice Stewart, for example, discussed this authority in his concurring opinion in *New York Times Co. v. United States* (the "Pentagon Papers" case):

> [I]t is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy. . . . In the area of basic national defense the frequent need for absolute secrecy is, of course, self-evident.
>
> I think there can be but one answer to this dilemma, if dilemma it be. The responsibility must be where the power is. If the Constitution gives the Executive a large degree of unshared power in the conduct of foreign affairs and the maintenance of our national defense, then under the Constitution the Executive must have the largely unshared duty to determine and preserve the degree of internal security necessary to exercise that power successfully. . . . [I]t is clear to me that it is the constitutional duty of the Executive . . . to protect the confidentiality necessary to carry out its respon-

[22] *United States v. Nixon*, 418 U.S. 683, 706 (1974), *see also id.* at 710, 712 n.19.

[23] *Id.* at 710, *see also United States v. Reynolds*, 345 U.S. 1 (1953) (recognizing privilege in judicial proceedings for "state secrets" based on determination by senior Executive officials).

[24] *See, e.g.*, *Webster v. Doe*, 486 U.S. 592, 605–06 (1988) (O'Connor, J., concurring in part and dissenting in part) ("The functions performed by the Central Intelligence Agency and the Director of Central Intelligence lie at the core of 'the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations'. . . . The authority of the Director of Central Intelligence to control access to sensitive national security information by discharging employees deemed to be untrustworthy flows primarily from this constitutional power of the President . . . ") (citation omitted), *New York Times Co. v. United States*, 403 U.S. at 741 (Marshall, J., concurring) (case presented no issue "regarding the President's power as Chief Executive and Commander in Chief to protect national security by disciplining employees who disclose information and by taking precautions to prevent leaks"), *Greene v. McElroy*, 360 U.S. 474, 513 (1959) (Clark, J., dissenting) (it is "basic" that "no person, save the President, has a constitutional right to access to governmental secrets"); *Guillot v. Garrett*, 970 F.2d 1320, 1324 (4th Cir. 1992) (President has "exclusive constitutional authority over access to national security information"); *Dorfmont v. Brown*, 913 F.2d 1399, 1405 (9th Cir. 1990) (Kozinski, J., concurring) ("Under the Constitution, the President has unreviewable discretion over security decisions made pursuant to his powers as chief executive and Commander-in-Chief . . . "), *cert. denied*, 499 U.S. 905 (1991).

sibilities in the fields of international relations and national defense.[25]

III.

In applying these constitutional principles to S. 1668 and H.R. 3829, we take as a given that Congress has important oversight responsibilities and a corollary interest in receiving information that enables it to carry out those responsibilities.[26] Those interests obviously include Congress's ability to consider evidence of misconduct and abuse by the Executive's agents. H.R. 3829, however, demonstrates that it is possible to develop procedures for providing Congress information it needs to perform its oversight duties, while not interfering with the President's ability to control classified information when necessary to perform his constitutionally assigned duties.

A.

In analyzing S. 1668, there is no need to resolve the precise parameters of the President's authority to control access to classified diplomatic and national security information. Instead, we have focused on the specific problem presented by the bill, which, in defined circumstances, gives a unilateral right of disclosure to every executive branch employee with access to classified information.[27] The reach of S. 1668 is sweeping: it would authorize any covered federal employee to foreclose or circumvent a presidential determination that restricts congressional access to certain classified information in extraordinary circumstances.

S. 1668 is inconsistent with Congress's traditional approach to accommodating the executive branch's interests with respect to national security information. In the National Security Act, for example, Congress itself recognized the need for heightened secrecy in certain "extraordinary circumstances affecting vital interests of the United States," and authorized the President to sharply limit congressional access to information relating to covert actions in such cases.[28] An example of

[25] *New York Times Co. v. United States*, 403 U.S. at 728–30 (Stewart, J., concurring) (footnote omitted).

[26] *See, e.g.*, *McGrain v. Daugherty*, 273 U.S. 135 (1927).

[27] We do not use the word "right" in the sense of a legally enforceable right. Rather, the term is intended to convey our understanding that the bill would purport to require the President to inform employees that they have standing authorization or permission to convey national security information directly to Congress without receiving specific authorization to convey the particular information in question. We have not analyzed the possible implications this legislation might have with respect to judicial enforcement of employee legal rights.

[28] *See* 50 U.S.C. § 413b(c)(2) (1994) ("If the President determines that it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States, the finding may be reported to the chairmen and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, and such other member or members of the congressional leadership as may be included by the President."). Even with this more protective standard, President Bush expressly reserved his constitutional authority to withhold disclosure for a period of time. *See* S. Rep. No. 102–85, at 40 (1991). *See also* 50 U.S.C. § 413b(c)(3) (1994) ("Whenever a finding is not reported pursuant

Continued

accommodation between the branches that is even more directly applicable to the present context is the National Security Act's recognition that the intelligence agencies on occasion need to redact sources and methods and other exceptionally sensitive intelligence information from materials they provide to the Intelligence Committees.[29]

In contrast, S. 1668 would deprive the President of his authority to decide, based on the national interest, how, when and under what circumstances particular classified information should be disclosed to Congress.[30] This is an impermissible encroachment on the President's ability to carry out core executive functions. In the congressional oversight context, as in all others, the decision whether and under what circumstances to disclose classified information must be made by someone who is acting on the official authority of the President and who is ultimately responsible to the President. The Constitution does not permit Congress to authorize subordinate executive branch employees to bypass these orderly procedures for review and clearance by vesting them with a unilateral right to disclose classified information—even to Members of Congress. Such a law would squarely conflict with the Framers' considered judgment, embodied in Article II of the Constitution, that, within the executive branch, all authority over matters of national defense and foreign affairs is vested in the President as Chief Executive and Commander in Chief.[31]

It has been suggested that S. 1668 (at least with modest revisions) would strike an acceptable balance between the competing executive and legislative interests relating to the control of classified information, and would thus survive review under ordinary separation of powers principles.[32] That balance under S. 1668, however, would be based on an abstract notion of what information Congress might need to know relating to some future inquiry and what information the President might need to protect in light of some future set of world events. Such an abstract resolution of the competing interests at stake is simply not consistent with the President's constitutional responsibilities respecting national security and foreign affairs. He must be free to determine, based on particular—and perhaps

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to paragraph (1) or (2) of this section, the President shall fully inform the intelligence committees in a timely fashion and shall provide a statement of the reasons for not giving prior notice.").

[29] *See* 50 U.S.C. § 413a (1994) ("To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall . . . keep the intelligence committees fully and currently informed of all intelligence activities . . .").

[30] *Cf. United States ex rel. Touhy v. Ragen*, 340 U.S. 462, 468 (1951) ("When one considers the variety of information contained in the files of any government department and the possibilities of harm from unrestricted disclosure . . . , the usefulness, indeed the necessity, of centralizing determination as to whether subpoenas *duces tecum* will be willingly obeyed or challenged is obvious . . .").

[31] This is not to suggest that Congress wholly lacks authority regarding the treatment of classified information, *see New York Times Co. v. United States*, 403 U.S. at 740 (White, J., concurring), but rather that Congress may not exercise that authority in a manner that undermines the President's ability to perform his constitutionally assigned duties.

[32] *See Whistleblower Protections for Classified Disclosures: Hearings Before the Senate Select Comm. on Intelligence*, 105th Cong. 8 (1998) (statement of Prof. Peter Raven-Hansen).

currently unforeseeable—circumstances, that the security or foreign affairs interests of the Nation dictate a particular treatment of classified information.

Furthermore, S. 1668 also undermines the traditional, case-by-case process of accommodating the competing needs of the two branches—a process that reflects the facts and circumstances of particular situations. As one appellate court has observed, there exists "an implicit constitutional mandate to seek optimal accommodation [between the branches] through a realistic evaluation of the needs of the conflicting branches *in the particular fact situation.*"[33] Rather than enabling balances to be struck as the demands of specific situations require, S. 1668 would attempt to legislate a procedure that cannot possibly reflect what competing executive and legislative interests may emerge with respect to some future inquiry. It would displace the delicate process of arriving at appropriate accommodations between the branches with an overall legislated "solution" that paid no regard to unique—and potentially critical—national security and foreign affairs considerations that may arise. This approach contrasts with that of H.R. 3829, which would balance the competing legislative and executive interests at stake in a manner that would permit rational judgments to be made in response to real world events.

B.

H.R. 3829 does not present the constitutional infirmity posed by S. 1668. H.R. 3829 does not vest any executive branch employee who has access to classified information with a unilateral right to determine how, when and under what circumstances classified information will be disclosed to Members of Congress and without regard for how such a disclosure might affect the President's ability to perform his constitutionally assigned duties.

Instead, H.R. 3829 would establish procedures under which employees who wish to report to Congress must first submit their complaint to an inspector general, who would review it for credibility and then submit the complaint to the agency head before it is forwarded to Congress. This process would allow for the executive branch review and clearance process that S. 1668 would foreclose. H.R. 3829 would further authorize heads of agencies and the Director of Central Intelligence, upon the completion of that process, to decide not to transmit an employee's complaint to the Intelligence Committees, or allow the employee to contact the Committees directly, "in the exceptional case and in order to protect vital law enforcement, foreign affairs, or national security interests."[34] If such

[33] *United States v. American Tel. & Tel. Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977) (emphasis added).

[34] In light of S. 1668's focus on the intelligence community and classified information, the Department's analysis of the bill's constitutionality has focused on its interference with the President's authority to protect confidential national security and foreign affairs information. Of course, other constitutionally-based confidentiality interests can be implicated by employee disclosures to Congress. H.R. 3829 appropriately recognizes that such disclosures also should not compromise vital law enforcement interests.

a decision were made, then the head of agency or Director of Central Intelligence would be required to provide the Committees with the reason for the determination.

Not only would H.R. 3829 thus avoid the constitutional infirmity of S. 1668 by allowing for review by the President or officials responsible to him, it would also allow for the operation of the accommodation process traditionally followed between the legislative and executive branches regarding disclosure of confidential information. Upon receipt of the explanation for a decision not to allow an employee complaint to go forward, the Intelligence Committees could contact the agency head or Director of Central Intelligence to begin the process of seeking to satisfy the Committees' oversight needs in ways that protect the executive branch's confidentiality interests. The bill's procedures are thus consistent with our constitutional system of separation of powers.

IV.

We recognize that Congress has significant interests in disclosure of evidence of wrongdoing or abuse. There is an inevitable tension, however, between preserving the secrecy necessary to permit the President to perform his constitutionally assigned duties and permitting the disclosures necessary to permit congressional oversight. Under relevant constitutional doctrine, Congress may not resolve this tension by vesting in individual federal employees the power to control disclosure of classified information. For this reason, we have concluded that S. 1668 is unconstitutional. H.R. 3829 does not contain this constitutional infirmity and is constitutional.

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2037

No. M-

IN THE

Supreme Court of the United States

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
Petitioner,

v.

SAMUEL MICHAEL KELLER, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO INTERVENE TO FILE A PETITION FOR A WRIT OF CERTIORARI AND PETITION FOR A WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

This motion for leave to intervene to file a petition for a writ of certiorari and the accompanying petition are filed by the National Collegiate Athletic Association (NCAA), which is a defendant in the underlying district court litigation. The NCAA is an unincorporated, non-profit membership association composed of over 1,000 member schools and conferences operating in three divisions under a Constitution and Bylaws adopted by the members through representative processes. Over 400,000 student-athletes participate annually in 23 NCAA sports. The NCAA operates 89 national championships.

The plaintiffs-appellees below, who are respondents in this Court, are Samuel Michael Keller; Edward C. O'Bannon, Jr.; Byron Bishop; Michael Anderson; Danny Wimprine; Ishmael Thrower; Craig Newsome; Damien Rhodes; and Samuel Jacobson.

The defendant-appellant below is Electronic Arts, Inc. Additional defendants below included the NCAA and the Collegiate Licensing Company.

MOTION TABLE OF CONTENTS

Page

PARTIES TO THE PROCEEDING i

TABLE OF AUTHORITIES iv

STATEMENT 3

ARGUMENT 6

CONCLUSION 12

MOTION TABLE OF AUTHORITIES

CASES

Page(s)

Applied Equipment Corp. v. *Litton Saudi Arabia Ltd.*, 869 P.2d 454 (Cal. 1994) 9

AT&T Mobility LLC v. *Concepcion*, 131 S. Ct. 1740 (2011) 10

Baggett v. *Bullitt*, 377 U.S. 360 (1964) 10

Banks v. *Chicago Grain Trimmers Ass'n*, 389 U.S. 813 (1967) 7

Banks v. *Chicago Grain Trimmers Ass'n*, 390 U.S. 459 (1968) 7

Brown v. *Entertainment Merchants Ass'n*, 131 S. Ct. 2729 (2011) 4

Bryant v. *Yellen*, 447 U.S. 352 (1980) 9

Comedy III Productions, Inc. v. *Gary Saderup, Inc.*, 21 P.3d 797 (Cal. 2001) 4

Commonwealth Land Title Insurance Co. v. *Corman Construction, Inc.*, 508 U.S. 958 (1993) 8

Dombrowski v. *Pfister*, 380 U.S. 479 (1965) 10

Hart v. *Electronic Arts, Inc.*, 717 F.3d 141 (3d Cir. 2013) 6

Hunter v. *Ohio ex rel. Miller*, 396 U.S. 879 (1969) 7, 8

Keller v. *Electronic Arts Inc.*, 724 F.3d 1268 (9th Cir. 2013) 1

NAACP v. *Button*, 371 U.S. 415 (1963) 10

MOTION TABLE OF AUTHORITIES—Continued

Page(s)

Rogers v. *Paul*, 382 U.S. 198 (1965) 8, 11

Varian Medical Systems, Inc. v. *Delfino*, 106 P.3d 958 (Cal. 2005) 10

DOCKETED CASES

Banks v. *Chicago Grain Trimmers Ass'n*, No. 66-59 (U.S.) 7

Commonwealth Land Title Insurance Co. v. *Corman Construction, Inc.*, No. 92-1871 (U.S.) 8

Electronic Arts Inc. v. *Keller*, No. 13-377 (U.S.) 6

Hunter v. *Ohio ex rel. Miller*, No. 654 (U.S. Oct. Term 1969) 7

STATUTES

26 U.S.C. § 1254(1) 6

Cal. Code Civ. P. § 425.16 4

OTHER AUTHORITIES

Eder, Steve, *Settlement in Athletes' Likeness Lawsuit*, N.Y. Times, Sept. 27, 2013, at B18, *available at* http://www.nytimes.com/2013/09/27/sports/ncaafootball/ea-sports-wont-make-college-video-game-in-2014.html?_r=0 6

IN THE

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NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
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SAMUEL MICHAEL KELLER, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO INTERVENE TO FILE A PETITION FOR A WRIT OF CERTIORARI

The National Collegiate Athletic Association respectfully moves for leave to intervene in this Court so that it can file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in *Keller* v. *Electronic Arts Inc.*, 724 F.3d 1268 (9th Cir. 2013); *see* Pet. App. 1a-39a. The petition is being filed together with this motion.

This case concerns the extent to which the First Amendment limits claims brought under state right-of-publicity laws. Those laws generally bar "appropriation of [a] plaintiff's name or likeness to defendant's advantage, commercially or otherwise ... [without plaintiff's] consent." Pet. App. 6a n.4 (listing elements of a

right-of-publicity claim under California law). As shown in the NCAA's petition, the interplay between right-of-publicity claims and the First Amendment is an issue on which the lower courts are badly divided. It is also important, affecting the fundamental rights of a wide array of speakers—from movie and television producers (*e.g.*, *The Social Network*) to biographers and songwriters (Bob Dylan's *Hurricane*), to videogame makers, like one of the defendants here.

This case, in which a divided panel of the Ninth Circuit rejected a First Amendment defense to a right-of-publicity claim, presents an opportunity for the Court to provide much-needed guidance on the question presented. A petition to review the Ninth Circuit's judgment is already pending before the Court. That petition, however, may soon be dismissed because the defendant that filed it, Electronic Arts (which makes the videogames at issue), has since reached a settlement in principle with the plaintiffs. The NCAA, which is also a defendant in the district court but participated in the court of appeals as an amicus curiae, thus requests permission to intervene so that it can file its own timely petition.

That request should be granted because the NCAA's rights and interests are directly implicated by the Ninth Circuit's decision. One of the claims that Electronic Arts challenged below was that it and the NCAA conspired to violate the plaintiffs' publicity rights. Had the Ninth Circuit applied the correct test under the First Amendment, that claim would have been stricken; instead, it remains pending. Hence, unless the NCAA is permitted to intervene and file its own petition, it will be forced to litigate the conspiracy claim fully—and potentially as a class action—before this Court can pass on the correctness of the Ninth Cir-

cuit's First Amendment ruling. This Court has granted intervention under similar circumstances, and the same result is particularly warranted here given both the established disarray in the lower courts on the question presented and the chilling effect that even the threat of litigation can have on the fundamental freedom of expression.

STATEMENT

1. Electronic Arts, Inc. (EA) produces a videogame series called *NCAA Football.* This highly popular series allows users to control "avatars," i.e., animated characters, representing college football players as they play in simulated games. Pet. App. 3a. In 2009, respondent Samuel Keller brought a putative class action based on these games, seeking damages and injunctive relief. Pet. App. 4a, 43a. Keller, who played quarterback for Arizona State University and the University of Nebraska, alleged that EA violated his California statutory and common-law publicity rights by including his likeness, without permission, in the 2005 and 2008 versions of *NCAA Football.* Pet. App. 4a.

Keller's claims were not leveled against EA alone. He also charged the NCAA with violating his right of publicity under Indiana law. Pet. App. 42a-43a. (The NCAA is headquartered in Indianapolis.) And he alleged a conspiracy among all three defendants—EA, the NCAA, and the Collegiate Licensing Company (CLC)—to deprive him and other players of their publicity rights. *Id.* Keller also brought a breach-of-contract claim against the NCAA. *Id.*

After the district court consolidated Keller's case with similar cases brought by other former college football players, the defendants moved to dismiss. Pet.

App. 41a. EA also moved to strike the claims against it under California's "anti-SLAPP" statute, which requires a court to strike claims that arise from a defendant's exercise of free speech rights unless the plaintiff makes a preliminary showing of likely success. *See* Cal. Code Civ. P. § 425.16.

The district court granted the NCAA's motion to dismiss Keller's Indiana right-of-publicity claim. Pet. App. 45a. It declined, however, to dismiss or strike the California right-of-publicity claim against EA, ruling (as relevant here) that that claim was not barred by the First Amendment. Pet. App. 45a-54a. The court also held that Keller had adequately pled a conspiracy claim against all defendants arising from EA's alleged deprivation of Keller's California publicity rights. Pet. App. 56a-58a. The effect of these rulings is that the only publicity-related claim remaining against the NCAA is that the NCAA conspired with the other defendants to facilitate EA's violation of Keller's right of publicity under California law.

2. A divided panel of the Ninth Circuit affirmed the dismissal of the anti-SLAPP motion. *See* Pet. App. 1a-39a Although acknowledging that videogames are core expressive works entitled to full First Amendment protection, *see Brown* v. *Entertainment Merchs. Ass'n*, 131 S. Ct. 2729 (2011), the court concluded that the First Amendment did not preclude Keller's right-of-publicity claims. The court reached that conclusion after applying a version of the so-called "transformative-use test," which is "'a balancing test between the First Amendment and the right of publicity based on whether the work in question adds significant creative elements so as to be transformed into something more than a mere celebrity likeness or imitation.'" Pet. App. 7a (quoting *Comedy III Prods., Inc.* v. *Gary Saderup,*

Inc., 21 P.3d 797, 799 (Cal. 2001)). Applying that test, the court of appeals held that *NCAA Football* did not qualify for First Amendment protection because it "realistically portrays college football players in the context of college football games." Pet. App. 17a; *see also* Pet. App. 2a (concluding that EA's alleged use of Keller's likeness "does not qualify for First Amendment protection as a matter of law because it literally recreates Keller in the very setting in which he has achieved renown"). In essence, the court held that the depictions in EA's games did not deserve First Amendment protection because they were too *realistic*. In doing so, the court focused narrowly on the allegedly realistic avatars appearing in the game and not on the transformative elements of the work as a whole.

Judge Thomas dissented. In his view, "[b]ecause the creative and transformative elements of Electronic Arts' *NCAA Football* video game series predominate over the commercial use of the athletes' likenesses, the First Amendment protects EA from liability." Pet. App. 28a.

Although the NCAA was and is a party in the district court, it was not a party in the Ninth Circuit. Because the NCAA's only role in this aspect of the litigation was as an alleged co-conspirator, and EA—the party that purportedly violated the plaintiffs' publicity rights—was robustly defending the underlying claim, the NCAA was prepared to leave it to EA to prosecute the appeal. It did, however, file a brief with the Ninth Circuit as amicus curiae. In that brief, the NCAA explained that Keller's allegation that the avatars used in *NCAA Football* represent realistic depictions of actual players, while taken as true for purposes of the anti-SLAPP motion, is in fact contested. *See* NCAA C.A. Br. at 2-3.

3. EA filed a petition for certiorari asking this Court to review the Ninth Circuit's judgment (No. 13-377).[1] Soon thereafter, however, plaintiffs, EA, and CLC announced that they have reached a proposed settlement. *See* Stipulation & Proposed Order at 1, No. 09-cv-1967 (N.D. Cal. Sept. 26, 2013). In notifying the district court of the proposed settlement, the settling parties stated that "[t]his settlement does not affect Plaintiffs' claims against [NCAA]." *Id.* Because of this settlement, it is likely that EA's petitions will soon be dismissed. The conspiracy claims against the NCAA—and thus the merits of the dispute—however, will remain unresolved.[2]

ARGUMENT

The NCAA seeks to intervene in this Court so that it can seek review of the Ninth Circuit's judgment. *See* 28 U.S.C. § 1254(1). Intervention is warranted both because the NCAA's rights are directly implicated by the Ninth Circuit's decision and because that decision deepens severe doctrinal disarray in the lower courts regarding an issue of fundamental constitutional rights.

1. In circumstances similar to those here, this Court has granted motions to intervene so that a nonparty below could file a petition for certiorari. For ex-

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[1] EA simultaneously sought review of a very similar decision issued by a divided panel of the Third Circuit. *See Hart* v. *Electronic Arts, Inc.*, 717 F.3d 141 (3d Cir. 2013), *petition for cert. filed*, No. 13-376 (U.S. Sept. 23, 2013).

[2] EA also recently announced that it will stop producing *NCAA Football*. *See, e.g.*, Eder, *Settlement in Athletes' Likeness Lawsuit*, N.Y. Times, Sept. 27, 2013, at B18, *available at* http://www.nytimes.com/2013/09/27/sports/ncaafootball/ea-sports-wont-make-college-video-game-in-2014.html?_r=0.

ample, in both *Banks* v. *Chicago Grain Trimmers Ass'n*, 389 U.S. 813 (1967), and *Hunter* v. *Ohio ex rel. Miller*, 396 U.S. 879 (1969), the Court allowed intervention where the would-be petitioner's interests had been represented by a different party below but that party had failed to file its own petition for certiorari following an adverse judgment.

As the Court explained in its later decision on the merits, *Banks* involved a widow who had been awarded benefits in an administrative action by the Labor Department. 390 U.S. 459, 460-461 (1968). When the party who had to pay the benefits subsequently sued the Labor Department to set aside the award, Mrs. Banks was not joined. *See* Pet. for Leave To Intervene & Pet. for Cert. at 9, No. 66-59 (U.S. Mar. 4, 1967). But when the government then declined to seek this Court's review of a Seventh Circuit decision setting aside the award, *see id.*, this Court granted Mrs. Banks' motion to intervene so that she could file her own petition and thereby protect her interest in the award, *see* 389 U.S. at 813. The Court ultimately granted that petition and reversed the Seventh Circuit's judgment. *See Banks*, 390 U.S. at 467.

Similarly, *Hunter* was a state-court lawsuit brought against Ohio election officials to strike the name of a judicial candidate from the ballot. *See* Pet. for Leave To Intervene & Pet. for Cert. at 6, No. 654 (U.S. Oct. Term 1969). The candidate himself was not named as a party; state officials litigated the case instead. *Id.* Following a ruling by the state court that the candidate was ineligible for office, those officials chose not to file a petition for certiorari. *Id.* at 6, 9. Following the same approach as in *Banks*, this Court allowed the candidate to intervene in order to seek re-

view here, although it then denied the petition. *See Hunter*, 396 U.S. 879.

More recently, in *Commonwealth Land Title Insurance Co.* v. *Corman Construction, Inc.*, 508 U.S. 958 (1993), this Court allowed intervention after it became clear that—as is also true here—a prior petition filed by a party to the decision below would be dismissed. In that case, the FDIC, acting as receiver for a bank, challenged a state statute as violating federal law. *See* Mot. To Intervene & Pet. for Cert. at 3-4, No. 92-1871 (U.S. May 24, 1993) The FDIC lost in the lower courts and filed a petition with this Court, but the Solicitor General, who had not authorized the filing, sought to have it dismissed. *Id.* at 5. This Court granted a motion to intervene by the bank's insurer, which was not a party below, so that the insurer could file its own (ultimately unsuccessful) petition. *See Corman*, 508 U.S. at 958.[3]

This Court has also allowed a non-party to join a case at the petition stage when doing so was necessary to avoid the case becoming moot. In *Rogers* v. *Paul*, 382 U.S. 198 (1965) (per curiam), two students brought a class action to desegregate the public high schools in their town. By the time the students sought review by this Court of an adverse Eighth Circuit judgment, one had graduated and the other had entered the last year of school. *See id.* at 199. The Court allowed two younger students, who had not been named parties below, to join the case in order to preserve a live controversy. *Id.* at 198-199. It then granted the petition and reversed the judgment below. *Id.*

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[3] The denials of certiorari following grants of intervention in *Hunter* and *Corman* indicate that a would-be petitioner need not show that the Court would likely decide to hear the case in order for intervention to be granted.

2a. The Court should allow the NCAA to intervene here, because the Ninth Circuit's judgment directly affects the NCAA's interests as a party in the district court. As discussed, one of the claims against the NCAA is that it conspired with EA to violate student-athletes' publicity rights. *See* Pet. App. 42a-43a; Third Am. Compl. ¶¶ 575-576, No. 09-cv-1967 (N.D. Cal. July 19, 2013). That claim is wholly derivative of the substantive right-of-publicity claim against EA at issue in the pending petition: If the First Amendment does not allow EA to be held liable for violating student-athletes' publicity rights, then the NCAA cannot be held liable for conspiring with EA to violate those rights. *See Applied Equip. Corp.* v. *Litton Saudi Arabia Ltd.*, 869 P.2d 454, 457 (Cal. 1994) ("Standing alone, a conspiracy does no harm and engenders no tort liability. It must be activated by the commission of an actual tort.").[4] The NCAA thus has more than a "sufficient stake in the outcome of the controversy" to warrant allowing it to seek further review. *Bryant* v. *Yellen*, 447 U.S. 352, 368 (1980).

The prejudice to the NCAA from denying intervention would be substantial. The NCAA would be forced to litigate the conspiracy claim, potentially against a certified class, all the way to final judgment (and through another full appeal) before having the opportunity to bring the First Amendment issue to this Court. At both the district court and court of appeals level, moreover, that litigation—which would take

[4] Indeed, EA moved the district court years ago to strike the conspiracy claim on this basis. *See* Mot. To Strike at 1, No. 09-cv-1967 (N.D. Cal. July 29, 2009); *see also* EA C.A. Br. at 8 n.16 ("If this Court determines that any of these constitutional defenses bar[s] Keller's right-of-publicity claims, then his ancillary claim[] for conspiracy ... also must be dismissed.").

years to complete—would proceed under an erroneous First Amendment test.

As this Court's precedent makes clear, imposing such delay and uncertainty is at odds with important free speech principles. The Court has long recognized that First Amendment "freedoms are delicate and vulnerable," and that "[t]he threat of sanctions may deter their exercise almost as potently as ... actual ... sanctions." *NAACP* v. *Button*, 371 U.S. 415, 433 (1963). Thus, the mere fact of a lawsuit calling First Amendment rights into question may have a "chilling effect upon the exercise of [those] rights." *Dombrowski* v. *Pfister*, 380 U.S. 479, 487 (1965). This Court has therefore "avoided making vindication of freedom of expression await the outcome of protracted litigation," *id.*, lest potential speakers be pressured to "steer far wide[] of the unlawful zone," *Baggett* v. *Bullitt*, 377 U.S. 360, 372 (1964).[5] That risk, of course, would be particularly acute in the context of a class action. *See, e.g.*, *AT&T Mobility LLC* v. *Concepcion*, 131 S. Ct. 1740, 1752 (2011).

Indeed, this case starkly illustrates the chilling effect that litigation can engender: EA, in addition to settling with the plaintiffs rather than pressing its First Amendment defense all the way to this Court, has decided to stop producing the expressive work at issue in the case. *See supra* n.2. That result will only dis-

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[5] The same concerns underlie California's anti-SLAPP statutes, and similar laws in other states. *See, e.g.*, *Varian Med. Sys., Inc.* v. *Delfino*, 106 P.3d 958, 967 (Cal. 2005) ("[T]he point of the anti-SLAPP statute is that you have a right *not* to be dragged through the courts because you exercised your constitutional rights." (internal quotation marks omitted)).

courage others from exercising their own First Amendment freedoms.

Although the NCAA opted not to participate as a party in the court of appeals, that is not an appropriate basis to deny intervention. The NCAA had every reason to rely on EA—as the party alleged to have engaged in the unlawful primary conduct—to litigate the First Amendment issue vigorously. NCAA is therefore comparable to the intervenors in *Banks*, *Hunter*, and *Corman*, who reasonably relied on others to represent their interests on appeal. And like those intervenors, the NCAA is acting promptly to step in now that the litigant who previously pressed the cause is stepping aside.

b. Allowing intervention would permit the Court to answer an important First Amendment question and thereby provide clear guidance both to lower courts and to future speakers. *Cf. Rogers*, 382 U.S. at 199 (granting intervention by non-parties in order to preserve the question for Supreme Court review). As explained in the NCAA's petition, the question of how extensively the First Amendment limits state-law right-of-publicity laws has badly divided the lower courts. It is also a question that affects a wide variety of speakers, from movie producers and authors to videogame makers like EA. Yet the Court has rarely had occasion to address it.

There is no benefit to be gained by delaying consideration of the issue. The First Amendment question here concerns the *legal* standard that applies at the beginning of a case; it does not require further development of the *factual* record. Indeed, as explained above, by the time such a record is developed, most of the damage to the defendant's (and perhaps others') First

Amendment rights is already done. This Court's prompt review is therefore warranted.

CONCLUSION

The motion to intervene should be granted.

Respectfully submitted.

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OCTOBER 2013

2054

No. 13-

IN THE

Supreme Court of the United States

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
Petitioner,

v.

SAMUEL MICHAEL KELLER, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the First Amendment precludes a right-of-publicity claim that is based on the realistic, non-commercial, and non-misleading description or depiction of a person in an expressive work.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISION INVOLVED 1

STATEMENT 1

REASONS FOR GRANTING THE PETITION 11

I. THE LOWER COURTS HAVE SPLINTERED OVER HOW TO BALANCE FIRST AMENDMENT FREEDOMS AGAINST RIGHT-OF-PUBLICITY CLAIMS 12

A. Some Court Use Some Version Of The Transformative-Use Test 12

B. Other Courts Follow The *Rogers* Test 13

C. Still Other Courts Employ A Variety Of Different Approaches 15

II. THE QUESTION PRESENTED IS RECURRING AND IMPORTANT, AND THIS IS A GOOD VEHICLE FOR DECIDING IT 17

TABLE OF AUTHORITIES—Continued

Page

III. THE NINTH CIRCUIT'S HOLDING IS WRONG 19

A. The Transformative-Use Test Does Not Adequately Protect First Amendment Rights 19

1. The test perversely punishes speech for being truthful and accurate 21

2. The test chills protected speech 24

B. The Predominant-Use Test And Nebulous Balancing Approaches Used By Other Courts Are Equally Problematic 28

C. The *Rogers* Test Properly Confines The Right Of Publicity 29

CONCLUSION 32

TABLE OF AUTHORITIES

CASES

Page(s)

Agency for International Development v. *Alliance for Open Society International, Inc.*, 133 S. Ct. 2321 (2013) 18

Ashcroft v. *ACLU*, 535 U.S. 564 (2002) 19

Baggett v. *Bullitt*, 377 U.S. 360 (1964) 24

Bartnicki v. *Vopper*, 532 U.S. 514 (2001) 19

Bellotti v. *Baird*, 443 U.S. 622 (1979) 18

Bleistein v. *Donaldson Lithographing Co.*, 188 U.S. 239 (1903) 24

Brown v. *Electronic Arts, Inc.*, 724 F.3d 1235 (9th Cir. 2013) 19

Brown v. *Entertainment Merchants Association*, 131 S. Ct. 2729 (2011) ..... *passim*

Browne v. *McCain*, 611 F. Supp. 2d 144 (C.D. Cal. 2009) 4

CBC Distribution & Marketing, Inc. v. *Major League Baseball Advanced Media, LP*, 505 F.3d 818 (8th Cir. 2007) 4, 17, 22

Cardtoons, LC v. *Major League Baseball Players Ass'n*, 95 F.3d 959 (10th Cir. 1996) 4, 16

Citizens United v. *FEC*, 558 U.S. 310 (2010) 18

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TABLE OF AUTHORITIES—Continued

Page

Doe v. *TCI Cablevision*, 110 S.W.3d 363 (Mo. 2003) 4, 15, 28

Eldred v. *Ashcroft*, 537 U.S. 186 (2003) 23

Estate of Presley v. *Russen*, 513 F. Supp. 1339 (D.N.J. 1981) 22

ETW Corp. v. *Jireh Publishing, Inc.*, 332 F.3d 915 (6th Cir. 2003) 2, 3, 13, 14

Gould Estate v. *Stoddart Publishing Co.*, [1996] 30 O.R.3d 520 (Can. Ont.) 31

Guglielmi v. *Spelling-Goldberg Productions*, 603 P.2d 454 (Cal. 1979) 3

Haelan Laboratories, Inc. v. *Topps Chewing Gum, Inc.*, 202 F.2d 866 (2d Cir. 1953) 2

Harper & Row, Publishers, Inc. v. *Nation Enterprises*, 471 U.S. 539 (1985) 30

Hart v. *Electronic Arts, Inc.*, 717 F.3d 141 (3d Cir. 2013) ..... *passim*

Hilton v. *Hallmark Cards*, 599 F.3d 894 (9th Cir. 2010) 3, 25

Hoffman v. *Capital Cities/ABC, Inc.*, 255 F.3d 1180 (9th Cir. 2001) 4, 13, 26

Hustler Magazine, Inc. v. *Falwell*, 485 U.S. 46 (1988) 21

Lyngstad & Others v. *Anabas Products Ltd.*, [1977] 1 FSR 62 31

Matthews v. *Wozencraft*, 15 F.3d 432 (5th Cir. 1994) 3, 14

TABLE OF AUTHORITIES—Continued

Page

Mindys Cosmetics, Inc. v. *Dakar*, 611 F.3d 590 (9th Cir. 2010) 1

Montgomery v. *Montgomery*, 60 S.W.3d 524 (Ky. 2001) 15

N.Y. Times Co. v. *Sullivan*, 376 U.S. 254 (1964) 21

Parks v. *LaFace Records*, 329 F.3d 432 (6th Cir. 2003) 3, 14

Pavesich v. *New England Life Insurance Co.*, 50 S.E. 68 (Ga. 1905) 30

R.A.V. v. *City of St. Paul*, 505 U.S. 377 (1992) 19, 20. 21

Regan v. *Time, Inc.*, 468 U.S. 641 (1984) 19

Reno v. *ACLU*, 521 U.S. 844 (1997) 24

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Snyder v. *Phelps*, 131 S. Ct. 1207 (2011) 18

Speiser v. *Randall*, 357 U.S. 513 (1958) 24

Stewart v. *Rolling Stone LLC*, 105 Cal. Rptr. 3d 98 (Cal. Ct. App. 2010) 3

The Florida Star v. *B.J.F.*, 491 U.S. 524 (1989) 21

Time, Inc. v. *Hill*, 385 U.S. 374 (1967) 21

Toffoloni v. *LFB Publishing Group*, 572 F.3d 1201 (11th Cir. 2009) 16

TABLE OF AUTHORITIES—Continued

Page

Tolley v. *J.S. Fry & Sons, Ltd.* [1929] 1 K.B. 467 31

Tyne v. *Time Warner Entertainment Co.*, 901 So. 2d 802 (Fla. 2005) 15

United States v. *Alvarez*, 132 S. Ct. 2537 (2012) 18, 20

United States v. *Playboy Enertainment Group, Inc.*, 529 U.S. 803 (2000) 24

United States v. *Stevens*, 559 U.S. 460 (2010) ... 18, 20, 29

United States v. *Williams*, 504 U.S. 36 (1992) 18

Valentine v. *CBS, Inc.*, 698 F.2d 430 (11th Cir. 1983) 3, 14, 15

Verizon Communications, Inc. v. *FCC*, 535 U.S. 467 (2002) 18

Virginia State Board of Pharmacy v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) 30

Winter v. *DC Comics*, 69 P.3d 473 (Cal. 2003) 4

Zacchini v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977) 4, 5, 30

STATUTES

28 U.S.C.
§ 1254(1) 1
§ 1332 6

Cal. Code Civ. P. § 425.16 7

TABLE OF AUTHORITIES—Continued

Page

OTHER AUTHORITIES

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Eder, *Settlement in Athletes' Likeness Lawsuit*, N.Y. Times, Sept. 27, 2013, at B18, *available at* http://www.nytimes.com/2013/09/27/sports/ncaafootball/ea-sports-wont-make-college-video-game-in-2014.html?_r=0 10

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Restatement (Third) of Unfair Competition (1995) 13

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The National Collegiate Athletic Association (NCAA) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-39a) is reported at 724 F.3d 1268 (9th Cir. 2013). The pertinent opinion of the district court (App. 41a-64a) is also unreported. The court's order staying its mandate pending proceedings in this Court (App. 65a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 31, 2013. That court had jurisdiction under the collateral order doctrine. *See Mindys Cosmetics, Inc.* v. *Dakar*, 611 F.3d 590, 595 (9th Cir. 2010), *cited in* App. 5a n.3. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides in relevant part that "Congress shall make no law ... abridging the freedom of speech."

STATEMENT

This case concerns an important constitutional question on which the lower courts are splintered: the extent to which the First Amendment permits a plaintiff to recover damages or to obtain injunctive relief, premised on a "right-of-publicity" tort, for the alleged use of the plaintiff's name or likeness in an expressive work like a movie, song, painting, biography or (as here) a videogame. A divided panel of the Ninth Cir-

cuit held in this case that the First Amendment does not bar right-of-publicity claims unless the plaintiff's image or likeness is sufficiently "transform[ed]." Applying this test, the court of appeals held that a former college football player's claim that his publicity rights were violated by a football videogame, which allegedly included a character resembling him, was not limited by the First Amendment. That holding conflicts with the First Amendment standard applied by numerous other federal courts of appeals and state courts of last resort. It also fails to provide meaningful First Amendment protection to a broad array of expressive works that actually or allegedly depict or reflect real events. Review is warranted to resolve the lower courts' sharply divergent views—and to ensure that broad swaths of protected speech are not chilled by the Ninth Circuit's flawed standard.

1. The right of publicity is "a relatively raw and brash newcomer." 1 McCarthy, *The Rights of Publicity and Privacy*, at v (2d ed. 2003). Although the privacy torts from which the right derives date to the turn of the twentieth century, *see Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 487 (1975) (discussing Warren and Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890)), the right of publicity itself did not emerge as a distinct tort until the 1950s, *see* Hoffman, *Limitations on the Right of Publicity*, 28 Bull. Copyright Soc'y 111 (1980) (discussing Nimmer, *The Right of Publicity*, 19 Law & Contemp. Probs. 203 (1954)). More specifically, "[a] cause of action for violation of the right was first recognized in *Haelan Laboratories, Inc.* v. *Topps Chewing Gum, Inc.*, 202 F.2d 866 (2nd Cir. 1953)." *ETW Corp.* v. *Jireh Publ'g, Inc.*, 332 F.3d 915, 929 (6th Cir. 2003); *see also Haelan Labs.*, 202 F.2d at 868 ("We think that, in addition to and independent of th[e] right

of privacy ..., a man has a right in the publicity value of his photograph, i.e., the right to grant the exclusive privilege of publishing his picture.... This right might be called a 'right of publicity.'"). Today, right-of-publicity laws generally bar "appropriation of [a] plaintiff's name or likeness to defendant's advantage, commercially or otherwise ... [without the plaintiff's] consent." App. 6a n.4 (listing the elements of a right-of-publicity claim under California law).

Right-of-publicity claims have been made with increasing frequency in recent years. These claims have required courts to wrestle with how best to balance publicity rights against the First Amendment, because often—as here—the claim is based on an expressive work of some kind. For example, right-of-publicity claims have been raised based on:

- paintings, *see ETW Corp.*, 332 F.3d 915;
- movies, *see Guglielmi* v. *Spelling-Goldberg Prods.*, 603 P.2d 454 (Cal. 1979); *Seale* v. *Gramercy Pictures*, 949 F. Supp. 331 (E.D. Pa. 1996);
- books, *see Seale*, 949 F. Supp. 331; *Matthews* v. *Wozencraft*, 15 F.3d 432 (5th Cir. 1994);
- magazines, *see Stewart* v. *Rolling Stone LLC*, 105 Cal. Rptr. 3d 98 (Cal. Ct. App. 2010);
- drawings on t-shirts, *see Comedy III Prods., Inc.* v. *Gary Saderup, Inc.*, 21 P.3d 797 (Cal. 2001); song lyrics, *Parks* v. *LaFace Records*, 329 F.3d 437 (6th Cir. 2003); *Valentine* v. *CBS, Inc.*, 698 F.2d 430 (11th Cir. 1983) (per curiam);
- greeting cards, *see Hilton* v. *Hallmark Cards*, 599 F.3d 894 (9th Cir. 2010);

- board games, *see Rosemont Enters., Inc.* v. *Urban Sys., Inc.*, 340 N.Y.S. 2d 144 (N.Y. Sup. Ct. 1973);
- presidential campaign commercials, *see Browne* v. *McCain*, 611 F. Supp. 2d 1062 (C.D. Cal. 2009);
- digitally-altered photographs, *see Hoffman* v. *Capital Cities/ABC, Inc.*, 255 F.3d 1180 (9th Cir. 2001);
- comic books and comic book characters, *see Doe* v. *TCI Cablevision*, 110 S.W.3d 363 (Mo. 2003); *Winter* v. *DC Comics*, 69 P.3d 473 (Cal. 2003); trading cards, *see Cardtoons, LC* v. *Major League Baseball Players Ass'n*, 95 F.3d 959 (10th Cir. 1996); and
- fantasy baseball products, *see CBC Distrib. & Mktg., Inc.* v. *Major League Baseball Advanced Media, LP*, 505 F.3d 818 (8th Cir. 2007).

This Court has decided only one case involving the interplay between the First Amendment and publicity rights. In *Zacchini* v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977), a closely divided Court held that the First Amendment did not preclude a right-of-publicity claim against a television station that broadcast an entertainer's entire "human cannonball" act. The Court made clear, however, that the extreme facts of the case limited the reach of its decision. It explained that "the case before us is more limited than the broad category of lawsuits that may arise under the heading of 'appropriation.' Petitioner does not merely assert that some general use, such as advertising, was made of his name or likeness; he relies on the much narrower claim that respondent televised an entire act that he ordinarily gets paid to perform." *Id.* at 573 n.10.

The Court also contrasted "the broadcast of petitioner's entire performance" with "the unauthorized use of another's name for purposes of trade," noting that only the former impermissibly "goes to the heart of petitioner's ability to earn a living as an entertainer." *Id.* at 576. The Court did not provide additional guidance regarding cases that involved something less than the misappropriation of a performer's entire act, such as simple depictions of individuals. *See* Order Denying Mots. To Dismiss at 19, No. 09-cv-1967 (N.D. Cal. Oct. 25, 2013) ("*Zacchini* does not provide a clear test for balancing the right of publicity against free speech concerns.").

In the 35-plus years since *Zacchini* was decided, the lower courts, as detailed below, have adopted at least five different approaches for how to balance the constitutional freedom of expression against statutory or common-law rights of publicity.

2. Electronic Arts, Inc. (EA) produces a videogame series called *NCAA Football.* This popular series allows users to play simulated football games between colleges and universities, by controlling "avatars," i.e., animated characters that represent college football players. App. 3a. Aspects of these games are—by design—highly realistic. For example, they use schools' actual names, colors, and logos (with the schools' permission). They also include "realistic virtual versions of actual stadiums; ... virtual athletes, coaches, cheerleaders, and fans realistically rendered by EA's graphic artists; and ... realistic sounds." *Id.* The games do not, however, include any names on the players' jerseys or otherwise identify players by name. *See id.* Nor do they use actual images or realistic renderings of the

players; rather, the games use publicly available information to create virtual players.[6]

In 2009, respondent Samuel Keller brought a putative class action based on EA's videogames, seeking damages and injunctive relief. App. 4a, 43a. Keller, who played quarterback for Arizona State University and the University of Nebraska, alleged that EA violated his right of publicity under California law by including his likeness, without permission, in the 2005 and 2008 versions of *NCAA Football*. *See* App. 42a ("Plaintiff alleges that, to make the games realistic, EA designs the virtual football players to resemble real-life college football athletes, including himself.").

Keller's claims were not leveled against EA alone. He also charged the NCAA, petitioner here, with violating his right of publicity under Indiana law. App. 43a. (The NCAA is headquartered in Indianapolis.) And he alleged a conspiracy among all three defendants—EA, the NCAA, and the Collegiate Licensing Company (CLC)—to deprive him and other players of their publicity rights. *Id.*[7]

After the district court consolidated Keller's case with similar cases brought by other former college football players, the defendants moved to dismiss. App. 41a-42a. EA also moved to strike the claims against it under California's "anti-SLAPP" statute, which requires a court to strike claims that arise from a defendant's exercise of free speech rights unless the plaintiff

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[6] EA's game used the name and logo of the NCAA pursuant to a licensing agreement; that agreement will expire in June 2014.

[7] The district court's jurisdiction over Keller's claims was premised on diversity of citizenship and satisfaction of the amount-in-controversy requirement. *See* 28 U.S.C. § 1332.

makes a preliminary showing of likely success. *See* Cal. Code Civ. P. § 425.16.

The district court granted the NCAA's motion to dismiss Keller's Indiana right-of-publicity claim, on the ground that Keller never alleged that the NCAA itself used his image or likeness. App. 44a-45a. It declined, however, to dismiss the claim that the NCAA had conspired with EA and CLC to violate Keller's right of publicity. App. 56a-58a. The court also declined to dismiss or strike the right-of-publicity claim against EA, ruling (as relevant here) that that claim was not barred by the First Amendment. App. 45a-51a. The court reached that conclusion by applying the so-called "transformative-use" test, which balances First Amendment rights and rights of publicity by looking to "whether the work in question adds significant creative elements so as to be transformed into something more than a mere celebrity likeness or imitation." App. 7a. Applying that test, the district court concluded that the games were insufficiently transformative—i.e., too accurate and realistic—to enjoy First Amendment protection. *See* App. 50a ("EA does not depict Plaintiff in a different form; he is represented as he what he was: the starting quarterback for Arizona State University. Further, ... the game's setting is identical to where the public found Plaintiff during his collegiate career: on the football field.").[8]

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[8] The district court assumed that the allegations in the complaint were true for the purpose of deciding the motions—including the allegations that "EA designs the virtual football players to resemble real-life college football athletes" and that "these virtual players are nearly identical to their real-life counterparts." App. 42a. Although NCAA disputes these allegations, it too assumes them to be true for the purpose of this petition.

3a. A divided panel of the Ninth Circuit affirmed the dismissal of the anti-SLAPP motion. *See* App. 1a-39a. The court acknowledged that videogames are core expressive works entitled to full First Amendment protection. *See Brown* v. *Entertainment Merchs. Ass'n*, 131 S. Ct. 2729 (2011) (*EMA*), *cited in* App. 2a. But it concluded that the First Amendment did not preclude Keller's right-of-publicity claim. The court rejected EA's argument that it should apply a speech-protective standard known as the *Rogers* test, after *Rogers* v. *Grimaldi*, 875 F.2d 994 (2d Cir. 1989). *See* App. 18a (labeling that test a "broader First Amendment defense" than the transformative-use test). Instead, like the district court, the court of appeals applied a standard known as the "transformative-use" test. Under that test, the court held, *NCAA Football* did not warrant First Amendment protection because the game "realistically portrays college football players in the context of college football games." App. 17a; *see also* App. 2a (EA's alleged use of Keller's likeness "does not qualify for First Amendment protection as a matter of law because it literally recreates Keller in the very setting in which he has achieved renown"). In other words, the court held, the game's purported use of Keller's likeness was insufficiently "transformative" to qualify for First Amendment protection.

Judge Thomas dissented. He observed that the majority misapplied the transformative-use test by "confin[ing] its inquiry to how a single athlete's likeness is represented in the video game, rather than examining the transformative and creative elements in the video game as a whole." App. 30a. Applying that "holistic analysis," Judge Thomas concluded that the games' "transformative elements predominate[d]," so much so that "EA's *NCAA Football* is [essentially] a

work of interactive historical fiction." App. 30a-31a. He also stated that he, "[u]nlike the majority, ... would not punish EA for the realism of its games.... [T]he lifelike roar of the crowd and the crunch of pads ... demonstrates how little of *NCAA Football* is driven by the particular likeness of Sam Keller, or any of the other plaintiffs." App. 34a. Finally, Judge Thomas addressed what he saw as the far-reaching consequences of the majority's decision, as well as its departure from other cases:

> The logical consequence of the majority view is that all realistic depictions of actual persons, no matter how incidental, are protected by a state law right of publicity regardless of the creative context. This logic jeopardizes the creative use of historic figures in motion pictures, books, and sound recordings. Absent the use of actual footage, the motion picture *Forrest Gump* might as well be just a box of chocolates. Without its historical characters, *Midnight in Paris* would be reduced to a pedestrian domestic squabble. The majority's holding that creative use of realistic images and personas does not satisfy the transformative use test cannot be reconciled with the many cases affording such works First Amendment protection.

App. 39a.[9]

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[9] The majority "reject[ed] the notion that [its] holding has such broad consequences." App. 17a-18a n.10. It stated that its decision could be cabined by employing the part of the transformative-use test that examines "whether a likely purchaser's primary motivation is to buy a reproduction of the celebrity, or to buy the expressive work of that artist." App. 18a n.10.

The Ninth Circuit subsequently granted EA's motion to stay the issuance of its mandate pending EA's filing, and this Court's disposition, of a petition for certiorari to review the court of appeals' judgment. App. 65a.

b. A few weeks before the Ninth Circuit's decision, the Third Circuit decided a very similar case, *Hart* v. *Electronic Arts, Inc.*, 717 F.3d 141 (3d Cir. 2013). There too, a divided panel rejected, under the transformative-use test, a First Amendment defense to a former college football player's right-of-publicity claim against EA, stemming from its *NCAA Football* games. The NCAA is not a party in *Hart*.

4. EA filed a petition asking this Court to review the Ninth Circuit's judgment (No. 13-377).[10] Soon thereafter, however, the plaintiffs, EA, and CLC announced that they had reached a settlement in principle. *See* Stipulation & Proposed Order at 1, No. 09-cv-1967 (N.D. Cal. Sept. 26, 2013). The plaintiffs made clear, however, that "[t]his settlement does not affect Plaintiffs' claims against" the NCAA. *Id.* That includes plaintiffs' conspiracy claim, which is wholly derivative of the right-of-publicity claim against EA, and thus remains viable only because of the court of appeals' First Amendment ruling.[11]

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[10] EA simultaneously sought certiorari in *Hart* (No. 13-376).

[11] In addition to settling with the plaintiffs, EA recently announced that it will stop producing *NCAA Football*. *See, e.g.*, Eder, *Settlement in Athletes' Likeness Lawsuit*, N.Y. Times, Sept. 27, 2013, at B18, *available at* http://www.nytimes.com/2013/09/27/sports/ncaafootball/ea-sports-wont-make-college-video-game-in-2014.html?_r=0.

Because the settlement in principle makes dismissal of EA's petitions likely, the NCAA, which is a party to the action but participated in the court of appeals as an amicus, is today moving for leave to intervene in this Court so that it can file this petition. Despite the partial settlement, the issues remain the same as framed in EA's petition. The NCAA, as an alleged "co-conspirator," will need to continue to defend against Keller's underlying claim—and absent this Court's review will need to do so under the under-protective First Amendment standard adopted by the court of appeals.

REASONS FOR GRANTING THE PETITION

The lower courts are badly divided over how to balance First Amendment rights with rights of publicity. Indeed, the transformative-use test employed by the Ninth Circuit here is one of at least five tests that lower courts have used in similar cases—and the transformative-use test itself has more than one version. This doctrinal disarray is firmly established, and the issue is a recurring and important one. Moreover, this is a good vehicle to resolve the disarray, both because the relevant arguments were presented and passed on below and because the lower courts' choice of test here was outcome-determinative. Finally, the Ninth Circuit's choice was wrong. The transformative-use test is inconsistent with settled First Amendment doctrine. To begin with, it punishes expression for being accurate, i.e., truthful. It also strikes a false balance, equating publicity rights, which protect economic interests, with the foundational freedoms protected by the First Amendment. And it requires subjective and indeterminate evaluations by courts, inevitably chilling free expression. The predominant-use test and other vague

balancing tests used by other lower courts are likewise flawed and will deter valuable speech. Those tests contrast with the *Rogers* test, which properly confines right-of-publicity claims and thereby protects free speech. The Court should grant review and adopt that test as the appropriate First Amendment standard.

I. THE LOWER COURTS HAVE SPLINTERED OVER HOW TO BALANCE FIRST AMENDMENT FREEDOMS AGAINST RIGHT-OF-PUBLICITY CLAIMS

A. Several Courts Employ Some Version Of The Transformative-Use Test

In its decision here, the Ninth Circuit held (as the Third Circuit did in *Hart*) that the First Amendment bars a right-of-publicity claim that stems from the use of a person's image or likeness in an expressive work only if the image or likeness is sufficiently "transform[ed]." App. 27a; *Hart*, 717 F.3d at 165. This transformative-use test was first adopted by the California Supreme Court in *Comedy III Productions*, 21 P.3d 797. That court described the test as "essentially ... based on whether the work in question adds significant creative elements so as to be transformed into something more than a mere celebrity likeness or imitation." *Id.* at 799. The California court borrowed the transformative-use test from copyright's fair-use doctrine, despite acknowledging that three of the four statutory fair-use factors were not useful for these purposes. *See id.* at 807-808 & n.10.

As explained below, other courts reject the transformative-use test. But even within jurisdictions that use it, there is disagreement about how to apply it properly. Both here and in *Hart*, for example, the majority looked primarily (if not solely) at whether the plaintiff's image or likeness itself was transformed. *See*

App. 12a-13a; *Hart*, 717 F.3d at 165.[12] In contrast, the dissent in both cases argued that courts applying the test should consider the expressive work as a whole, and both dissenters concluded that under that approach EA would prevail. App. 33a; *Hart*, 717 F.3d at 174-176 (Ambro, J., dissenting). The Sixth Circuit, when it has applied the transformative-use test, has also looked to the work as a whole. *See ETW Corp.*, 332 F.3d at 938.[13]

B. Other Courts Follow The *Rogers* Test

Four circuits and two state supreme courts have rejected the transformative-use test in favor of a rule that the First Amendment protects all uses of a name, image, or likeness in an expressive work, unless a use is tantamount to an unauthorized commercial endorsement or is wholly unrelated to the expression. That approach—commonly known as the *Rogers* test—is also endorsed by the Restatement. *See Restatement (Third) of Unfair Competition* § 47 cmt. c (1995) ("[I]f the name or likeness is used solely to attract attention to a work that is not related to the identified person,

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[12] The district court here took the same approach. *See* App. 50a-51a.

[13] Reflecting further doctrinal confusion, the Ninth Circuit suggested in an earlier case that even sufficient transformation may not defeat a right-of-publicity claim, if the expressive work at issue was created with "actual malice." *See Hoffman*, 255 F.3d at 1184. In subsequent cases, including this one, the Ninth Circuit seems to have steered away from this suggestion; the court has often (as here) simply described *Hoffman* without engaging with its analysis. *See* App. 11a n.6. This may be because *Hoffman* would appear to threaten speakers with liability both when their depictions are true, i.e., realistic (because then the work will be insufficiently transformative) and false (because then actual malice can be found).

the user may be subject to liability for a use of the other's identity in advertising.").

This test was first applied in *Rogers*, the case that gave the test its name. There, the court considered a Lanham Act and right-of-publicity claim brought by Ginger Rogers against the makers of *Ginger and Fred*, a film about a fictional Italian duo who imitated Rogers and Fred Astaire. *See* 875 F.2d at 996-997. The Second Circuit concluded that the use of a person's name in the title of an expressive work was protected by the First Amendment unless the use was "wholly unrelated" to the work or "was simply a disguised commercial advertisement for the sale of goods or services." *Id.* at 1004 (internal quotation marks omitted).

Other circuits have embraced the *Rogers* test (or a substantively identical standard). The Fifth Circuit, for example, cited *Rogers* in concluding that a partially fictionalized biography was protected by the First Amendment because it was not merely a disguised advertisement. *See Matthews*, 15 F.3d at 440. Similarly, in *Parks*, the Sixth Circuit adopted the *Rogers* test and remanded for a determination of whether the use of Rosa Parks' name in a song title was in fact a "disguised commercial advertisement" or used "solely to attract attention" and thus unrelated to the work. 329 F.3d at 461.[14] And prior to *Rogers*, the Eleventh Circuit followed a similar approach in *Valentine*, 698 F.2d 430. The court there construed a right-of-publicity statute not to apply where the defendants "did not use

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[14] As noted above, the Sixth Circuit in a different case applied the transformative-use test. *See ETW Corp.*, 332 F.3d at 938. The court in that case did not actually adopt that test; it was instead applying a variety of tests to the publicity claim before it. *See id.* at 937-938.

[the individual's] name to directly promote a product or service." *Id.* at 433. A contrary construction, the court observed, would raise "grave questions" regarding the constitutionality of the law. *Id.*

State supreme courts have similarly applied *Rogers*-like tests in setting the outer bounds of the right of publicity. The Kentucky Supreme Court has cabined the right-of-publicity tort to situations in which "use of a person's name or likeness" is insufficiently "related to the underlying work, or, if the otherwise constitutionally-protected work is simply [a] disguised commercial advertisement for the sale of goods or services." *Montgomery* v. *Montgomery*, 60 S.W.3d 524, 529 (Ky. 2001) (footnote and internal quotation marks omitted). And the Florida Supreme Court has found that, in light of significant constitutional concerns, the state's right-of-publicity law does not apply to works "which do not directly promote a product or service." *Tyne* v. *Time Warner Entm't Co.*, 901 So. 2d 802, 810 (Fla. 2005).

C. Still Other Courts Employ A Variety Of Different Approaches

In contrast to the courts discussed above, several circuits and state supreme courts do not use either the transformative-use test or the *Rogers* test when confronted with a right-of publicity claim that is based on an expressive work.

The Missouri Supreme Court, for example, has endorsed a "predominant-use" test, which asks whether the "predominant purpose" of the speech is to "make an expressive comment on or about a celebrity"—in which case the speech receives First Amendment protection—or whether the speech "predominantly exploits the commercial value of an individual's identity"—in

which case it does not. *Doe*, 110 S.W.3d at 374. That court has also expressly rejected the transformative-use test. *See id.*

The Eleventh Circuit, meanwhile, has opined that the proper test requires courts simply to "engage in a fact-sensitive balancing, with an eye toward that which is reasonable and that which resonates with our community morals." *Toffoloni* v. *LFB Publ'g Group*, 572 F.3d 1201, 1208 (11th Cir. 2009). Applying Georgia law, the court in that case also fashioned a "newsworthiness" exception to that state's right-of-publicity law. *Id.*[15]

Other courts have likewise used nebulous forms of balancing that do not consider "transformation," "predominant purpose," or whether a work involves an unauthorized endorsement. In *Cardtoons, LC*, for example, the Tenth Circuit considered a right-of-publicity claim against parody playing cards that featured caricatures of real baseball players. *See* 95 F.3d at 962-963. After holding that the cards enjoyed "full First Amendment protection," *id.* at 970, the court "examin[ed] the importance of Cardtoons' right to free expression and the consequences of limiting that right" before vaguely "weigh[ing] those consequences against the effect of infringing on [the players'] right of publicity," *id.* at 972. The court ultimately concluded, without articulating any more specific considerations, that the First Amendment interests in the case outweighed any justifications given for the right of publicity. *See id.* at 973-976.

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[15] The *Toffoloni* court did not mention its prior decision in *Valentine*.

The Eighth Circuit engaged in similar balancing in *CBC*. There the court extended First Amendment protection to fantasy baseball products containing the real names of and information about major league baseball players. *See* 505 F.3d at 820. Citing *Cardtoons*, the court "recognized the public value of information about the game of baseball and its players" and concluded that it would be "strange" to deny First Amendment protection to the use of publicly available data. *Id.* at 823. After further noting that the case "barely, if at all, implicate[d] the interests that states typically intend to vindicate" with right-of-publicity laws, the court held that the First Amendment interests involved "superseded" any rights of publicity. *Id.* at 823-824.

In sum, there is pervasive disagreement among the lower courts about the proper test to use in cases like this. That disagreement, moreover, is often outcome determinative and will inevitably chill free speech.

II. THE QUESTION PRESENTED IS RECURRING AND IMPORTANT, AND THIS IS A GOOD VEHICLE FOR DECIDING IT

The issue presented here warrants resolution by this Court. As indicated by the decisions cited above, the extent to which the First Amendment limits right-of-publicity claims is a question that arises frequently throughout the country, and in a wide variety of expressive contexts. The cited cases also show that the disagreement among the lower courts is both broad and entrenched; there is thus nothing to be gained by awaiting further development (and divergence) in the lower courts. Finally, the question presented is manifestly important, as it involves efforts to limit, across a broad swath of expressive conduct, the fundamental

protections afforded by the First Amendment. *See, e.g., Bellotti* v. *Baird*, 443 U.S. 622, 636 (1979) (noting "the importance the Court always has attached to First Amendment rights"). This Court has in recent Terms repeatedly reaffirmed the importance and robustness of First Amendment protections, rejecting an array of government efforts to restrict the freedom of expression—including in the videogame context presented in this case. *See EMA*, 131 S. Ct. 2729; *see also Agency for Int'l Dev.* v. *Alliance for Open Society Int'l, Inc.*, 133 S. Ct. 2321 (2013); *United States* v. *Alvarez*, 132 S. Ct. 2537 (2012); *Snyder* v. *Phelps*, 131 S. Ct. 1207 (2011); *United States* v. *Stevens*, 559 U.S. 460 (2010); *Citizens United* v. *FEC*, 558 U.S. 310 (2010). The Court's attention is needed again; without it, substantial uncertainty will exist regarding whether and to what extent the First Amendment protects expressive conduct that makes use of the name, image or likeness of athletes, politicians, movie stars, authors, and others.

This case presents a good opportunity to redress the doctrinal disarray in the lower courts. The NCAA's First Amendment arguments were both pressed and passed upon in the court of appeals, rendering the issue suitable for review by certiorari. *See, e.g., Verizon Commc'ns, Inc.* v. *FCC*, 535 U.S. 467, 530 (2002) (quoting *United States* v. *Williams*, 504 U.S. 36, 41 (1992)). The Ninth Circuit, moreover, acknowledged that its choice of the transformative-use test rather than the *Rogers* test was outcome-determinative: The court stated that "absent evidence that EA explicitly misled consumers" (which evidence does not exist), Keller "would be hard-pressed to support" a claim "that consumers are being illegally misled into believing that he is endorsing EA or its products," as would be required under the *Rogers* test. App. 21a.

Indeed, the same day that it decided this case, the Ninth Circuit also decided a similar case in which former NFL star Jim Brown challenged EA's use of his likeness in its *Madden NFL* videogames. *See Brown* v. *Electronic Arts, Inc.*, 724 F.3d 1235 (9th Cir. 2013). Brown's claim was brought under the Lanham Act rather than right-of-publicity law, so the court of appeals applied the *Rogers* test. *See id.* at 1241-1242. That test led the court to reject Brown's claim; the court explained that because the record did not show that Electronic Arts had explicitly misled consumers about Brown's involvement with the games, "the public interest in free expression outweighs the public interest in avoiding consumer confusion." *Id.* at 1248. Had the court applied the *Rogers* test in *Keller*, the right-of-publicity claim would have yielded to the First Amendment, just as the Lanham Act claim did in *Brown*.

III. THE NINTH CIRCUIT'S HOLDING IS WRONG

A. The Transformative-Use Test Does Not Adequately Protect First Amendment Rights

A right-of-publicity claim like Keller's penalizes speech based on its content: The tort holds the speaker liable because her expression includes another's name or likeness. *See Bartnicki* v. *Vopper*, 532 U.S. 514, 521 (2001); *see also* Volokh, *Freedom of Speech and the Right of Publicity*, 40 Hous. L. Rev. 903, 912 n.35 (2003) ("The right of publicity is clearly content-based: It prohibits the unlicensed use of particular content (people's names or likenesses)."). Such content-based regulations of speech "are presumptively invalid" and must be subjected to the strictest constitutional scrutiny. *R.A.V.* v. *City of St. Paul*, 505 U.S. 377, 382 (1992); *see also, e.g.*, *Ashcroft* v. *ACLU*, 535 U.S. 564, 573 (2002)

("[A]s a general matter ... government has no power to restrict expression because of ... its content."); *Regan* v. *Time, Inc.*, 468 U.S. 641, 648 (1984) (holding unconstitutional a statute prohibiting accurate depictions of U.S. currency unless for educational, historic, or newsworthy purposes, because those determinations "cannot help but be based on the content of the photograph and the message it delivers").

This Court has generally allowed content-based speech restrictions only with a "few historic and traditional categories [of expression] long familiar to the bar." *Alvarez*, 132 S. Ct. at 2544 (alteration in original) (internal quotation marks omitted). These include obscenity, defamation, fighting words, true threats, child pornography, and speech integral to criminal conduct. *See id.* Those types of expression are "of such slight social value ... that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *R.A.V.*, 505 U.S. at 383. Thus, "the[ir] prevention and punishment ... have never been thought to raise any Constitutional problem." *EMA*, 131 S. Ct. at 2733. This Court has consistently rebuffed recent attempts to add new categories of expression that the government may restrict based on content. *See, e.g.*, *Alvarez*, 132 S. Ct. at 2544; *Stevens*, 559 U.S. at 482; *EMA*, 131 S. Ct. at 2734, 2741.

The vast quantity of expression that can be subject to right-of-publicity claims does not fall within any of the categories listed above. The videogames at issue here, for example, are plainly not obscene, defamatory, fraudulent, threatening, and so on. Nor is there any basis for adding all depictions of celebrities or uses of their names to the historical list. There is no serious argument, after all, that such depictions and uses are always "of such slight social value ... that any benefit

that may be derived from them is clearly outweighed by the social interest in order and morality." *R.A.V.*, 505 U.S. at 383.

The right of publicity accordingly must be limited to applications that can survive strict scrutiny. The transformative-use test fails to impose such a limit.

1. The test perversely punishes speech for being truthful and accurate

As this case shows, the transformative-use test improperly steers the right of publicity into the very heartland of what is protected by the First Amendment. The more accurate and realistic a particular depiction is, the more the test ratchets up the risk of liability. That is entirely backwards. Accuracy and realism (i.e., truth) are generally a reliable *defense* to liability for otherwise tortious speech, not a basis for withholding First Amendment protection. *See, e.g., The Florida Star* v. *B.J.F.*, 491 U.S. 524, 534 (1989) (criticizing a Florida law making it unlawful to publicize the name of the victim of a sexual offense because it "punish[ed] truthful publication").[16] This is particularly so for expression that uses facts in the public domain, *see N.Y. Times Co.* v. *Sullivan*, 376 U.S. 254 (1964)—such as the biographical details used by EA in its video-

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[16] *Cf. Hustler Magazine, Inc.* v. *Falwell*, 485 U.S. 46, 52 (1988) ("False statements of fact are particularly valueless; they interfere with the truth-seeking function of the marketplace of ideas, and they cause damage to an individual's reputation that cannot easily be repaired by counterspeech, however persuasive or effective."); *Time, Inc.* v. *Hill*, 385 U.S. 374, 388 (1967) (prohibiting false-light liability even for false speech on "matters of public interest in the absence of proof that the defendant published the report with knowledge of its falsity or in reckless disregard of the truth").

games, *see* App. 35a-36a (Thomas, J., dissenting). "[I]t would be a strange law that a person would not have a [F]irst [A]mendment right to use information that is available to everyone," *CBC*, 505 F.3d at 823. Yet that is the rule of law that the Ninth Circuit embraced here.

The potential reach of that rule is breathtaking. Countless expressive works use a real person's actual name or likeness, including films like *The Social Network* (about the rise of Facebook) and *Ray* (about the singer Ray Charles), and documentaries like *Capturing the Friedmans* (about a high-profile investigation of alleged child molestation) and *Roger and Me* (about the closing of General Motors' factories in Flint, Michigan). Often, the very point of an artist's work is to represent a real subject as faithfully as possible. Yet under the transformative-use test, achieving that artistic goal is exactly what invites liability. *Cf. Estate of Presley* v. *Russen*, 513 F. Supp. 1339, 1359 (D.N.J. 1981) (rejecting Elvis impersonator's First Amendment defense to a right-of-publicity claim brought by Presley's estate: "entertainment that is merely a copy or imitation, even if skillfully and accurately carried out, does not really have its own creative component and does not have a significant value as pure entertainment"), *cited in Hart*, 717 F.3d at 164. That approach is not remotely consistent with this Court's First Amendment jurisprudence.

The Ninth Circuit defended its approach by asking: "If EA creates a virtual likeness of Tom Brady using only publicly available data, does EA have free reign to use that likeness in commercials without violating Brady's right of publicity? We think not, and thus must reject [the] point about the public availability of much of the data used[.]" App. 27a n.12. But this reasoning fails because the court's hypothetical involved a false

claim of celebrity endorsement. That type of misleading commercial speech *can* constitutionally be the subject of a right-of-publicity claim—as the *Rogers* test recognizes. *See infra* Part III.C. But the First Amendment's tolerance for regulating such misleading speech cannot justify the test, or the result, adopted by the court of appeals here. That court simply asked the wrong question. The question is whether any compelling state interest justifies withholding First Amendment protection from realistic, *non-commercial and non-misleading* expression, like the expression at issue here.

The answer is no. The state interest supposedly furthered by right-of-publicity torts is "'protect[ing] a form of intellectual property [in one's person] that society deems to have some social utility.'" App. 21a (second alteration in original) (quoting *Comedy III*, 21 P.3d at 804). The point, in other words, is to reward the "[o]ften considerable money, time and energy ... needed to develop one's prominence in a particular field." *Id.*; *see also* App. 22a. ("Keller's claim is that EA has appropriated, without permission and without providing compensation, his talent and years of hard work on the football field."). But society already provides ample incentives for becoming a celebrity; the marginal additional incentive from the right to cash in on one's publicity is minimal. Safeguarding that added incentive is manifestly not important enough to justify penalizing truthful, non-commercial expression.

The contrary conclusion reached by courts that have adopted the transformative-use test derives from a profound false equivalence. The fair-use doctrine in copyright, which inspired the transformative-use test, is designed to balance competing *speech* interests—the interest in using copyright protection to induce the cre-

ation of new works and the interest in permitting others to expand or comment on existing works. *See Eldred* v. *Ashcroft*, 537 U.S. 186, 219-220 (2003). In this context, by contrast, there are speech interests on only one side of the balance; publicity rights create an incentive to pursue fame, not expression. No precedent—and no sound principle—supports the notion underlying the transformative-use test: that "the right to control, manage, and profit from one's own identity" is a "fundamental protection" that is equivalent to and thus must be balanced against "the right of free expression." *Hart*, 717 F.3d at 157.

2. The test chills protected speech

In addition to perversely punishing certain expression for being too truthful, the transformative-use test is subjective and unpredictable, and hence threatens to chill large amounts of protected expression.

As this Court has explained, "[u]nder our Constitution, 'esthetic and moral judgments about art ... are for the individual to make, not for the Government to decree.'" *EMA*, 131 S. Ct. at 2733 (quoting *United States* v. *Playboy Entm't Group, Inc.*, 529 U.S. 803, 818 (2000)); *see also Bleistein* v. *Donaldson Lithographing Co.*, 188 U.S. 239, 251 (1903) (Holmes, J.) ("It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits."). The Court has further explained that allowing government officials to make such judgments, and thereby restrict speech, generates tremendous uncertainty, as speakers must guess what a government censor will deem sufficiently artistic at some point in the future. Faced with such uncertainty, speakers inevitably "'steer far wider of the unlawful

zone' ... than if the boundaries of the forbidden areas were clearly marked." *Baggett* v. *Bullitt*, 377 U.S. 360, 372 (1964) (quoting *Speiser* v. *Randall*, 357 U.S. 513, 526 (1958)). The result is an "obvious chilling effect on free speech." *Reno* v. *ACLU*, 521 U.S. 844, 871-872 (1997).

These dangers are fully realized by allowing otherwise-protected expression to be penalized based on how "transformative" a court deems it. While there are surely easy cases at either transformative extreme, there is a vast gray area in the middle. The countless biographers, filmmakers, singers, photographers, and other artists who create works that depict or refer to famous people cannot reliably guess—and should not be forced to guess—whether their particular depictions or references are sufficiently "transformative" to escape liability.

Evidently seeking to limit the enormous chilling potential created by the transformative-use test, courts adopting that test have sought to draw "subtle" distinctions among expressive works, *Comedy III*, 21 P.3d at 811, based on judges' personal sense of whether a particular work is sufficiently artistic or creative to warrant protection. The California Supreme Court in *Comedy III*, for example, withheld First Amendment protection from a charcoal drawing of The Three Stooges after finding it insufficiently creative. The court mused, however, that it would have reached the opposite conclusion about Andy Warhol's portraits of Marilyn Monroe because those works represent "a form of ironic social comment on the dehumanization of celebrity itself." *Id.* at 811.

The Ninth Circuit has drawn similarly subtle distinctions. In one case, the court found a greeting card

parody of the television show *The Simple Life*, a card that featured Paris Hilton's head superimposed on a cartoon body, insufficiently transformative because "the basic setting is the same [as in the show]: we see Paris Hilton, born to privilege, working as a waitress." *Hilton*, 599 F.3d at 911. But another Ninth Circuit panel opined in dicta that a magazine's use of an image of Dustin Hoffman from the film *Tootsie was* transformative because "Hoffman's body was eliminated and a new, differently clothed body was substituted in its place." *Hoffman*, 255 F.3d at 1184 n.2.

Protecting the many valuable expressive works that accurately depict real people does not require, and should not depend, on "subtle" distinctions. So long as they apply the transformative-use test, however, courts will have to engage in unpredictable and subjective—and hence chilling—line-drawing.

Finally, as this case shows, the need for courts to make value-laden judgments in these situations has led to violations of this Court's directive against medium-specific First Amendment standards. *See EMA*, 131 S. Ct. at 2733. Dissenting in *Hart*, for example, Judge Ambro charged the majority with treating videogames as less worthy of First Amendment protection than other types of expressive works. *See* 717 F.3d at 174 (Ambro, J., dissenting). The majority barely responded to Judge Ambro's concern, simply asserting that it had followed this Court's admonition that videogames "enjoy the full force of First Amendment protections." *Id.* at 148 (majority opinion).

The majority below, meanwhile, all but admitted that it was granting less protection to videogames than it would have given other media. Judge Thomas warned in dissent that the majority's holding "jeopard-

ize[d] the creative use of historic figures in motion pictures, books, and sound recordings." App. 39a (Thomas, J., dissenting). Disagreeing that its holding was so broad, the majority explained that its test allows a court to consider "'whether a likely purchaser's primary motivation is to buy a reproduction of the celebrity, or to buy the expressive work of that artist.' Certainly this leaves room for distinguishing this case ... and cases involving *other kinds of expressive works*." App. 17a n.10 (emphasis added) (citations omitted).[17] The court's care in protecting "other kinds of expressive works" did not, however, extend to videogames. Such selectivity is not consistent with this Court's precedent.[18]

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[17] The Ninth Circuit's supposed safety-valve is problematic for a second reason: It requires a speaker to guess what a court might hold to be "a likely *purchaser's* primary motivation" in buying an expressive work. App. 18a n.10. Many speakers will simply self-censor rather than run the risk that their multi-dimensional guesswork will later prove wrong.

[18] As discussed earlier, the majorities and dissenters in both this case and *Hart* disagreed over whether the transformative-use test focuses on the depiction or description of the celebrities (as the majorities concluded) or at the expressive work as a whole (as the dissenters argued). While both iterations suffer from all the flaws identified in the text, the majorities' approach is particularly indefensible. That approach would allow *any* use of a name, image, or likeness in an expressive work to trigger liability, even if the use constituted the tiniest fraction of the overall work. In the movie *Forrest Gump*, for example, the title character encounters various historical figures. These encounters are generally brief, some lasting only a few seconds. But under the majority's test here, those figures (or their estates if deceased) could presumably recover for the unauthorized use of the individuals' images. That approach would constitute a staggering constriction in the scope of the First Amendment.

B. The Predominant-Use Test And Nebulous Balancing Approaches Used By Other Courts Are Equally Problematic

The Missouri Supreme Court's "predominant-use" test and the more nebulous balancing engaged in by other courts are no more consistent with this Court's First Amendment precedents than the transformative-use test.

The predominant-use test requires courts to determine whether a speaker's depiction or description of a celebrity was primarily expressive or primarily "exploit[ed] the commercial value of an individual's identity." *Doe*, 110 S.W.3d at 374. The *Doe* court gave virtually no guidance as to how to make such determinations, however, particularly in the (very common) situation in which the challenged work is highly expressive but also plainly commercial. In any event, it is difficult to see how courts could evaluate speakers' predominant use of expression without making a value judgment about the expression itself. All this would lead to the same chilling effect discussed above in regard to the transformative-use test.

The Third Circuit in *Hart* aptly summarized the flaws with the predominant use test:

> [T]he Predominant Use Test is subjective at best, arbitrary at worst, and in either case calls upon judges to act as both impartial jurists and discerning art critics. These two roles cannot co-exist.... [Use of the test] would be tantamount to admitting that it is proper for courts to analyze select elements of a work to determine how much they contribute to the entire work's expressiveness. Moreover, as a necessary (and insidious) consequence, the [test]'s

> approach would suppose that there exists a broad range of seemingly expressive speech that has no First Amendment value.

717 F.3d at 154. Although the court failed to see that much of its criticism applies with equal force to the transformative-use test, that criticism was well-founded.

The various vague forms of balancing employed by other courts fare no better. This Court has never sanctioned a "free-floating test for First Amendment coverage." *Stevens*, 559 U.S. at 470; *see also EMA*, 131 S. Ct. at 2734. And "[t]he First Amendment's guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits." *Stevens*, 559 U.S. at 470. Furthermore, the economic interests protected by the right of publicity are, as explained, in no way equivalent to the speech interests protected by the First Amendment. *See supra* pp.23-24. Such incommensurate interests ought not be balanced (vaguely or otherwise). Any attempt to do so will inevitably be unpredictable and therefore chill protected expression.

C. The *Rogers* Test Properly Confines The Right Of Publicity

Unlike the other approaches used by courts in cases like this, the *Rogers* test confines right-of-publicity claims to situations in which speakers have used a depiction of, or reference to, a celebrity to sell something—either by falsely claiming a celebrity commercial endorsement or by including a celebrity image in a publication gratuitously, just to attract attention.

So confined, right-of-publicity claims raise satisfy First Amendment dictates. Speech that falsely claims a

commercial endorsement is akin to the category of fraudulent speech that the government has long been permitted to regulate. *See, e.g.*, *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976) (noting that fraudulent speech generally falls outside the protections of the First Amendment). And the gratuitous use of a celebrity's image to attract attention, unrelated to any expressive content in the work, likewise falls beyond First Amendment protection. Hence, as confined by the *Rogers* test, right-of-publicity claims raise little if any First Amendment concern.

The *Rogers* test is also consistent with this Court's decision in *Zacchini*. The Court in that case made clear that it was not addressing the typical "lawsuit[] that may arise under the heading of 'appropriation'" 433 U.S. at 573 n.10. Rather, *Zacchini* involved the copying of a performer's entire act—akin to a copyright violation. And the Court emphasized that such wholesale copying was quite "unlike the unauthorized use of another's name for purposes of trade." *Id.* at 576. One critical difference is that in a case like *Zacchini* there is no new expressive work at issue; the defendant has taken the *plaintiff's* expressive work and simply shown it herself. The First Amendment interests on the defendant's side are thus weaker. Moreover, unlike in the typical right-of-publicity case, there *are* substantial First Amendment interests on the plaintiff's side; protection of the plaintiff's entire act from misappropriation maintains the same "engine of free expression" that the copyright laws promote, *Harper & Row, Publishers, Inc.* v. *Nation Enters.*, 471 U.S. 539, 558 (1985). The Court's allowance of the right-of-publicity claim in those specific circumstances in no way precludes adop-

tion of the *Rogers* test for the far-more-common set of cases like the one here.

Finally, limiting the right of publicity to misleading commercial speech returns it to its original form. The courts that first recognized a privacy tort believed the tort would not threaten freedom of expression precisely because "[t]here is in the publication of one's picture for advertising purposes not the slightest semblance of an expression of an idea, a thought, or an opinion." *Pavesich* v. *New England Life Ins. Co.*, 50 S.E. 68, 80 (Ga. 1905). Adopting this limit would also bring the United States closer in line with other common law jurisdictions, such as Great Britain, which (despite generally being less speech-protective than the United States) have rejected or greatly restricted the right of publicity in order to protect free expression. *See, e.g.*, *Lyngstad & Others* v. *Anabas Prods. Ltd.*, [1977] 1 FSR 62 ("To suggest that there is some proprietary right in the plaintiffs' name which entitled them to sue simply for its use is contrary to all the English authorities."); *Tolley* v. *J.S. Fry & Sons, Ltd.* [1929] 1 K.B. 467, 477 ("[S]ome men and women voluntarily enter professions which by their nature invite publicity, and public approval or disapproval. It is not unreasonable in their case that they should submit without complaint to their names and occupations and reputations being treated ... almost as public property."), *rev'd on other grounds* [1931] A.C. 333.[19]

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[19] *See also* Cornish et al., *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* § 9-04 (7th ed. 2010) (observing that the *Report of the Committee on Privacy*, Cmnd. 5012 (1972), was particularly concerned that a privacy right "might be used too readily to trespass upon the freedom to receive and make use of information and to express opinions"); *see also Gould Estate* v. *Stoddart Publ'g Co.*, [1996] 30 O.R.3d 520, ¶ 14 (Can.

In short, the *Rogers* test properly reconciles right-of-publicity claims with the constitutional right to free expression.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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Ont.) (suggesting that "the tort of appropriation of personality is restricted to endorsement-type situations").

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE NCAA STUDENT-ATHLETE NAME & LIKENESS LICENSING LITIGATION,

SAMUEL MICHAEL KELLER, *et al.*,
Plaintiffs-Appellees,

v.

ELECTRONIC ARTS INC.,
Defendant-Appellant,

and

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *et al.*,
Defendants.

No. 10-15387
Argued and Submitted Feb. 15, 2011
Submission Vacated Feb. 18, 2011
Argued and Resubmitted July 13, 2012
Filed July 31, 2013

OPINION

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* * *

BYBEE, Circuit Judge:

Video games are entitled to the full protections of the First Amendment, because "[l]ike the protected books, plays, and movies that preceded them, video games communicate ideas—and even social messages—through many familiar literary devices (such as characters, dialogue, plot, and music) and through features

distinctive to the medium (such as the player's interaction with the virtual world)." *Brown v. Entm't Merchs. Ass'n*, ___ U.S. ___, ___, 131 S. Ct. 2729, 2733, 180 L. Ed. 2d 708 (2011).[1] Such rights are not absolute, and states may recognize the right of publicity to a degree consistent with the First Amendment. *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 574-75, 97 S. Ct. 2849, 53 L. Ed. 2d 965 (1977). In this case, we must balance the right of publicity of a former college football player against the asserted First Amendment right of a video game developer to use his likeness in its expressive works.

The district court concluded that the game developer, Electronic Arts ("EA"), had no First Amendment defense against the right-of-publicity claims of the football player, Samuel Keller. We affirm. Under the "transformative use" test developed by the California Supreme Court, EA's use does not qualify for First Amendment protection as a matter of law because it literally recreates Keller in the very setting in which he has achieved renown. The other First Amendment defenses asserted by EA do not defeat Keller's claims either.

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[1] In *Brown v. Electronic Arts, Inc.*, No. 09–56675, slip op. at 9-10 (9th Cir. July 31, 2013), we noted that "there may be some work referred to as a 'video game' (or referred to as a 'book,' 'play,' or 'movie' for that matter) that does not contain enough of the elements contemplated by the Supreme Court [in *Brown v. Entertainment Merchants Association*] to warrant First Amendment protection as an expressive work," but asserted that "[e]ven if there is a line to be drawn between expressive video games and non-expressive video games, and even if courts should at some point be drawing that line, we have no need to draw that line here." The same holds true in this case.

I

Samuel Keller was the starting quarterback for Arizona State University in 2005 before he transferred to the University of Nebraska, where he played during the 2007 season. EA is the producer of the *NCAA Football* series of video games, which allow users to control avatars representing college football players as those avatars participate in simulated games. In *NCAA Football,* EA seeks to replicate each school's entire team as accurately as possible. Every real football player on each team included in the game has a corresponding avatar in the game with the player's actual jersey number and virtually identical height, weight, build, skin tone, hair color, and home state. EA attempts to match any unique, highly identifiable playing behaviors by sending detailed questionnaires to team equipment managers. Additionally, EA creates realistic virtual versions of actual stadiums; populates them with the virtual athletes, coaches, cheerleaders, and fans realistically rendered by EA's graphic artists; and incorporates realistic sounds such as the crunch of the players' pads and the roar of the crowd.

EA's game differs from reality in that EA omits the players' names on their jerseys and assigns each player a home town that is different from the actual player's home town. However, users of the video game may upload rosters of names obtained from third parties so that the names do appear on the jerseys. In such cases, EA allows images from the game containing athletes' real names to be posted on its website by users. Users can further alter reality by entering "Dynasty" mode, where the user assumes a head coach's responsibilities for a college program for up to thirty seasons, including recruiting players from a randomly generated pool of high school athletes, or "Campus Leg-

end" mode, where the user controls a virtual player from high school through college, making choices relating to practices, academics, and social life.

In the 2005 edition of the game, the virtual starting quarterback for Arizona State wears number 9, as did Keller, and has the same height, weight, skin tone, hair color, hair style, handedness, home state, play style (pocket passer), visor preference, facial features, and school year as Keller. In the 2008 edition, the virtual quarterback for Nebraska has these same characteristics, though the jersey number does not match, presumably because Keller changed his number right before the season started.

Objecting to this use of his likeness, Keller filed a putative class-action complaint in the Northern District of California asserting, as relevant on appeal, that EA violated his right of publicity under California Civil Code § 3344 and California common law.[2] EA moved to strike the complaint as a strategic lawsuit against public participation ("SLAPP") under California's anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16, and the district court denied the motion. We have jurisdiction

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[2] There are actually nine named plaintiffs, all former National Collegiate Athletic Association ("NCAA") football or basketball players: Keller, Edward O'Bannon, Jr. (UCLA), Byron Bishop (University of North Carolina), Michael Anderson (University of Memphis), Danny Wimprine (University of Memphis), Ishmael Thrower (Arizona State University), Craig Newsome (Arizona State University), Damien Rhodes (Syracuse University), and Samuel Jacobson (University of Minnesota). EA's NCAA basketball games are also implicated in this appeal. Because the issues are the same for each plaintiff, all of the claims are addressed through our discussion of Keller and *NCAA Football*.

over EA's appeal pursuant to 28 U.S.C. § 1291. *See Batzel v. Smith*, 333 F.3d 1018, 1024-26 (9th Cir. 2003).[3]

II

California's anti-SLAPP statute is designed to discourage suits that "masquerade as ordinary lawsuits but are brought to deter common citizens from exercising their political or legal rights or to punish them for doing so." *Batzel*, 333 F.3d at 1024 (internal quotation marks omitted). The statute provides:

> A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

Cal. Civ. Proc. Code § 425.16(b)(1). We have determined that the anti-SLAPP statute is available in federal court. *Thomas v. Fry's Elecs., Inc.*, 400 F.3d 1206 (9th Cir. 2005) (per curiam).

We evaluate an anti-SLAPP motion in two steps. First, the defendant must "make a prima facie showing that the plaintiff's suit arises from an act by the defendant made in connection with a public issue in furtherance of the defendant's right to free speech under the United States or California Constitution." *Batzel*, 333 F.3d at 1024. Keller does not contest that EA has

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[3] We review *de novo* the district court's denial of a motion to strike under California's anti-SLAPP statute. *Mindys Cosmetics, Inc. v. Dakar*, 611 F.3d 590, 595 (9th Cir. 2010).

made this threshold showing. Indeed, there is no question that "video games qualify for First Amendment protection," *Entm't Merchs. Ass'n*, 131 S. Ct. at 2733, or that Keller's suit arises from EA's production and distribution of *NCAA Football* in furtherance of EA's protected right to express itself through video games.

Second, we must evaluate whether the plaintiff has "establish[ed] a reasonable probability that the plaintiff will prevail on his or her ... claim." *Batzel*, 333 F.3d at 1024. "The plaintiff must demonstrate that the complaint is legally sufficient and supported by a prima facie showing of facts to sustain a favorable judgment if the evidence submitted by plaintiff is credited." *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 840 (9th Cir. 2001) (internal quotation marks omitted). The statute "subjects to potential dismissal only those actions in which the plaintiff cannot state and substantiate a legally sufficient claim." *Navellier v. Sletten*, 29 Cal.4th 82, 124 Cal.Rptr.2d 530, 52 P.3d 703, 711 (Cal. 2002) (internal quotation marks omitted). EA did not contest before the district court and does not contest here that Keller has stated a right-of-publicity claim under California common and statutory law.[4] Instead, EA raises four affirmative defenses derived from the First Amendment: the "transformative use" test, the *Rogers* test, the "public interest" test, and the "public

[4] The elements of a right-of-publicity claim under California common law are: "(1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury." *Stewart v. Rolling Stone LLC*, 181 Cal.App.4th 664, 105 Cal.Rptr.3d 98, 111 (internal quotation marks omitted). The same claim under California Civil Code § 3344 requires a plaintiff to prove "all the elements of the common law cause of action" plus "a knowing use by the defendant as well as a direct connection between the alleged use and the commercial purpose." *Id.*

affairs" exemption. EA argues that, in light of these defenses, it is not reasonably probable that Keller will prevail on his right-of-publicity claim. This appeal therefore centers on the applicability of these defenses. We take each one in turn.[5]

A

The California Supreme Court formulated the transformative use defense in *Comedy III Productions, Inc. v. Gary Saderup, Inc.*, 25 Cal.4th 387, 106 Cal.Rptr.2d 126, 21 P.3d 797 (Cal. 2001). The defense is "a balancing test between the First Amendment and the right of publicity based on whether the work in question adds significant creative elements so as to be transformed into something more than a mere celebrity likeness or imitation." *Id.* at 799. The California Supreme Court explained that "when a work contains significant transformative elements, it is not only especially worthy of First Amendment protection, but it is also less likely to interfere with the economic interest protected by the right of publicity." *Id.* at 808. The court rejected the wholesale importation of the copyright "fair use" defense into right-of-publicity claims, but recognized that some aspects of that defense are "particularly pertinent." *Id.; see* 17 U.S.C. § 107; *see also SOFA Entm't, Inc. v. Dodger Prods., Inc.*, 709 F.3d 1273, 1277–78 (9th Cir. 2013) (discussing the "fair use" defense codified in 17 U.S.C. § 107).

Comedy III gives us at least five factors to consider in determining whether a work is sufficiently trans-

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[5] Just as we did in *Hilton v. Hallmark Cards*, we reserve the question of whether the First Amendment furnishes a defense other than those the parties raise. 599 F.3d 894, 909 n.11 (9th Cir. 2009).

formative to obtain First Amendment protection. *See* J. Thomas McCarthy, *The Rights of Publicity and Privacy* § 8:72 (2d ed. 2012). First, if "the celebrity likeness is one of the 'raw materials' from which an original work is synthesized," it is more likely to be transformative than if "the depiction or imitation of the celebrity is the very sum and substance of the work in question." *Comedy III,* 106 Cal.Rptr.2d 126, 21 P.3d at 809. Second, the work is protected if it is "primarily the defendant's own expression"—as long as that expression is "something other than the likeness of the celebrity." *Id.* This factor requires an examination of whether a likely purchaser's primary motivation is to buy a reproduction of the celebrity, or to buy the expressive work of that artist. McCarthy, *supra,* § 8:72. Third, to avoid making judgments concerning "the quality of the artistic contribution," a court should conduct an inquiry "more quantitative than qualitative" and ask "whether the literal and imitative or the creative elements predominate in the work." *Comedy III,* 106 Cal.Rptr.2d 126, 21 P.3d at 809. Fourth, the California Supreme Court indicated that "a subsidiary inquiry" would be useful in close cases: whether "the marketability and economic value of the challenged work derive primarily from the fame of the celebrity depicted." *Id.* at 810. Lastly, the court indicated that "when an artist's skill and talent is manifestly subordinated to the overall goal of creating a conventional portrait of a celebrity so as to commercially exploit his or her fame," the work is not transformative. *Id.*

We have explained that "[o]nly if [a defendant] is entitled to the [transformative] defense *as a matter of law* can it prevail on its motion to strike," because the California Supreme Court "envisioned the application of the defense as a question of fact." *Hilton,* 599 F.3d at

910. As a result, EA "is only entitled to the defense as a matter of law if no trier of fact could reasonably conclude that the [game] [i]s not transformative." *Id.*

California courts have applied the transformative use test in relevant situations in four cases. First, in *Comedy III* itself, the California Supreme Court applied the test to T-shirts and lithographs bearing a likeness of The Three Stooges and concluded that it could "discern no significant transformative or creative contribution." *Id.* at 811. The court reasoned that the artist's "undeniable skill is manifestly subordinated to the overall goal of creating literal, conventional depictions of The Three Stooges so as to exploit their fame." *Id.* "[W]ere we to decide that [the artist's] depictions were protected by the First Amendment," the court continued, "we cannot perceive how the right of publicity would remain a viable right other than in cases of falsified celebrity endorsements." *Id.*

Second, in *Winter v. DC Comics*, the California Supreme Court applied the test to comic books containing characters Johnny and Edgar Autumn, "depicted as villainous half-worm, half-human offspring" but evoking two famous brothers, rockers Johnny and Edgar Winter. 30 Cal.4th 881, 134 Cal.Rptr.2d 634, 69 P.3d 473, 476 (Cal. 2003). The court held that "the comic books are transformative and entitled to First Amendment protection." *Id.* at 480. It reasoned that the comic books "are not just conventional depictions of plaintiffs but contain significant expressive content other than plaintiffs' mere likenesses." *Id.* at 479. "To the extent the drawings of the Autumn brothers resemble plaintiffs at all, they are distorted for purposes of lampoon, parody, or caricature." *Id.* Importantly, the court relied on the fact that the brothers "are but cartoon characters ... in a larger story, which is itself quite expressive." *Id.*

Third, in *Kirby v. Sega of America, Inc.*, the California Court of Appeal applied the transformative use test to a video game in which the user controls the dancing of "Ulala," a reporter from outer space allegedly based on singer Kierin Kirby, whose "'signature' lyrical expression ... is 'ooh la la.'" 144 Cal.App.4th 47, 50 Cal.Rptr.3d 607, 609-10 (Ct. App. 2006). The court held that "Ulala is more than a mere likeness or literal depiction of Kirby," pointing to Ulala's "extremely tall, slender computer-generated physique," her "hairstyle and primary costume," her dance moves, and her role as "a space-age reporter in the 25th century," all of which were "unlike any public depiction of Kirby." *Id.* at 616. "As in *Winter*, Ulala is a 'fanciful, creative character' who exists in the context of a unique and expressive video game." *Id.* at 618.

Finally, in *No Doubt v. Activision Publishing, Inc.*, the California Court of Appeal addressed Activision's *Band Hero* video game. 192 Cal.App.4th 1018, 122 Cal.Rptr.3d 397, 400 (Ct. App. 2011), *petition for review denied*, 2011 Cal. LEXIS 6100 (Cal. June 8, 2011) (No. B223996). In *Band Hero*, users simulate performing in a rock band in time with popular songs. *Id.* at 401. Users choose from a number of avatars, some of which represent actual rock stars, including the members of the rock band No Doubt. *Id.* at 401. Activision licensed No Doubt's likeness, but allegedly exceeded the scope of the license by permitting users to manipulate the No Doubt avatars to play any song in the game, solo or with members of other bands, and even to alter the avatars' voices. *Id.* at 402. The court held that No Doubt's right of publicity prevailed despite Activision's First Amendment defense because the game was not "transformative" under the *Comedy III* test. It reasoned that the video game characters were "literal rec-

reations of the band members," doing "the same activity by which the band achieved and maintains its fame." *Id.* at 411. According to the court, the fact "that the avatars appear in the context of a videogame that contains many other creative elements[] does not transform the avatars into anything other than exact depictions of No Doubt's members doing exactly what they do as celebrities." *Id.* The court concluded that "the expressive elements of the game remain manifestly subordinated to the overall goal of creating a conventional portrait of No Doubt so as to commercially exploit its fame." *Id.* (internal quotation marks omitted).

We have also had occasion to apply the transformative use test. In *Hilton v. Hallmark Cards,* we applied the test to a birthday card depicting Paris Hilton in a manner reminiscent of an episode of Hilton's reality show *The Simple Life.* 599 F.3d at 899. We observed some differences between the episode and the card, but noted that "the basic setting is the same: we see Paris Hilton, born to privilege, working as a waitress." *Id.* at 911. We reasoned that "[w]hen we compare Hallmark's card to the video game in *Kirby,* which transported a 1990s singer (catchphrases and all) into the 25th century and transmogrified her into a space-age reporter, ... the card falls far short of the level of new expression added in the video game." *Id.* As a result, we concluded that "there is enough doubt as to whether Hallmark's card is transformative under our case law that we cannot say Hallmark is entitled to the defense as a matter of law." *Id.*[6]

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[6] We also briefly addressed the transformative use test in a footnote in *Hoffman v. Capital Cities/ABC, Inc.,* 255 F.3d 1180 (9th Cir. 2001). We indicated that if we had considered the test, we would have concluded that an image of Dustin Hoffman from

With these cases in mind as guidance, we conclude that EA's use of Keller's likeness does not contain significant transformative elements such that EA is entitled to the defense as a matter of law. The facts of *No Doubt* are very similar to those here. EA is alleged to have replicated Keller's physical characteristics in *NCAA Football*, just as the members of No Doubt are realistically portrayed in *Band Hero*. Here, as in *Band Hero*, users manipulate the characters in the performance of the same activity for which they are known in real life—playing football in this case, and performing in a rock band in *Band Hero*. The context in which the activity occurs is also similarly realistic—real venues in *Band Hero* and realistic depictions of actual football stadiums in *NCAA Football*. As the district court found, Keller is represented as "what he was: the starting quarterback for Arizona State" and Nebraska, and "the game's setting is identical to where the public found [Keller] during his collegiate career: on the football field." *Keller v. Elec. Arts, Inc.*, No. C 09-1967 CW, 2010 WL 530108, at *5 (N.D. Cal. Feb. 8, 2010).

EA argues that the district court erred in focusing primarily on Keller's likeness and ignoring the transformative elements of the game as a whole. Judge Thomas, our dissenting colleague, suggests the same. *See* Dissent at 1285. We are unable to say that there was any error, particularly in light of *No Doubt*, which reasoned much the same as the district court in this

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"Tootsie" that had been altered to make it appear like he was wearing fashions from a decade later "contained 'significant transformative elements.'" *Id.* at 1184 n.2; 1182-83. "Hoffman's body was eliminated and a new, differently clothed body was substituted in its place. In fact, the entire theory of Hoffman's case rests on his allegation that the photograph is not a 'true' or 'literal' depiction of him, but a false portrayal." *Id.* at 1184 n.2.

case: "that the avatars appear in the context of a videogame that contains many other creative elements[] does not transform the avatars into anything other than exact depictions of No Doubt's members doing exactly what they do as celebrities." *No Doubt*, 122 Cal.Rptr.3d at 411.[7] EA suggests that the fact that *NCAA Football* users can alter the characteristics of the avatars in the game is significant. Again, our dissenting colleague agrees. *See* Dissent at 1286-87. In *No Doubt*, the California Court of Appeal noted that *Band Hero* "d[id] not permit players to alter the No Doubt avatars in any respect." *Id.* at 410. The court went on to say that the No Doubt avatars "remain at all times immutable images of the real celebrity musicians, in stark contrast to the 'fanciful, creative characters' in *Winter* and *Kirby*." *Id.* The court explained further:

> [I]t is the differences between *Kirby* and the instant case ... which are determinative. In *Kirby*, the pop singer was portrayed as an entirely new character—the space-age news reporter Ulala. In *Band Hero*, by contrast, no

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[7] Judge Thomas argues that the "sheer number of virtual actors," the absence of "any evidence as to the personal marketing power of Sam Keller," and the relative anonymity of each individual player in *NCAA Football* as compared to the public figures in other California right-of publicity cases all mitigate in favor of finding that the EA's First Amendment rights outweigh Keller's right of publicity. *See* Dissent at 1286-88. These facts are not irrelevant to the analysis—they all can be considered in the framework of the five considerations from *Comedy III* laid out above—but the fact is that EA elected to use avatars that mimic real college football players for a reason. If EA did not think there was value in having an avatar designed to mimic each individual player, it would not go to the lengths it does to achieve realism in this regard. Having chosen to use the players' likenesses, EA cannot now hide behind the numerosity of its potential offenses or the alleged unimportance of any one individual player.

> matter what else occurs in the game during the depiction of the No Doubt avatars, the avatars perform rock songs, the same activity by which the band achieved and maintains its fame. Moreover, the avatars perform those songs as literal recreations of the band members. That the avatars can be manipulated to perform at fanciful venues including outer space or to sing songs the real band would object to singing, or that the avatars appear in the context of a videogame that contains many other creative elements, does not transform the avatars into anything other than exact depictions of No Doubt's members doing exactly what they do as celebrities.

Id. at 410-11. Judge Thomas says that "[t]he Court of Appeal cited character immutability as a chief factor distinguishing [*No Doubt*] from *Winter* and *Kirby*." Dissent at 1287. Though No Doubt certainly mentioned the immutability of the avatars, we do not read the California Court of Appeal's decision as turning on the inability of users to alter the avatars. The key contrast with *Winter* and *Kirby* was that in those games the public figures were transformed into "fanciful, creative characters" or "portrayed as ... entirely new character[s]." *No Doubt*, 122 Cal.Rptr.3d at 410. On this front, our case is clearly aligned with *No Doubt*, not with *Winter* and *Kirby*. We believe *No Doubt* offers a

persuasive precedent that cannot be materially distinguished from Keller's case.[8,9]

The Third Circuit came to the same conclusion in *Hart v. Electronic Arts, Inc.*, 717 F.3d 141 (3d Cir. 2013). In *Hart*, EA faced a materially identical challenge under New Jersey right-of-publicity law, brought by former Rutgers quarterback Ryan Hart. *See id.* at 163 n.28 ("*Keller* is simply [*Hart*] incarnated in California."). Though the Third Circuit was tasked with interpreting New Jersey law, the court looked to the trans-

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[8] EA further argues that *No Doubt* is distinguishable because the video game company in that case entered into a license agreement which it allegedly breached. However, the California Court of Appeal did not rely on breach of contract in its analysis of whether the game was transformative. 122 Cal.Rptr.3d at 412 n.7. Keller asserts here that EA contracted away its First Amendment rights in a licensing agreement with the NCAA that purportedly prohibited the use of athlete likenesses. However, in light of our conclusion that EA is not entitled to a First Amendment defense as a matter of law, we need not reach this issue and leave it for the district court to address in the first instance on remand should the finder of fact determine in post-SLAPP proceedings that EA's use is transformative.

[9] In dissent, Judge Thomas suggests that this case is distinguishable from other right-to-publicity cases because "an individual college athlete's right of publicity is extraordinarily circumscribed and, in practical reality, nonexistent" because "NCAA rules prohibit athletes from benefitting economically from any success on the field." Dissent at 1289. Judge Thomas commendably addresses the fairness of this structure, *see* Dissent at 1289 n.5, but setting fairness aside, the fact is that college athletes are not indefinitely bound by NCAA rules. Once an athlete graduates from college, for instance, the athlete can capitalize on his success on the field during college in any number of ways. EA's use of a college athlete's likeness interferes with the athlete's right to capitalize on his athletic success once he is beyond the dominion of NCAA rule.

formative use test developed in California. *See id.* at 158 n.23 (noting that the right-of-publicity laws are "strikingly similar ... and protect similar interests" in New Jersey and California, and that "consequently [there is] no issue in applying balancing tests developed in California to New Jersey"); *see also id.* at 165 (holding that "the Transformative Use Test is the proper analytical framework to apply to cases such as the one at bar"). Applying the test, the court held that "the *NCAA Football* ... games at issue ... do not sufficiently transform [Hart]'s identity to escape the right of publicity claim," reversing the district court's grant of summary judgment to EA. *Id.* at 170.

As we have, the Third Circuit considered the potentially transformative nature of the game as a whole, *id.* at 166, 169, and the user's ability to alter avatar characteristics, *id.* at 166-68. Asserting that "the lack of transformative context is even more pronounced here than in *No Doubt*," *id.* at 166, and that "the ability to modify the avatar counts for little where the appeal of the game lies in users' ability to play as, or alongside[,] their preferred players or team," *id.* at 168 (internal quotation marks omitted), the Third Circuit agreed with us that these changes do not render the *NCAA Football* games sufficiently transformative to defeat a right-of-publicity claim.

Judge Ambro dissented in *Hart*, concluding that "the creative components of *NCAA Football* contain sufficient expressive transformation to merit First Amendment protection." *Id.* at 175 (Ambro, J., dissenting). But in critiquing the majority opinion, Judge Ambro disregarded *No Doubt* and *Kirby* because "they were not decided by the architect of the Transformative Use Test, the Supreme Court of California." *Id.* at 172 n.4. He thus "d[id] not attempt to explain or distin-

guish the[se cases'] holdings except to note that [he] believe[s] *No Doubt*, which focused on individual depictions rather than the work in its entirety, was wrongly decided in light of the prior precedent in *Comedy III* and *Winter*." *Id.* We recognize that we are bound only by the decisions of a state's highest court and not by decisions of the state's intermediate appellate court when considering statelaw issues sitting in diversity jurisdiction. *See In re Kirkland*, 915 F.2d 1236, 1238-39 (9th Cir. 1990). Nonetheless, where there is no binding precedent from the state's highest court, we "must predict how the highest state court would decide the issue using *intermediate appellate court decisions*, decisions from other jurisdictions, statutes, treatises, and restatements as guidance." *Id.* at 1239 (emphasis added). As stated above, we believe *No Doubt* in particular provides persuasive guidance. We do not believe *No Doubt* to be inconsistent with the California Supreme Court's relevant decisions, and we will not disregard a well-reasoned decision from a state's intermediate appellate court in this context. Like the majority in *Hart*, we rely substantially on *No Doubt*, and believe we are correct to do so.

Given that *NCAA Football* realistically portrays college football players in the context of college football games, the district court was correct in concluding that EA cannot prevail as a matter of law based on the transformative use defense at the anti-SLAPP stage. *Cf. Hilton*, 599 F.3d at 910-11.[10]

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[10] Judge Thomas asserts that "[t]he logical consequence of the majority view is that all realistic depictions of actual persons, no matter how incidental, are protected by a state law right of publicity regardless of the creative context," "jeopardiz[ing] the creative use of historic figures in motion pictures, books, and sound recordings." Dissent at 1290. We reject the notion that our holding has

B

EA urges us to adopt for right-of-publicity claims the broader First Amendment defense that we have previously adopted in the context of false endorsement claims under the Lanham Act: the *Rogers* test.[11] *See Brown v. Elec. Arts*, No. 09-56675, slip op. at 5-6 (applying the *Rogers* test to a Lanham Act claim brought by former NFL player Jim Brown relating to the use of his likeness in EA's *Madden NFL* video games).

Rogers v. Grimaldi is a landmark Second Circuit case balancing First Amendment rights against claims under the Lanham Act. 875 F.2d 994 (2d Cir. 1989). The case involved a suit brought by the famous performer Ginger Rogers against the producers and distributors of *Ginger and Fred*, a movie about two fictional Italian cabaret performers who imitated Rogers and her frequent performing partner Fred Astaire. *Id.* at 996-97. Rogers alleged both a violation of the Lanham Act for creating the false impression that she en-

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such broad consequences. As discussed above, one of the factors identified in *Comedy III* "requires an examination of whether a likely purchaser's primary motivation is to buy a reproduction of the celebrity, or to buy the expressive work of that artist." McCarthy, *supra*, § 8:72; *see Comedy III*, 21 P.3d at 809. Certainly this leaves room for distinguishing between this case—where we have emphasized EA's primary emphasis on reproducing reality—and cases involving other kinds of expressive works.

[11] Keller argues that EA never asked the district court to apply *Rogers* and has therefore waived the issue on appeal. Although it could have been more explicit, EA's anti-SLAPP motion did cite *Rogers* and argue that Keller had not alleged that his likeness was "wholly unrelated" to the content of the video game or a "disguised commercial advertisement," the two prongs of the *Rogers* test.

dorsed the film and infringement of her common law right of publicity. *Id.* at 997.

The *Rogers* court recognized that "[m]ovies, plays, books, and songs are all indisputably works of artistic expression and deserve protection," but that "[t]he purchaser of a book, like the purchaser of a can of peas, has a right not to be misled as to the source of the product." *Id.* "Consumers of artistic works thus have a dual interest: They have an interest in not being misled and they also have an interest in enjoying the results of the author's freedom of expression." *Id.* at 998. The *Rogers* court determined that titles of artistic or literary works were less likely to be misleading than "the names of ordinary commercial products," and thus that Lanham Act protections applied with less rigor when considering titles of artistic or literary works than when considering ordinary products. *Id.* at 999-1000. The court concluded that "in general the Act should be construed to apply to artistic works only where the public interest in avoiding consumer confusion outweighs the public interest in free expression." *Id.* at 999. The court therefore held:

> In the context of allegedly misleading titles using a celebrity's name, that balance will normally not support application of the [Lanham] Act unless the title has no artistic relevance to the underlying work whatsoever, or, if it has some artistic relevance, unless the title explicitly misleads as to the source or the content of the work.

Id.

We first endorsed the *Rogers* test for Lanham Act claims involving artistic or expressive works in *Mattel, Inc. v. MCA Records, Inc.*, 296 F.3d 894, 902 (9th Cir.

2002). We agreed that, in the context of artistic and literary titles, "[c]onsumers expect a title to communicate a message about the book or movie, but they do not expect it to identify the publisher or producer," and "adopt[ed] the *Rogers* standard as our own." *Id.* Then, in *E.S.S. Entertainment 2000, Inc. v. Rock Star Videos, Inc.*, we considered a claim by a strip club owner that video game maker Rock Star incorporated its club logo into the game's virtual depiction of East Los Angeles, violating the club's trademark right to that logo. 547 F.3d 1095, 1096-98 (9th Cir. 2008). We held that Rock Star's use of the logo and trade dress was protected by the First Amendment and that it therefore could not be held liable under the Lanham Act. *Id.* at 1099-1101. In so doing, we extended the *Rogers* test slightly, noting that "[a]lthough this test traditionally applies to uses of a trademark in the title of an artistic work, there is no principled reason why it ought not also apply to the use of a trademark in the body of the work." *Id.* at 1099.

In this case, EA argues that we should extend this test, created to evaluate Lanham Act claims, to apply to right-of-publicity claims because it is "less prone to misinterpretation" and "more protective of free expression" than the transformative use defense. Although we acknowledge that there is some overlap between the transformative use test formulated by the California Supreme Court and the *Rogers* test, we disagree that the *Rogers* test should be imported wholesale for right-of-publicity claims. Our conclusion on this point is consistent with the Third Circuit's rejection of EA's identical argument in *Hart*. *See Hart*, 717 F.3d at 154-58. As the history and development of the *Rogers* test makes clear, it was designed to protect consumers from the risk of consumer confusion—the hallmark element of a Lanham Act claim. *See Cairns v. Franklin*

Mint Co., 292 F.3d 1139, 1149 (9th Cir. 2002). The right of publicity, on the other hand, does not primarily seek to prevent consumer confusion. *See Hart*, 717 F.3d at 158 ("[T]he right of publicity does not implicate the potential for consumer confusion ... ."). Rather, it primarily "protects a form of intellectual property [in one's person] that society deems to have some social utility." *Comedy III*, 21 P.3d at 804. As the California Supreme Court has explained:

> Often considerable money, time and energy are needed to develop one's prominence in a particular field. Years of labor may be required before one's skill, reputation, notoriety or virtues are sufficiently developed to permit an economic return through some medium of commercial promotion. For some, the investment may eventually create considerable commercial value in one's identity.

Id. at 804-05 (internal quotation marks and citations omitted).

The right of publicity protects the *celebrity*, not the *consumer*. Keller's publicity claim is not founded on an allegation that consumers are being illegally misled into believing that he is endorsing EA or its products. Indeed, he would be hard-pressed to support such an allegation absent evidence that EA explicitly misled consumers into holding such a belief. *See Brown v. Elec. Arts*, No. 09-56675, slip op. at 23 (holding under the *Rogers* test that, since "Brown's likeness is artistically relevant to the [*Madden NFL*] games and there are no alleged facts to support the claim that EA explicitly misled consumers as to Brown's involvement with the games," "the public interest in free expression outweighs the public interest in avoiding consumer confu-

sion"). Instead, Keller's claim is that EA has appropriated, without permission and without providing compensation, his talent and years of hard work on the football field. The reasoning of the *Rogers* and *Mattel* courts—that artistic and literary works should be protected unless they explicitly mislead consumers—is simply not responsive to Keller's asserted interests here. *Cf. Hart*, 717 F.3d at 157 ("Effectively, [EA] argues that [Hart] should be unable to assert a claim for appropriating his likeness as a football player precisely because his likeness was used for a game about football. Adopting this line of reasoning threatens to turn the right of publicity on its head.").

We recognize that *Rogers* also dealt with a right-of-publicity claim—one under Oregon law—and applied a modified version of its Lanham Act test in order to adapt to that particular context:

> In light of the Oregon Court's concern for the protection of free expression, ... the right of publicity [would not] bar the use of a celebrity's name in a movie title unless the title was "wholly unrelated" to the movie or was "simply a disguised commercial advertisement for the sale of goods or services."

875 F.2d at 1004. However, the *Rogers* court was faced with a situation in which the "Oregon Courts ... [had] not determined the scope of the common law right of publicity in that state." *Id.* at 1002. In the absence of clear state-law precedent, the *Rogers* court was "obliged to engage in the uncertain task of predicting what the New York courts would predict the Oregon courts would rule as to the contours of a right of publicity under Oregon law." *Id.* In light of *Comedy III* and its progeny, we are faced with no such uncertain task.

Lastly, we note that the only circuit court to import the *Rogers* test into the publicity arena, the Sixth Circuit, has done so inconsistently. In *Parks v. LaFace Records*, the Sixth Circuit indicated that the *Rogers* test was appropriate for right-of-publicity claims, noting that the Restatement (Third) of Unfair Competition had endorsed use of the test in that context. 329 F.3d 437, 461 (6th Cir. 2003) (citing *Restatement (Third) of Unfair Competition* § 47 cmt. c). Subsequently, in *ETW Corp. v. Jireh Publishing, Inc.*, the court acknowledged the *Parks* decision but did not apply the *Rogers* test to the Ohio right-of-publicity claim in question. 332 F.3d at 915, 936 & n.17 (6th Cir. 2003). Instead, the court applied a balancing test from comment d in the *Restatement* (analyzing "the substantiality and market effect of the use of the celebrity's image ... in light of the informational and creative content"), as well as the transformative use test from *Comedy III*. *Id.* at 937-38; *see Hart*, 717 F.3d at 157 ("We find *Parks* to be less than persuasive [as to the applicability of the *Rogers* test to right-of-publicity cases] given that just over a month later another panel of the Sixth Circuit decided [*ETW*], a right of publicity case where the Circuit applied the Transformative Use Test."). Similarly, the Tenth Circuit in *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 95 F.3d 959 (10th Cir. 1996), and the Eighth Circuit in *C.B.C. Distribution and Marketing, Inc. v. Major League Baseball Advanced Media, L.P.*, 505 F.3d 818 (8th Cir. 2007), rejected the *Rogers* test in favor of a flexible case-by-case approach that takes into account the celebrity's interest in retaining his or her publicity and the public's interest in free expression. Therefore, we decline EA's invitation to extend the *Rogers* test to right-of-publicity claims.

C

California has developed two additional defenses aimed at protecting the reporting of factual information under state law. One of these defenses only applies to common law right-of-publicity claims while the other only applies to statutory right-of-publicity claims. *Montana v. San Jose Mercury News, Inc.*, 40 Cal. Rptr. 2d 639, 640 (Ct. App. 1995). Liability will not lie for common law right-of-publicity claims for the "publication of matters in the public interest." *Id.* at 640-41. Similarly, liability will not lie for statutory right-of-publicity claims for the "use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign." Cal. Civ. Code § 3344(d). Although these defenses are based on First Amendment concerns, *Gill v. Hearst Publ'g Co.*, 253 P.2d 441, 443-44 (Cal. 1953), they are not coextensive with the Federal Constitution, *New Kids on the Block v. News Am. Publ'g, Inc.*, 971 F.2d 302, 310 n.10 (9th Cir. 1992), and their application is thus a matter of state law.

EA argues that these defenses give it the right to "incorporate athletes' names, statistics, and other biographical information" into its expressive works, as the defenses were "designed to create 'extra breathing space' for the use of a person's name in connection with matters of public interest." Keller responds that the right of publicity yields to free use of a public figure's likeness only to the extent reasonably required to report information to the public or publish factual data, and that the defenses apply only to broadcasts or accounts of public affairs, not to EA's *NCAA Football* games, which do not contain or constitute such reporting about Keller.

California courts have generally analyzed the common law defense and the statutory defense separately, but it is clear that both defenses protect only the act of publishing or reporting. By its terms, § 3344(d) is limited to a "broadcast or account," and we have confirmed that the common law defense is about a publication or reporting of newsworthy items. *Hilton*, 599 F.3d at 912. However, most of the discussion by California courts pertains to whether the subject matter of the communication is of "public interest" or related to "news" or "public affairs," leaving little guidance as to when the communication constitutes a publication or reporting.

For instance, in *Dora v. Frontline Video, Inc.*, a well-known surfer sued the producer of a documentary on surfing entitled "The Legends of Malibu," claiming misappropriation of his name and likeness. 18 Cal. Rptr. 2d 790, 791 (Ct. App. 1993). The court held that the documentary was protected because it was "a fair comment on real life events which have caught the popular imagination." *Id.* at 792 (internal quotation marks omitted). The court explained that surfing "has created a lifestyle that influences speech, behavior, dress, and entertainment," has had "an economic impact," and "has also had a significant influence on the popular culture," such that "[i]t would be difficult to conclude that a surfing documentary does not fall within the category of public affairs." *Id.* at 794-95. Similarly, in *Gionfriddo v. Major League Baseball*, retired professional baseball players alleged that Major League Baseball violated their right of publicity by displaying "factual data concerning the players, their performance statistics, and verbal descriptions and video depictions of their play" in game programs and on its website. 114 Cal. Rptr. 2d 307, 314 (Ct. App. 2001).

The court reasoned that "[t]he recitation and discussion of factual data concerning the athletic performance of these plaintiffs command a substantial public interest, and, therefore, is a form of expression due substantial constitutional protection." *Id.* at 315. And in *Montana v. San Jose Mercury News, Inc.*, former NFL quarterback Joe Montana brought a right-of-publicity action against a newspaper for selling posters containing previously published pages from the newspaper depicting the many Super Bowl victories by Montana and the San Francisco 49ers. *Montana*, 40 Cal. Rptr. 2d at 639-40. The court found that "[p]osters portraying the 49'ers' [sic] victories are ... a form of public interest presentation to which protection must be extended." *Id.* at 641 (internal quotation marks omitted).

We think that, unlike in *Gionfriddo*, *Montana*, and *Dora*, EA is not publishing or reporting factual data. EA's video game is a means by which users can play their own virtual football games, not a means for obtaining information about real-world football games. Although EA has incorporated certain actual player information into the game (height, weight, etc.), its case is considerably weakened by its decision not to include the athletes' names along with their likenesses and statistical data. EA can hardly be considered to be "reporting" on Keller's career at Arizona State and Nebraska when it is not even using Keller's name in connection with his avatar in the game. Put simply, EA's interactive game is not a publication of facts about college football; it is a game, not a reference source. These state law defenses, therefore, do not apply.[12]

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[12] We similarly reject Judge Thomas's argument that Keller's right-of-publicity claim should give way to the First Amendment in light of the fact that "the essence of *NCAA Football* is founded

III

Under California's transformative use defense, EA's use of the likenesses of college athletes like Samuel Keller in its video games is not, as a matter of law, protected by the First Amendment. We reject EA's suggestion to import the *Rogers* test into the right-of-publicity arena, and conclude that state-law defenses for the reporting of information do not protect EA's use.

AFFIRMED.

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on publicly available data." Dissent at 1288. Judge Thomas compares *NCAA Football* to fantasy baseball products that the Eighth Circuit deemed protected by the First Amendment in the face of a right-of-publicity claim in *C.B.C. Distribution and Marketing*, 505 F.3d at 823-24. Dissent at 1288. But there is a big difference between a video game like *NCAA Football* and fantasy baseball products like those at issue in *C.B.C.* Those products merely "incorporate[d] the names along with performance and biographical data of actual major league baseball players." *Id.* at 820. *NCAA Football*, on the other hand, uses virtual likenesses of actual college football players. It is seemingly true that each likeness is generated largely from publicly available data—though, as Judge Thomas acknowledges, EA solicits certain information directly from schools—but finding this fact dispositive would neuter the right of publicity in our digital world. Computer programmers with the appropriate expertise can create a realistic likeness of any celebrity using only publicly available data. If EA creates a virtual likeness of Tom Brady using only publicly available data—public images and videos of Brady—does EA have free reign to use that likeness in commercials without violating Brady's right of publicity? We think not, and thus must reject Judge Thomas's point about the public availability of much of the data used given that EA produced and used actual likenesses of the athletes involved.

THOMAS, Circuit Judge, dissenting:

Because the creative and transformative elements of Electronic Arts' *NCAA Football* video game series predominate over the commercial use of the athletes' likenesses, the First Amendment protects EA from liability. Therefore, I respectfully dissent.

I

As expressive works, video games are entitled to First Amendment protection. *Brown v. Entm't Merchs. Ass'n*, 131 S. Ct. 2729, 2733 (2011). The First Amendment affords additional protection to *NCAA Football* because it involves a subject of substantial public interest: collegiate football. *Moore v. Univ. of Notre Dame*, 968 F. Supp. 1330, 1337 (N.D. Ind. 1997). Because football is a matter of public interest, the use of the images of athletes is entitled to constitutional protection, even if profits are involved. *Montana v. San Jose Mercury News, Inc.*, 40 Cal. Rptr. 2d 639, 643 n.2 (Cal. Ct. App. 1995); *see also* Cal. Civ. Code § 3344(d) (exempting from liability the "use of a name ... or likeness in connection with any ... public affairs, or sports broadcast or account").

Where it is recognized, the tort of appropriation is a creature of common law or statute, depending on the jurisdiction. However, the right to compensation for the misappropriation for commercial use of one's image or celebrity is far from absolute. In every jurisdiction, any right of publicity must be balanced against the constitutional protection afforded by the First Amendment. Courts have employed a variety of methods in balancing the rights. *See, e.g., Doe v. TCI Cablevision*, 110 S.W.3d 363, 374 (Mo. 2003) (en banc). The California Supreme Court applies a "transformative use" test

it formulated in *Comedy III Productions, Inc. v. Gary Saderup, Inc.*, 21 P.3d 797 (Cal. 2001).[1]

As the majority properly notes, the transformative use defense is "a balancing test between the First Amendment and the right of publicity based on whether the work in question adds significant creative elements so as to be transformed into something more than a mere celebrity likeness or imitation." *Comedy III*, 21 P.3d at 799. The rationale for the test, as the majority notes, is that "when a work contains significant transformative elements, it is not only especially worthy of First Amendment protection, but it is also less likely to interfere with the economic interest protected by the right of publicity." *Id.* at 808.

The five considerations articulated in *Comedy III*, and cited by the majority, are whether: (1) the celebrity likeness is one of the raw materials from which an original work is synthesized; (2) the work is primarily the defendant's own expression if the expression is something other than the likeness of the celebrity; (3) the literal and imitative or creative elements predominate in the work; (4) the marketability and economic value of the challenged work derives primarily from the fame of the celebrity depicted; and (5) an artist's skill and talent

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[1] I agree with the majority that the test articulated in *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989), should not be employed in this context. The *Rogers* test is appropriately applied in Lanham Act cases, where the primary concern is with the danger of consumer confusion when a work is depicted as something it is not. 15 U.S.C. § 1125(a)(1). However, the right of publicity is an economic right to use the value of one own's celebrity. *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 576-77 (1977). Therefore, a more nuanced balancing is required. In our context, I believe the transformative use test—if correctly applied to the work as a whole—provides the proper analytical framework.

has been manifestly subordinated to the overall goal of creating a conventional portrait of a celebrity so as to commercially exploit the celebrity's fame. *Id.* at 809-10.

Although these considerations are often distilled as analytical factors, Justice Mosk was careful in *Comedy III* not to label them as such. Indeed, the focus of *Comedy III* is a more holistic examination of whether the transformative and creative elements of a particular work predominate over commercially based literal or imitative depictions. The distinction is critical, because excessive deconstruction of *Comedy III* can lead to misapplication of the test. And it is at this juncture that I must respectfully part ways with my colleagues in the majority.

The majority confines its inquiry to how a single athlete's likeness is represented in the video game, rather than examining the transformative and creative elements in the video game as a whole. In my view, this approach contradicts the holistic analysis required by the transformative use test. *See Hart v. Elec. Arts, Inc.*, 717 F.3d 141, 170-76 (3d Cir. 2013) (Ambro, J., dissenting).[2] The salient question is whether the entire work is transformative, and whether the transformative elements predominate, rather than whether an individual persona or image has been altered.

When EA's *NCAA Football* video game series is examined carefully, and put in proper context, I conclude that the creative and transformative elements of the games predominate over the commercial use of the likenesses of the athletes within the games.

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[2] I agree fully with Judge Ambro's excellent dissent in *Hart*, which describes the analytic flaws of applying a transformative use test outside the context of the work as a whole.

A

The first step in conducting a balancing is to examine the creative work at issue. At its essence, EA's *NCAA Football* is a work of interactive historical fiction. Although the game changes from year to year, its most popular features predominately involve role-playing by the gamer. For example, a player can create a virtual image of himself as a potential college football player. The virtual player decides which position he would like to play, then participates in a series of "try-outs" or competes in an entire high school season to gauge his skill. Based on his performance, the virtual player is ranked and available to play at select colleges. The player chooses among the colleges, then assumes the role of a college football player. He also selects a major, the amount of time he wishes to spend on social activities, and practice—all of which may affect the virtual player's performance. He then plays his position on the college team. In some versions of the game, in another mode, the virtual player can engage in a competition for the Heisman Trophy. In another popular mode, the gamer becomes a virtual coach. The coach scouts, recruits, and develops entirely fictional players for his team. The coach can then promote the team's evolution over decades of seasons.

The college teams that are supplied in the game do replicate the actual college teams for that season, including virtual athletes who bear the statistical and physical dimensions of the actual college athletes. But, unlike their professional football counterparts in the *Madden NFL* series, the NCAA football players in these games are not identified.

The gamers can also change their abilities, appearances, and physical characteristics at will. Keller's im-

pressive physical likeness can be morphed by the gamer into an overweight and slow virtual athlete, with anemic passing ability. And the gamer can create new virtual players out of whole cloth. Players can change teams. The gamer could pit Sam Keller against himself, or a stronger or weaker version of himself, on a different team. Or the gamer could play the game endlessly without ever encountering Keller's avatar. In the simulated games, the gamer controls not only the conduct of the game, but the weather, crowd noise, mascots, and other environmental factors. Of course, one may play the game leaving the players unaltered, pitting team against team. But, in this context as well, the work is one of historic fiction. The gamer controls the teams, players, and games.

Applying the *Comedy III* considerations to *NCAA Football* in proper holistic context, the considerations favor First Amendment protection. The athletic likenesses are but one of the raw materials from which the broader game is constructed. The work, considered as a whole, is primarily one of EA's own expression. The creative and transformative elements predominate over the commercial use of likenesses. The marketability and economic value of the game comes from the creative elements within, not from the pure commercial exploitation of a celebrity image. The game is not a conventional portrait of a celebrity, but a work consisting of many creative and transformative elements.

The video game at issue is much akin to the creations the California Supreme Court found protected in *Winter v. DC Comics*, 69 P.3d 473, 476 (Cal. 2003), where the two fabled guitarists Johnny and Edgar Winter were easily identifiable, but depicted as chimeras. It is also consistent with the California Court of Appeal's decision in *Kirby v. Sega of America, Inc.*, 50 Cal. Rptr. 3d 607, 609-10 (Cal. Ct. App. 2006), where a

character easily identified as singer Kierin Kirby, more popularly known as Lady Miss Kier, was transformed into a "'fanciful, creative character' who exists in the context of a unique and expressive video game." *Id.* at 618. So, too, are the virtual players who populate the world of the *NCAA Football* series.

No Doubt v. Activision Publishing, Inc., 122 Cal. Rptr. 3d 397 (Cal. Ct. App. 2011), is not to the contrary. The literal representations in *No Doubt* were not, and could not be, transformed in any way. Indeed, in *No Doubt*, the bandmembers posed for motion-capture photography to allow reproduction of their likenesses, *id.* at 402, and the Court of Appeal underscored the fact that the video game did not "permit players to alter the No Doubt avatars in any respect" and the avatars remained "at all times immutable images of the real celebrity musicians," *id.* at 410. The Court of Appeal cited character immutability as a chief factor distinguishing that case from *Winter* and *Kirby*. *Id.* Unlike the avatars in *No Doubt*, the virtual players in *NCAA Football* are completely mutable and changeable at the whim of the gamer. The majority places great reliance on *No Doubt* as support for its proposition that the initial placement of realistic avatars in the game overcomes the First Amendment's protection, but the Court of Appeal in *No Doubt* rejected such a cramped construction, noting that "even literal reproductions of celebrities may be 'transformed' into expressive works based on the context into which the celebrity image is placed." *Id.* at 410 (citing *Comedy III*, 21 P.3d at 797).[3]

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[3] Of course, to the extent that the Court of Appeal's opinion in *No Doubt* may be read to be in tension with the transformative use test as articulated by the California Supreme Court in *Comedy III* and *Winter*, it must yield.

Unlike the majority, I would not punish EA for the realism of its games and for the skill of the artists who created realistic settings for the football games. Majority op. at 1279 n.10. That the lifelike roar of the crowd and the crunch of pads contribute to the gamer's experience demonstrates how little of *NCAA Football* is driven by the particular likeness of Sam Keller, or any of the other plaintiffs, rather than by the game's artistic elements.

In short, considering the creative elements alone in this case satisfies the transformative use test in favor of First Amendment protection.

B

Although one could leave the analysis with an examination of the transformative and creative aspects of the game, a true balancing requires an inquiry as to the other side of the scales: the publicity right at stake. Here, as well, the *NCAA Football* video game series can be distinguished from the traditional right of publicity cases, both from a quantitative and a qualitative perspective.

As a quantitative matter, *NCAA Football* is different from other right of publicity cases in the sheer number of virtual actors involved. Most right of publicity cases involve either one celebrity, or a finite and defined group of celebrities. *Comedy III* involved literal likenesses of the Three Stooges. *Hilton v. Hallmark Cards*, 599 F.3d 894, 909-12 (9th Cir. 2009), involved the literal likeness of Paris Hilton. *Winter* involved the images of the rock star brother duo. *Kirby* involved the likeness of one singer. *No Doubt* focused on the likenesses of the members of a specific legendary band.

In contrast, *NCAA Football* includes not just Sam Keller, but thousands of virtual actors. This consideration is of particular significance when we examine, as instructed by *Comedy III*, whether the source of the product marketability comes from creative elements or from pure exploitation of a celebrity image. 21 P.3d at 810. There is not, at this stage of the litigation, any evidence as to the personal marketing power of Sam Keller, as distinguished from the appeal of the creative aspects of the product. Regardless, the sheer number of athletes involved inevitably diminish the significance of the publicity right at issue. *Comedy III* involved literal depictions of the Three Stooges on lithographs and T-shirts. *Winter* involved characters depicted in a comic strip. *Kirby* and *No Doubt* involved pivotal characters in a video game. The commercial image of the celebrities in each case was central to the production, and its contact with the consumer was immediate and unavoidable. In contrast, one could play *NCAA Football* thousands of times without ever encountering a particular avatar. In context of the collective, an individual's publicity right is relatively insignificant. Put another way, if an anonymous virtual player is tackled in an imaginary video game and no one notices, is there any right of publicity infringed at all?

The sheer quantity of the virtual players in the game underscores the inappropriateness of analyzing the right of publicity through the lens of one likeness only. Only when the creative work is considered in complete context can a proper analysis be conducted.

As a qualitative matter, the essence of *NCAA Football* is founded on publicly available data, which is not protected by any individual publicity rights. It is true that EA solicits and receives information directly from colleges and universities. But the information is

hardly proprietary. Personal vital statistics for players are found in college programs and media guides. Likewise, playing statistics are easily available. In this respect, the information used by EA is indistinguishable from the information used in fantasy athletic leagues, for which the First Amendment provides protection, *C.B.C. Distribution & Mktg., Inc. v. Major League Baseball Advanced Media, L.P.*, 505 F.3d 818, 823-24 (8th Cir. 2007), or much beloved statistical board games, such as Strat-O-Matic. An athlete's right of publicity simply does not encompass publicly available statistical data. *See, e.g.*, *IMS Health Inc. v. Sorrell*, 630 F.3d 263, 271-72 (2d Cir. 2010) ("The First Amendment protects '[e]ven dry information, devoid of advocacy, political relevance, or artistic expression.'" (quoting *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 446 (2d Cir. 2001)) (alteration in original)).[4]

Further, the structure of the game is not founded on exploitation of an individual's publicity rights. The players are unidentified and anonymous. It is true that third-party software is available to quickly identify the players, but that is not part of the EA package. And the fact that the players can be identified by the knowledgeable user by their position, team, and statistics is somewhat beside the point. The issue is whether the marketability of the product is driven by an individual celebrity, or by the game itself. *Comedy III*, 21 P.3d at 810. Player anonymity, while certainly not a complete

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[4] Contrary to the majority's suggestion, I do not claim that any use of a likeness founded on publicly available information is transformative. Majority op. 1283-84 n.12. The majority's analogy to a commercial featuring Tom Brady is inapposite for at least two reasons: (1) a commercial is not interactive in the same way that *NCAA Football* is, and (2) Brady's marketing power is well established, while that of the plaintiffs is not.

defense, bears on the question of how we balance the right of publicity against the First Amendment. This feature of the game places it in stark contrast with *No Doubt*, where the whole point of the enterprise was the successful commercial exploitation of the specifically identified, world-famous musicians.

Finally, as a qualitative matter, the publicity rights of college athletes are remarkably restricted. This consideration is critical because the "right to exploit commercially one's celebrity is primarily an economic right." *Gionfriddo v. Major League Baseball*, 114 Cal. Rptr. 2d 307, 318 (Cal. Ct. App. 2001). NCAA rules prohibit athletes from benefitting economically from any success on the field. NCAA Bylaw 12.5 specifically prohibits commercial licensing of an NCAA athlete's name or picture. NCAA, *2012–13 NCAA Division I Manual* § 12.5.2.1 (2012). Before being allowed to compete each year, all Division I NCAA athletes must sign a contract stating that they understand the prohibition on licensing and affirming that they have not violated any amateurism rules. In short, even if an athlete wished to license his image to EA, the athlete could not do so without destroying amateur status. Thus, an individual college athlete's right of publicity is extraordinarily circumscribed and, in practical reality, nonexistent.[5]

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[5] The issue of whether this structure is fair to the student athlete is beyond the scope of this appeal, but forms a significant backdrop to the discussion. The NCAA received revenues of $871.6 million in fiscal year 2011-12, with 81% of the money coming from television and marketing fees. However, few college athletes will ever receive any professional compensation. The NCAA reports that in 2011, there were 67,887 college football players. Of those, 15,086 were senior players, and only 255 athletes were drafted for a professional team. Thus, only 1.7% of seniors re-

In sum, even apart from consideration of transformative elements, examination of the right of publicity in question also resolves the balance in favor of the First Amendment. The quantity of players involved dilutes the commercial impact of any particular player and the scope of the publicity right is significantly reduced by the fact that: (1) a player cannot own the individual, publicly available statistics on which the game is based; (2) the players are not identified in the game; and (3) NCAA college athletes do not have the right to license their names and likenesses, even if they chose to do so.[6]

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ceived any subsequent professional economic compensation for their athletic endeavors. NCAA, *Estimated Probability of Competing in Athletics Beyond the High School Interscholastic Level* (2011), *available at* http://www.ncaa.org/wps/wcm/connect/public/ncaa/pdfs/2011/2011+probability+of+going+pro.

And participation in college football can come at a terrible cost. The NCAA reports that, during a recent five-year period, college football players suffered 41,000 injuries, including 23 nonfatal catastrophic injuries and 11 fatalties from indirect catastrophic injuries. NCAA, *Football Injuries: Data From the 2004/05 to 2008/09 Seasons, available at* http://www.ncaa.org/wps/wcm/connect/public/ncaa/health+and+safety/sports+injuries/resources/football+injuries.

[6] While acknowledging that these considerations are relevant to the *Comedy III* analysis, the majority says EA's use of realistic likenesses demonstrates that it sees "value in having an avatar designed to mimic each individual player." Majority op. at 1276 n.7. But the same is true of any right of publicity case. The defendants in *Winter* saw value in using comic book characters that resembled the Winter brothers. Andy Warhol—whose portraits were discussed in *Comedy III*—saw value in using images of celebrities such as Marilyn Monroe. In those cases, the products' marketability derives primarily from the creative elements, not from a pure commercial exploitation of a celebrity image. The same is true of *NCAA Football.*

II

Given the proper application of the transformative use test, Keller is unlikely to prevail. The balance of interests falls squarely on the side of the First Amendment. The stakes are not small. The logical consequence of the majority view is that all realistic depictions of actual persons, no matter how incidental, are protected by a state law right of publicity regardless of the creative context. This logic jeopardizes the creative use of historic figures in motion pictures, books, and sound recordings. Absent the use of actual footage, the motion picture *Forrest Gump* might as well be just a box of chocolates. Without its historical characters, *Midnight in Paris* would be reduced to a pedestrian domestic squabble. The majority's holding that creative use of realistic images and personas does not satisfy the transformative use test cannot be reconciled with the many cases affording such works First Amendment protection.[7] I respectfully disagree with this potentially dangerous and out-of-context interpretation of the transformative use test.

For these reasons, I respectfully dissent.

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[7] *See, e.g.*, *ETW Corp. v. Jireh Publ'g, Inc.*, 332 F.3d 915 (6th Cir. 2003) (affording First Amendment protection to an artist's use of photographs of Tiger Woods); J. Thomas McCarthy, *The Rights of Publicity and Privacy* § 8.65 (2013 ed.) (collecting cases); *Hart*, 717 F.3d at 173 (Ambro, J., dissenting) (describing cases).

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAMUEL MICHAEL KELLER, on behalf of himself and all others similarly situated,
Plaintiff,

v.

ELECTRONIC ARTS INC., et al.,
Defendants.

No. C 09-1967 CW
Filed February 8, 2010

ORDER ON DEFENDANTS' MOTIONS TO DISMISS (Docket Nos. 34, 47, 48) AND ELECTRONIC ARTS' ANTI-SLAPP MOTION TO STRIKE (Docket No. 35)

Defendants Electronic Arts, Inc. (EA), the National Collegiate Athletics Association (NCAA) and the Collegiate Licensing Company (CLC) move separately to dismiss Plaintiff Samuel Michael Keller's claims against them. EA also moves to strike Plaintiff's claims against it pursuant to California Civil Code section 425.16 (Docket No. 35). Plaintiff opposes the motions. As *amici curiae*, James "Jim" Brown and Herbert Anthony Adderley filed a brief in opposition to EA's motion to dismiss. The motions were heard on December 17, 2009. Having considered all of the papers submitted by the parties, the Court DENIES EA's Motion to Dismiss (Docket No. 34), GRANTS NCAA's Motion in part and DENIES it in part (Docket No. 48), DENIES

CLC's Motion (Docket No. 47) and DENIES EA's Motion to Strike (Docket No. 35).

BACKGROUND

Plaintiff is a former starting quarterback for the Arizona State University and University of Nebraska football teams. EA, a Delaware corporation with a principal place of business in California, develops interactive entertainment software. It produces, among other things, the "NCAA Football" series of video games. In the games, consumers can simulate football matches between college and university teams. Plaintiff alleges that, to make the games realistic, EA designs the virtual football players to resemble real-life college football athletes, including himself. He claims that these virtual players are nearly identical to their real-life counterparts: they share the same jersey numbers, have similar physical characteristics and come from the same home state. To enhance the accuracy of the player depictions, Plaintiff alleges, EA sends questionnaires to team equipment managers of college football teams. Although EA omits the real-life athletes' names from "NCAA Football," Plaintiff asserts that consumers may access online services to download team rosters and the athletes' names, and upload them into the games. Plaintiff claims that, in recent iterations, EA has included features that facilitate the upload of this information.

Plaintiff alleges that EA uses his likeness without his consent. He asserts that NCAA, an unincorporated association based in Indiana, and CLC, a Georgia corporation headquartered in Atlanta, facilitated this use. Plaintiff claims that EA, NCAA and CLC met at NCAA's Indiana headquarters and EA's California

headquarters to negotiate the agreements that underlie the alleged misconduct.

Plaintiff alleges other misconduct by NCAA and CLC, related to NCAA's amateurism rules. Plaintiff maintains that NCAA's approval of EA's games violates NCAA's "duty to NCAA athletes to honor its own rules prohibiting the use of student likenesses...." Compl. ¶ 15. He cites NCAA Bylaw 12.5, which prohibits the commercial licensing of the "name, picture or likeness" of athletes at NCAA-member institutions. Compl. ¶ 13. Plaintiff asserts that CLC must honor NCAA's prohibitions on the use of student likenesses.

Plaintiff charges NCAA with violations of Indiana's right of publicity statute, civil conspiracy and breach of contract. He charges CLC with civil conspiracy and unjust enrichment. Against EA, he pleads claims for violations of California's statutory and common law rights of publicity, civil conspiracy, violation of California's Unfair Competition Law and unjust enrichment. He intends to move to certify his case as a class action and seeks, among other things, damages and an injunction prohibiting the future use of his and putative class members' likenesses.

LEGAL STANDARD

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Dismissal under Rule 12(b)(6) for failure to state a claim is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007). In considering whether the complaint is sufficient to state

a claim, the court will take all material allegations as true and construe them in the light most favorable to the plaintiff. *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). However, this principle is inapplicable to legal conclusions; "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not taken as true. *Ashcroft v. Iqbal*, —— U.S. ——, 129 S. Ct. 1937, 1949–50, 173 L. Ed. 2d 868 (2009) (citing *Twombly*, 550 U.S. at 555).

DISCUSSION

I. Indiana Right of Publicity Claim

Plaintiff alleges that NCAA violated his Indiana right of publicity. He argues that Indiana law applies to NCAA because its headquarters are located in Indiana and the alleged violation occurred in Indiana. NCAA argues that Plaintiff's claim fails as a matter of law because he does not allege that it used his image or likeness. Plaintiff responds that NCAA used his likeness because it "expressly reviewed and knowingly approved each version of each NCAA-brand videogame ...." Opp'n to NCAA's Mot. to Dismiss at 4.

Under Indiana law, personalities have a property interest in, among other things, their images and likenesses. Ind. Code § 32-36-1-7. A personality is a living or deceased person whose image and likeness have commercial value. *Id.* § 32-36-1-6. Indiana Code section 32-36-1-8 provides,

> *A person may not use* an aspect of a personality's right of publicity for a commercial purpose during the personality's lifetime or for one hundred (100) years after the date of the personality's death without having obtained previous written consent from a person ....

(emphasis added).

Although the parties do not offer controlling authority on this point, the plain language of the statute favors NCAA's position. Plaintiff argues that NCAA's liability under Indiana law arises from its knowing approval of EA' s use of his likeness. This interpretation expands liability under the Indiana statute to include persons who enable right of publicity violations. However, Plaintiff does not offer any authority to show that section 32-36-1-8 encompasses this type of misconduct. The Court declines to adopt Plaintiff's interpretation.

Plaintiff makes a related argument that NCAA should be held liable under Indiana's right of publicity statute as a co-conspirator of EA, which used his likeness. He cites cases that provide that co-conspirators can be held liable as joint tortfeasors for damages caused by another co-conspirator. *See, e.g., Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th 503, 511, 28 Cal.Rptr.2d 475, 869 P.2d 454 (1994); *Boyle v. Anderson Fire Fighters Ass'n Local 1262*, 497 N.E.2d 1073, 1079 (Ind. Ct. App. 1986). However, these cases are inapposite because Plaintiff has not alleged that either EA or CLC, NCAA's alleged co-conspirators, violated Indiana's right of publicity statute.

Plaintiff's Indiana right of publicity claim against NCAA is dismissed with leave to amend to allege that NCAA used his likeness or conspired with others to violate his right of publicity under Indiana law.

II. California Right of Publicity Claims

California's right of publicity statute provides,

> Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise,

> or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person's prior consent ... shall be liable for any damages sustained by the person or persons injured as a result thereof.

Cal. Civ. Code § 3344(a). The statutory right of publicity complements the common law right of publicity, which arises from the misappropriation tort derived from the law of privacy. *See Comedy III Prods., Inc. v. Saderup,* 25 Cal.4th 387, 391, 106 Cal.Rptr.2d 126, 21 P.3d 797 (2001). To state a claim under California common law, a plaintiff must allege "'(1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury.'" *Hilton v. Hallmark Cards,* 580 F.3d 874, 889 (9th Cir. 2009) (quoting *Downing v. Abercrombie & Fitch,* 265 F.3d 994, 1001 (9th Cir. 2001)). Although the statutory and common law rights are similar, there are differences. For example, to state a claim under section 3344, a plaintiff must prove knowing use in addition to satisfying the elements of a common law claim. *Kirby v. Sega of Am., Inc.,* 144 Cal.App.4th 47, 55, 50 Cal.Rptr.3d 607 (2006).

EA does not contest the sufficiency of Plaintiff's claims. It asserts, however, that his right of publicity claims are barred by the First Amendment and California law. The Court considers and rejects each of these defenses in turn.

A. Transformative Use Defense[1]

A defendant may raise an affirmative defense that the challenged work is "protected by the First Amendment inasmuch as it contains significant transformative elements or that the value of the work does not derive primarily from the celebrity's fame." *Hilton*, 580 F.3d at 889 (quoting *Comedy III*, 25 Cal.4th at 407, 106 Cal.Rptr.2d 126, 21 P.3d 797) (internal quotation marks omitted). The defense "poses what is essentially a balancing test between the First Amendment and the right of publicity." *Hilton*, 580 F.3d at 889 (quoting *Winter v. DC Comics*, 30 Cal.4th 881, 885, 134 Cal.Rptr.2d 634, 69 P.3d 473 (2003)) (internal quotation marks omitted).

To determine whether a work is transformative, a court must inquire into

> whether the celebrity likeness is one of the "raw materials" from which an original work is synthesized, or whether the depiction or imitation of the celebrity is the very sum and substance of the work in question. We ask, in other words, whether a product containing a celebrity's likeness is so transformed that it has become primarily the defendant's own expression rather than the celebrity's likeness. And when we use the word "expression," we mean expression of something other than the likeness of the celebrity.

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[1] *Amici* invite the Court to adopt another standard to assess right of publicity claims. Because the Court finds that the transformative test is sufficient for the purposes of this motion, it does not address *amici's* arguments.

Comedy III, 25 Cal.4th at 406, 106 Cal.Rptr.2d 126, 21 P.3d 797. "An artist depicting a celebrity must contribute something more than a merely trivial variation, but create something recognizably his own, in order to qualify for legal protection." *Winter*, 30 Cal.4th at 888, 134 Cal.Rptr.2d 634, 69 P.3d 473 (quoting *Comedy III*, 25 Cal.4th at 408, 106 Cal.Rptr.2d 126, 21 P.3d 797) (internal quotation and editing marks omitted). The analysis "simply requires the court to examine and compare the allegedly expressive work with the images of the plaintiff to discern if the defendant's work contributes significantly distinctive and expressive content." *Kirby*, 144 Cal.App.4th at 61, 50 Cal.Rptr.3d 607. "If distinctions exist, the First Amendment bars claims based on appropriation of the plaintiff's identity or likeness; if not, the claims are not barred." *Id.*

Two California Supreme Court cases "bookend the spectrum" used to measure a work's transformative nature. *Hilton*, 580 F.3d at 890-91. On one end, *Comedy III* provides an example of a nontransformative work. There, the defendant's "literal, conventional depictions of The Three Stooges," drawn in charcoal and printed on tee-shirts, did not contain transformative elements that warranted protection by the First Amendment. *Comedy III*, 25 Cal.4th at 409, 106 Cal.Rptr.2d 126, 21 P.3d 797. Interpreting *Comedy III*, the Ninth Circuit stated that "it is clear that merely merchandising a celebrity's image without that person's consent ... does not amount to a transformative use." *Hilton*, 580 F.3d at 890.

Winter offers the opposite bookend. There, a comic book publisher depicted two musicians, Johnny and Edgar Winter, as half-human, half-worm cartoon characters. *Winter*, 30 Cal.4th at 890, 134 Cal.Rptr.2d 634, 69 P.3d 473. The court affirmed summary judgment in

favor of the defendant, holding that the images were sufficiently transformative. The court stated,

> Although the fictional characters Johnny and Edgar Autumn are less-than-subtle evocations of Johnny and Edgar Winter, the books do not depict plaintiffs literally. Instead, plaintiffs are merely part of the raw materials from which the comic books were synthesized.

Id.

Using *Comedy III* and *Winter* as guideposts, *Kirby* applied the transformative use analysis to a video game. There, the court held that the main character in the defendant's video game was transformed. The plaintiff was a musician and dancer, known for saying the phrase "ooh la la." *Kirby,* 144 Cal.App.4th at 50-51, 50 Cal.Rptr.3d 607. Ulala, the main character in the defendant's game, worked as a news reporter in the twenty-fifth century, "dispatched to investigate an invasion of Earth." *Id.* at 52, 50 Cal.Rptr.3d 607. Although there were similarities between the two, the court held Ulala to be "more than a mere likeness or literal depiction of Kirby." *Id.* at 59, 50 Cal.Rptr.3d 607. "Ulala contains sufficient expressive content to constitute a 'transformative work' under the test articulated by the [California] Supreme Court." *Id.* In particular, Ulala was extremely tall and wore clothing that differed from the plaintiff's and the setting for the game was unlike any in which she had appeared. *Id.*

Here, EA's depiction of Plaintiff in "NCAA Football" is not sufficiently transformative to bar his California right of publicity claims as a matter of law.[2] In

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[2] EA asks the Court to take judicial notice of the content of the video games "NCAA Football 2006" through "NCAA Football

the game, the quarterback for Arizona State University shares many of Plaintiff's characteristics. For example, the virtual player wears the same jersey number, is the same height and weight and hails from the same state. EA's depiction of Plaintiff is far from the transmogrification of the Winter brothers. EA does not depict Plaintiff in a different form; he is represented as he what he was: the starting quarterback for Arizona State University. Further, unlike in *Kirby*, the game's setting is identical to where the public found Plaintiff during his collegiate career: on the football field.

EA asserts that the video game, taken as a whole, contains transformative elements. However, the broad view EA asks the Court to take is not supported by precedent. In *Winter*, the court focused on the depic-

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2009," "NCAA March Madness 2006" through "NCAA March Madness 2008," and "NCAA Basketball 2009;" paragraphs four of the Strauser and O'Brien Declarations summarizing the content of these video games; various press releases announcing the release date of the video games; a United States Copyright Office document indicating the date of first publication for "NCAA March Madness 2007;" an August 15, 2008 order from *Kent v. Universal Studios, Inc.*, Case No. 08-2704 (C.D. Cal.); and the content of the CBSSports.com Fantasy College Football game. (Docket No. 36.) Generally, in ruling on a motion to dismiss, a court cannot consider material outside of the complaint. *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), *overruled on other grounds in Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1127 (9th Cir. 2002). However, a court may consider exhibits submitted with the complaint and those documents "whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Id.* at 453-54.

Because Plaintiff refers to the video games in his complaint, the Court GRANTS EA's request for judicial notice of them. Plaintiff does not mention the press releases or other materials proffered by EA. Therefore, the Court DENIES EA's request as to the other materials.

tions of the plaintiffs, not the content of the other portions of the comic book. The court in *Kirby* did the same: it compared Ulala with the plaintiff; its analysis did not extend beyond the game's elements unrelated to Ulala. These cases show that this Court's focus must be on the depiction of Plaintiff in "NCAA Football," not the game's other elements.

Accordingly, at this stage, EA's transformative use defense fails.

B. Public Interest Defense

"Under California law, 'no cause of action will lie for the publication of matters in the public interest, which rests on the right of the public to know and the freedom of the press to tell it.'" *Hilton*, 580 F.3d at 892 (quoting *Montana v. San Jose Mercury News, Inc.*, 34 Cal.App.4th 790, 793, 40 Cal.Rptr.2d 639 (1995)). "'Public interest attaches to people who by their accomplishments or mode of living create a bona fide attention to their activities.'" *Hilton*, 580 F.3d at 892 (quoting *Dora v. Frontline Video, Inc.*, 15 Cal.App.4th 536, 542, 18 Cal.Rptr.2d 790 (1993)).

In *Gionfriddo v. Major League Baseball*, the court held that the defendants were entitled to the public interest defense. 94 Cal.App.4th 400, 415, 114 Cal.Rptr.2d 307 (2001). There, the plaintiffs, four former baseball players, claimed that the defendants' use of their names and statistics violated their rights of publicity. *Id.* at 405-07, 114 Cal.Rptr.2d 307. Their information appeared on a website, which reported historical team rosters and listed names of players who won awards during each season. *Id.* at 406, 114 Cal.Rptr.2d 307. The defendants also included still photographs of the plaintiffs from their playing days in

video documentaries. *Id.* The court characterized these uses as "simply making historical facts available to the public through game programs, Web sites and video clips." *Id.* at 411, 114 Cal.Rptr.2d 307. Because the public had an interest in the plaintiffs' athletic performance, the First Amendment protected the "recitation and discussion of [their] factual data." *Id.*

The public interest defense also applied in *Montana.* There, the defendant newspaper sold posters containing reproductions of newspaper pages reporting on the San Francisco 49ers' win in the 1990 Super Bowl; these pages contained images of the plaintiff. 34 Cal.App.4th at 792, 40 Cal.Rptr.2d 639. The plaintiff conceded that the original newspaper accounts were protected by the First Amendment, but challenged their reproduction as posters. *Id.* at 794, 40 Cal.Rptr.2d 639. The court held that the posters were entitled to the same First Amendment protection as the original news stories. The court stated,

> Montana's name and likeness appeared in the posters for *precisely* the same reason they appeared on the original newspaper front pages: because Montana was a major player in contemporaneous newsworthy sports events. Under these circumstances, Montana's claim that SJMN used his face and name solely to extract the commercial value from them fails.

Id. (emphasis in original). Citing *Montana,* the Ninth Circuit stated that the public interest defense "is about ... publication or reporting." *Hilton,* 580 F.3d at 892.

"NCAA Football" is unlike the works in *Gionfriddo* and *Montana.* The game does not merely report or publish Plaintiff's statistics and abilities. On the contrary, EA enables the consumer to assume the identity

of various student athletes and compete in simulated college football matches. EA is correct that products created for entertainment deserve constitutional protection. *See, e.g., Gionfriddo*, 94 Cal.App.4th at 410, 114 Cal.Rptr.2d 307 ("Entertainment features receive the same constitutional protection as factual news reports."). But it does not follow that these protections are absolute and always trump the right of publicity.

EA cites cases in which courts held that the public interest exception protected online fantasy baseball and football games. Although these games are more analogous to "NCAA Football," the cases are nonetheless distinguishable. In *C.B.C. Distribution and Marketing v. Major League Baseball Advanced Media*, a declaratory judgment action, the plaintiff sold "fantasy baseball products" that included the names and statistics of major league baseball players. 505 F.3d 818, 820-21 (8th Cir. 2007). Through these products, consumers could form fantasy baseball teams and compete with other users. *Id.* at 820. "A participant's success ... depend[ed] on the actual performance of the fantasy team's players on their respective actual teams during the course of the major league baseball season." *Id.* at 820-21. The defendant counterclaimed, arguing that these products violated players' rights of publicity. The court disagreed. It analogized the case to *Gionfriddo*, and held that the use of the players' information in the fantasy game was a "'recitation and discussion'" of the players' information. *Id.* at 823-24 (quoting *Gionfriddo*, 94 Cal.App.4th at 411, 114 Cal.Rptr.2d 307).

C.B.C. Distribution is inapplicable here. Success in "NCAA Football" does not depend on updated reports of the real-life players' progress during the college football season. Further, EA's game provides more than just the players' names and statistics; it offers a

depiction of the student athletes' physical characteristics and, as noted, enables consumers to control the virtual players on a simulated football field. EA' s use of Plaintiff's likeness goes far beyond what the court considered in *C.B.C. Distribution.*

EA is not entitled to the public interest defense on this motion.

C. Section 3344(d) Exemption

California Civil Code section 3344(d) provides a public affairs exemption to the statutory right of publicity. It exempts from liability under section 3344 "a use of a name ... or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign." Cal. Civ. Code § 3344(d). This exemption is not coextensive with the public interest defense; it "is designed to avoid First Amendment questions in the area of misappropriation by providing extra breathing space for the use of a person's name in connection with matters of public interest." *New Kids on the Block v. News Am. Pub., Inc.*, 971 F.2d 302, 310 n.10 (9th Cir. 1992) (citing *Eastwood v. Superior Court*, 149 Cal.App.3d 409, 421, 198 Cal.Rptr. 342 (1983)).

In *Dora v. Frontline Video, Inc.*, a California court held that section 3344(d) barred a plaintiff's statutory right of publicity claim. 15 Cal.App.4th at 546, 18 Cal.Rptr.2d 790. The defendant's documentary on surfing contained, among other things, the plaintiff's name and likeness. *Id.* at 540, 18 Cal.Rptr.2d 790. The court held that this use was exempted by section 3344(d) because the plaintiff's name and likeness were used in connection with public affairs. In doing so, the court addressed the meaning of "public affairs." The court distinguished "public affairs" from "news," stating that

"'public affairs' was intended to mean something less important than news." *Dora,* 15 Cal.App.4th at 545, 18 Cal.Rptr.2d 790. Thus, the subject matter encompassed by public affairs is not limited "to topics that might be covered on public television or public radio." *Id.* at 546, 18 Cal.Rptr.2d 790.

Here, Plaintiff does not dispute EA's contention that college athletics are "public affairs." He asserts, however, that section 3344(d) only applies to factual reporting.[3] In essence, he asserts that section 3344(d) applies to the same type of "reporting" as does the public interest defense.

Neither party offered direct authority on the type of use for which the section 3344(d) exemption applies. However, *Montana* is instructive. There, the court stated that "the statutory cause of action specifically exempts from liability the use of a name or likeness in connection with the *reporting* of a matter in the public interest." 34 Cal.App.4th at 793, 40 Cal.Rptr.2d 639 (emphasis added). Thus, without authority requiring otherwise, the Court construes section 3344(d) to require the same type of activity as the public interest defense discussed above, namely reporting.[4] Although

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[3] EA understands Plaintiff to argue that reporting implicates newsworthy information. So interpreted, EA claims, Plaintiff's argument must fail because *Dora* draws a distinction between "news" and "public affairs." The Court does not construe Plaintiff's argument in the same way. Instead, the Court reads Plaintiff to argue that "NCAA Football" does not constitute "reporting" and, as a result, EA does not use his name and likeness in a manner that is exempted by section 3344(d).

[4] Although section 3344(d) and the public interest defense implicate the same type of activity, they are nonetheless not coextensive because section 3344(d) defines safe harbors for reporting in particular contexts. *See New Kids on the Block,* 971 F.2d at 310 n.10.

"NCAA Football" is based on subject matter considered "public affairs," EA is not entitled to the statutory defense because its use of Plaintiff's image and likeness extends beyond reporting information about him.

Accordingly, Plaintiff's California statutory and common law right of publicity claims are not barred as a matter of law.

III. Civil Conspiracy Claims

Defendants move separately to dismiss Plaintiff's civil conspiracy claims. All challenge the sufficiency of Plaintiff's claims, arguing that he does not plead an underlying tort, which is a necessary element. CLC separately asserts the agent immunity defense.

Plaintiff did not specify the state law under which his civil conspiracy claims arise. For the purposes of this motion, the Court assumes that his claims arise under California law.

A. Sufficiency of the Claims

Civil conspiracy "is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration." *Applied Equipment Corp.*, 7 Cal.4th at 510, 28 Cal.Rptr.2d 475, 869 P.2d 454 (citing *Wyatt v. Union Mortgage Co.*, 24 Cal.3d 773, 784, 157 Cal.Rptr. 392, 598 P.2d 45 (1979)). "Standing alone, a conspiracy does no harm and engenders no tort liability. It must be activated by the commission of an actual tort." *Applied Equipment Corp.*, 7 Cal.4th at 511, 28 Cal.Rptr.2d 475, 869 P.2d 454.

A claim for civil conspiracy consists of three elements: "(1) the formation and operation of the conspira-

cy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct." *Kidron v. Movie Acquisition Corp.*, 40 Cal.App.4th 1571, 1581, 47 Cal.Rptr.2d 752 (1995). "The conspiring defendants must ... have actual knowledge that a tort is planned and concur in the tortious scheme with knowledge of its unlawful purpose." *Id.* at 1582, 47 Cal.Rptr.2d 752 (citing *Wyatt*, 24 Cal.3d at 784-86, 157 Cal.Rptr. 392, 598 P.2d 45). This knowledge must be combined with an intent to aid in achieving the objective of the conspiracy. *Kidron*, 40 Cal.App.4th at 1582, 47 Cal.Rptr.2d 752; *Schick v. Bach*, 193 Cal.App.3d 1321, 1328, 238 Cal.Rptr. 902 (1987). A claim of unlawful conspiracy must contain "enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement." *Twombly*, 550 U.S. at 556. A bare allegation that a conspiracy existed does not suffice. *Id.*

Plaintiff alleges that there were meetings among Defendants in California and Indiana. Compl. ¶¶ 54-56. He asserts that Defendants knew of NCAA principles barring the licensing of student-athlete identities, but nonetheless approved EA's games containing the athletes' likenesses without their consent. Compl. ¶¶ 12-15. Finally, he claims that EA's actions violated his California statutory and common law rights of publici-

ty.[5] These factual allegations sufficiently support liability under Plaintiff's civil conspiracy claim.[6]

B. CLC's Agent Immunity Defense

CLC maintains that the agent immunity defense bars Plaintiff's conspiracy claim against it. This defense provides that no liability shall lie "if the alleged conspirator, though a participant in the agreement underlying the injury, was not personally bound by the duty violated by the wrongdoing and was acting only as the agent or employee of the party who did have that duty." *Doctors' Co. v. Superior Court*, 49 Cal.3d 39, 44, 260 Cal.Rptr. 183, 775 P.2d 508 (1989).

CLC maintains that Plaintiff's allegations that its role as a licensing company entering into agreements on behalf of NCAA establishes, as a matter of law, that it is NCAA's agent. These allegations are not sufficient

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[5] Plaintiff alleges that Defendants conspired to deprive "class members of their right to protect their names, likenesses and rights to publicity and their contractual, property rights." Compl. ¶ 80. For the purposes of this motion, the Court construes this allegation to refer to EA's alleged violation of Plaintiff's California right of publicity because he does not state a claim based on the tortious conduct of any other Defendant.

[6] Citing *Everest Investors 8 v. Whitehall Real Estate Limited Partnership XI*, 100 Cal.App.4th 1102, 123 Cal.Rptr.2d 297 (2002), CLC also argues that it cannot accrue tort liability under a civil conspiracy theory because Plaintiff has not alleged that it can make video games. This argument is unavailing. *Everest Investors 8* states that "tort liability from a conspiracy presupposes that the conspirator is legally capable of committing the tort—that he owes a duty to the plaintiff recognized by law and is potentially subject to liability for the breach of that duty." *Id.* at 1106, 123 Cal.Rptr.2d 297. Nothing in the record indicates that CLC is legally incapable of violating Plaintiff's rights of publicity.

at this early stage to establish CLC's entitlement to this defense.

IV. Section 17200 Claim

EA maintains that Plaintiff fails to state a claim under California Business and Professions Code section 17200 because he does not allege an underlying wrong or seek available relief. However, as discussed above, Plaintiff sufficiently asserts right of publicity and civil conspiracy claims. With regard to relief, he seeks an injunction, which EA concedes is available under section 17200. Thus, Plaintiff has stated a section 17200 claim against EA.

V. Breach of Contract Claim

NCAA argues that Plaintiff does not state a breach of contract claim because he has not identified an enforceable contract. Because Plaintiff does not specify the state law under which his claim arises, the Court assumes that California law applies.

To assert a cause of action for breach of contract in California, a plaintiff must plead: (1) existence of a contract; (2) the plaintiff's performance or excuse for nonperformance; the defendant's breach; and (4) damages to the plaintiff as a result of the breach. *Armstrong Petrol. Corp. v. Tri-Valley Oil & Gas Co.*, 116 Cal.App.4th 1375, 1391 n. 6, 11 Cal.Rptr.3d 412 (2004).

Plaintiff has not identified a contract that he is seeking to enforce. Although he refers to an NCAA document as a contract, he does not attach the document to his complaint. Instead, he states that by signing the document, the athletes agree that "they have 'read and understand' the NCAA's rules" and that "to the best of [their] knowledge [they] have not violated

any amateurism rules." Compl. ¶ 14. These phrases, on their own, do not indicate that the document is a contract. Plaintiff's breach of contract claim against NCAA is dismissed with leave to amend to allege or attach an enforceable contract.

VI. Unjust Enrichment Claims

Plaintiff claims that EA and CLC were unjustly enriched through the sale of video games that use his likeness. EA and CLC argue that his claim is barred because California law does not provide a cause of action for unjust enrichment. Even if it did, EA and CLC argue, Plaintiff's allegations regarding the existence of a contract with NCAA would independently bar an unjust enrichment claim.

California courts appear to be split on whether there is an independent cause of action for unjust enrichment. *Baggett v. Hewlett-Packard Co.*, 582 F. Supp. 2d 1261, 1270-71 (C.D. Cal. 2007) (applying California law). One view is that unjust enrichment is not a cause of action, or even a remedy, but rather a general principle, underlying various legal doctrines and remedies. *McBride v. Boughton*, 123 Cal.App.4th 379, 387, 20 Cal.Rptr.3d 115 (2004). In *McBride*, the court construed a "purported" unjust enrichment claim as a cause of action seeking restitution. *Id.* There are at least two potential bases for a cause of action seeking restitution: (1) an alternative to breach of contract damages when the parties had a contract which was procured by fraud or is unenforceable for some reason; and (2) where the defendant obtained a benefit from the plaintiff by fraud, duress, conversion, or similar conduct and the plaintiff chooses not to sue in tort but to seek restitution on a quasi-contract theory. *Id.* at 388, 20 Cal.Rptr.3d 115. In the latter case, the law implies a

contract, or quasi-contract, without regard to the parties' intent, to avoid unjust enrichment. *Id.*

Another view is that a cause of action for unjust enrichment exists and its elements are receipt of a benefit and unjust retention of the benefit at the expense of another. *Lectrodryer v. SeoulBank*, 77 Cal.App.4th 723, 726, 91 Cal.Rptr.2d 881 (2000); *First Nationwide Savings v. Perry*, 11 Cal.App.4th 1657, 1662-63, 15 Cal.Rptr.2d 173 (1992).

Even under the more restrictive analysis of *McBride*, Plaintiff sufficiently pleads claims for restitution against EA and CLC on the theory that they obtained a benefit from him through their alleged wrongful conduct. His breach of contract claim against NCAA does not bar these claims. Although EA and CLC correctly note that the existence of such a contract could bar a restitutionary claim against a contracting party, it is not clear that his alleged contract with NCAA defined any rights between him and EA and CLC. *Cf. Cal. Med. Ass'n v. Aetna U.S. Healthcare of Cal.*, 94 Cal.App.4th 151, 172, 114 Cal.Rptr.2d 109 (2001) (holding that "as a matter of law, a quasi-contract action for unjust enrichment does not lie where, as here, express binding agreements exist and define the parties' rights"). Thus, Plaintiff has adequately stated his unjust enrichment claim for restitution against EA and CLC.

VII. EA's Anti–SLAPP Motion to Strike

Finally, EA moves under California Code of Civil Procedure section 425.16 to strike all of Plaintiff's claims against it. Section 425.16(b)(1), which addresses Strategic Lawsuits Against Public Participation (SLAPP), provides,

> A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

California anti-SLAPP motions are available to litigants proceeding in federal court. *Thomas v. Fry's Elecs., Inc.*, 400 F.3d 1206, 1206 (9th Cir. 2005). California courts analyze anti-SLAPP motions in two steps. "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." *Equilon Enter. v. Consumer Cause, Inc.*, 29 Cal.4th 53, 67, 124 Cal.Rptr.2d 507, 52 P.3d 685 (2002). Second, the court "determines whether the plaintiff has demonstrated a probability of prevailing on the claim." *Id.*

Assuming that the challenged causes of action arise from protected activity, Plaintiff makes a sufficient showing of his probability of success on the merits. EA incorrectly argues that Plaintiff has a substantial burden to show probability of success. It maintains that the Court must apply "the same standard governing motions for summary judgment, nonsuit, or directed verdict." EA's Mot. to Strike at 12. However, this standard does not apply in federal court.

"At the second step of the anti-SLAPP inquiry, the required probability that [a party] will prevail need not be high." *Hilton*, 580 F.3d at 888-89. The "statute does not bar a plaintiff from litigating an action that arises out of the defendant's free speech or petitioning; it sub-

jects to potential dismissal only those actions in which the plaintiff cannot state and substantiate a legally sufficient claim." *Id.* at 888 (quoting *Navellier v. Sletten*, 29 Cal.4th 82, 93, 124 Cal.Rptr.2d 530, 52 P.3d 703 (2002)) (quotation marks omitted). In *Thomas v. Fry's Electronics*, the case that provides that anti-SLAPP motions are available to litigants proceeding in federal court, the court stated that "federal courts may not impose a heightened pleading requirement in derogation of federal notice pleading rules." 400 F.3d at 1207; *see also Empress LLC v. City & County of S.F.*, 419 F.3d 1052, 1056 (9th Cir.2005) (holding that "a heightened pleading standard should only be applied when the Federal Rules of Civil Procedure so require"); *Verizon, Inc. v. Covad Commc'ns. Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004) (holding that procedural "state laws are not used in federal court if to do so would result in a direct collision with a Federal Rule of Civil Procedure" and noting that federal courts have "accordingly refused to apply certain discovery-limiting provisions of the anti-SLAPP statute because they would conflict with Fed. R. Civ. P. 56").

Under Federal Rule of Civil Procedure 8, Plaintiff has sufficiently stated his claims against EA. Accordingly, the Court denies EA's special motion to strike Plaintiff's claims as a SLAPP.

CONCLUSION

For the foregoing reasons, the Court DENIES EA's Motion to Dismiss (Docket No. 34), GRANTS NCAA's Motion in part and DENIES it in part (Docket No. 48), DENIES CLC's Motion (Docket No. 47) and DENIES EA's Motion to Strike (Docket No. 35). Plaintiff's claims for violation of his Indiana right of publicity and breach of contract against NCAA are

dismissed with leave to amend. In accordance with this Court's Order of January 15, 2010 on consolidation, Plaintiff has thirty days from the date of this Order to file a consolidated amended complaint. A case management conference is scheduled for April 27, 2010 at 2:00 p.m.

IT IS SO ORDERED.

Dated: February 8, 2010

/s/ Claudia Wilken
CLAUDIA WILKEN
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE NCAA STUDENT-ATHLETE NAME & LIKENESS LICENSING LITIGATION,

SAMUEL MICHAEL KELLER, *et al.*,
Plaintiffs-Appellees,

v.

ELECTRONIC ARTS INC.,
Defendant-Appellant,

and

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *et al.*,
Defendants.

No. 10-15387
D.C. No. 4:09-cv-01967-CW
Northern District of California, Oakland
Filed August 21, 2013

ORDER

Before: THOMAS and BYBEE, Circuit Judges, and QUIST, Senior District Judge.

Appellant's motion for stay of the issuance of the mandate pending application for writ of certiorari is GRANTED. Fed. R. App. P. 41(b).

Therefore, it is ordered that the mandate is stayed pending the filing of the petition for writ of certiorari in the Supreme Court. The stay shall continue until final disposition by the Supreme Court.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Robin Lee Rosenberg

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

   United States District Judge for the Southern District of Florida

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

   Palm Beach County Courthouse
   205 North Dixie Highway
   West Palm Beach, Florida 33401

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

   1962; West Palm Beach, Florida

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

   1985 - 1989, Duke University, School of Law; J.D., 1989
   1985 - 1989, Duke University, Sanford Institute of Public Policy; M.A., 1989
   1979 - 1983, Princeton University; B.A., 1983

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

   2007 - present
   Fifteenth Judicial Circuit in and for Palm Beach County
   205 North Dixie Highway
   West Palm Beach, Florida 33401
   Circuit Judge

2001 - 2006
Rosenberg & McAuliffe, PL
1601 Forum Place, Suite 301
West Palm Beach, Florida 33401
Partner

2002 - 2006
ARC Mediation
1601 Forum Place, Suite 301
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Co-founder, principal, mediator and arbitrator

1999 - 2001
Slim-Fast Foods Company
(West Palm Beach office no longer exists; company merged with Unilever in April 2000)
Vice President and General Counsel

1997 - 1999
Holland & Knight LLP
222 Lakeview Avenue, Suite 1000
West Palm Beach, Florida 33401
Partner

1995 - 1997
City of West Palm Beach
401 Clematis Street, Fifth Floor
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Assistant City Attorney

1994 - 1995
Foley & Lardner
777 South Flagler Drive
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1990 - 1994
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Trial Attorney

1993 - 1994
Civic Education Project (CEP)
University of West Bohemia (Zapadoceska Univerzita)

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1992 - 1993
Duke University, Sanford Institute of Public Policy
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Visiting Lecturer in Public Policy Sciences

1989 - 1990
United States District Court for the Southern District of Florida
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Fall 1988
Florida Democratic Party
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Volunteer Field Coordinator

Summer 1987
Mayer, Brown & Platt
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Law Clerk

Summer 1987
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Law Clerk

Summer 1986
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Staff Assistant

January – August 1985
Princeton University, Office of Government Affairs

One Dupont Circle, Northwest
Washington, District of Columbia 20036
Legislative Assistant

1983 - 1984
United States Senate, Senator Bill Bradley
(This office is no longer in existence.)
Washington, District of Columbia
Legislative Correspondent

Other affiliations (uncompensated):

2001 - 2006
Anti-Defamation League, South Florida Division, Civil Rights Committee
621 NW 53rd Street
Suite 450
Boca Raton, Florida 33487
Board Member

2001 - 2006
Palm Beach Fellowship of Christians & Jews
139 North County Road
Suite 36
Palm Beach, Florida 33480
Board Member

2002 - 2006
Community Alliance of Palm Beach County
1870 Forest Hill Boulevard
West Palm Beach, Florida 33406
Board Member

1995 - 1997
Center for Children in Crisis
No physical address
West Palm Beach, Florida
Board Member

1995 - 1997
Executive Women of the Palm Beaches
2701 North Australian Avenue
Suite 205
West Palm Beach, Florida 33407
Board Member

1989
Uplift Assistance
No physical address
Riviera Beach, Florida
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 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.

   South Florida Business Journal Seventh Annual Arthur E. Turner Excellence in Entrepreneurship Awards Finalist (2002)

   United States Department of Justice Special Achievement Awards (1991, 1992, 1993)

   Outstanding Law Student Award, National Association of Women Lawyers (1989)

   National Collegiate Championship, Women's Tennis (1983)

   Captain, Varsity Tennis Team, All Ivy League, Princeton University (1982)

   U.S. Presidential Rank Review Board (1997)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conference 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 Arbitration Association (2001 - 2006)
   Arbitrator

   American Arbitration Association (2005)
   National Research Exchange Panel

   Federal Bar Association (2001 - 2006)

   Florida Academy of Professional Mediators, Inc. (2001 - 2010)

Florida Association of Women Lawyers (2012)

Fourth DCA Representative, Florida Conference of Circuit Judges (2010)

Palm Beach County Bar Association (1995 - 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, 1990
       District of Columbia, 1998

       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.

       State of Florida, 1990
       District of Columbia, 1998
       United States Court of Appeals for the Eleventh Circuit, 2006
       United States District Court for the Northern District of Florida, 2003
       Supreme Court of the United States, 1997
       United States District Court for the Southern District of Florida, 1990

       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.

       American Inns of Court (2005 – 2005)

       Anti-Defamation League, South Florida Division, Civil Rights Committee (2001 – 2006)
           Board Member

Center for Children in Crisis (1995 – 1997)
Board Member

Community Alliance of Palm Beach County (2002 – 2006)
Board Member

Cystic Fibrosis Foundation (1995 – 2004)
Volunteer

Economic Council (2003 – 2004)

Executive Women of the Palm Beaches (1995 – 1997)
Board Member

Forum Club of the Palm Beaches (2003 – 2006)

Palm Beach Fellowship of Christians & Jews (2001 – 2006)
Board Member

Uplift Assistance (1989)
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..

"Mediation Comes of Age," Palm Beach County Bar Association Bulletin, November 2004. 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 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 it 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.

May 17, 2013: I presided over a mock trial at Palm Beach County Courthouse, West Palm Beach, Florida, West Palm Beach, Florida. The participants were middle school students from Palm Springs Middle School. I have no notes, transcript or recording, but press coverage is supplied. The address for the Palm Beach County Courthouse is 205 North Dixie Highway, West Palm Beach, Florida 33401.

March 1, 2013: Panelist, "Developing and Advancing Your Reputation as a Lawyer," Young Lawyers Section Session at the Palm Beach County Bar Association Bench-Bar Conference, West Palm Beach, Florida. I relied on the same notes supplied for the March 4, 2011 event.

November 15, 2012: Panelist, Palm Beach County Bar Promotes Diversity," Palm Beach County Bar Association, West Palm Beach, Florida. I discussed the topic of the pathway to appointment or election to the judiciary and how women

balance the demands of balancing work and family. I have no notes, transcript or recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

May 11, 2012: Panelist, "Walk a Mile in a Judge's Shoes," Palm Beach County Bar Association, Circuit Civil Practice Committee, West Palm Beach, Florida. I discussed the topic of my experiences as a judge in Palm Beach County Circuit Court. I have no notes, transcript or recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

February 8, 2012: Guest Speaker, "The Florida Judicial System," Alliance of Delray Residential Associations, Inc., Boca Raton, Florida. I discussed the topic of how the court system is structured and operates in Florida. I have no notes, transcript or recording, but press coverage is supplied. The address for the Alliance of Delray Residential Associations, Inc. is 40 S.E. Fifth Street, Suite 610, Boca Raton, Florida 33432.

November 10, 2011: Panelist, Florida Association of Women Lawyers (FAWL) Mentoring Lunch at Carlton Fields (law firm),West Palm Beach, Florida. Notes supplied.

October 18, 2011: Panelist, "Trial Professionalism," Palm Beach County Bar Association, Judicial Lunch Series, West Palm Beach, Florida. I discussed the topic of how attorneys can practice with professionalism in Palm Beach County. I have no notes, transcript or recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

May 20, 2011: Panelist, "Emerging Issues in Discovery," Palm Beach County Bar Association and Federal Bar Association, Palm Beach County Chapter, West Palm Beach, Florida. I discussed the topic of current discovery issues emerging in the state court in Palm Beach County, including e-discovery issues. I have no notes, transcript or recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

May 11, 2011: Guest Speaker, Company A, Boca Raton, Florida. I discussed the topic of how the court system is structured and operates in Florida. I have no notes, transcript or recording. The address for Company A is 10935 Boca Woods Lane, Boca Raton, Florida 33434.

April 19, 2011: Panelist, "Pet Peeves," Palm Beach County Bar Association, West Palm Beach, Florida. Notes supplied.

March 4, 2011: Panelist, "Developing and Advancing Your Reputation as a Lawyer," Palm Beach County Bar Association Bench-Bar Conference, West Palm Beach, Florida. Notes supplied.

February 22, 2011: Guest Speaker, "Preparing for Trial and Conducting Trial," South Palm Beach County Bar Association Civic Practice Committee Lunch in Boca Raton, Florida. Notes supplied.

November 9, 2010: Panelist, "Avoiding Juror Misconduct in the Social Networking Age," Palm Beach County Bar Association Judicial Lunch Series in West Palm Beach, Florida. I discussed the topic of the implications of electronic communication on juror conduct. I have no notes, transcript of recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

September 30, 2010: Panelist, Palm Beach County Bar Association, Employment Law Committee, West Palm Beach, Florida. The panel discussion was a judicial roundtable on recent developments in federal and state employment law. I have no notes, transcript of recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

March 20, 2009: Panelist, "Listen and Learn ... Judicial Round Table Discussion on Ethics," Palm Beach County Bar Association, West Palm Beach, Florida. I discussed the topic of ethics and professionalism in the courtroom. I have no notes, transcript of recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

February 20, 2009: Panelist, "Lunch with the Judiciary: Open Panel Discussion – Settling Cases and Ethical Considerations," Palm Beach County Bar Association, West Palm Beach, Florida. I discussed the topic of ethical considerations when settling cases. I have no notes, transcript or recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

January 6, 2009: Administration of Oath of Office to newly elected State Attorney (and husband) Michael F. McAuliffe, Palm Beach County, Florida. I have no notes, transcript or recording. The address for the Palm Beach County Courthouse is 205 North Dixie Highway, West Palm Beach, Florida 33401.

November 19, 2008: Administration of Oath of Office to newly elected Palm Beach County School Board member Frank Barbieri, West Palm Beach, Florida. I have no notes, transcript or recording. The address for the Palm Beach County School District is 3300 Forest Hill Boulevard, West Palm Beach, Florida 33046.

June 27, 2008: Panelist, "Lunch with the Judiciary: Case Management in Contentious Cases," Palm Beach County Bar Association, West Palm Beach, Florida. I discussed the topic of how to manage complex and contentious cases. I have no notes, transcript or recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

April 18, 2008: Guest speaker at Palm Beach County Victims' Rights Coalition 28th Annual Awards Luncheon, West Palm Beach, Florida. I discussed the topic of the role of victims' rights in the judicial system. I have no notes, transcript or recording. The address for the Palm Beach County Victims' Rights Coalition is 6800 Forest Hill Boulevard, West Palm Beach, Florida 33413.

March 2008: Panelist, Employment Law Seminar, Palm Beach County Bar Association, West Palm Beach, Florida. I discussed the topic of emerging state and federal employment law related topics. I have no notes, transcript or recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

February 21, 2008: I presided over a mock trial at Palm Beach County Courthouse, West Palm Beach, Florida, West Palm Beach, Florida. The participants were third graders from Timber Trace Elementary School. I have no notes, transcript or recording. The address for the Palm Beach County Courthouse is 205 North Dixie Highway, West Palm Beach, Florida 33401.

February 14, 2008: Panelist, "Good Courtroom Practice," Palm Beach County Bar Association, West Palm Beach, Florida. I discussed the topic of professional practices for attorneys appearing in court. I have no notes, transcript or recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

January 11, 2008: Panelist, "Lunch and Learn with the Judiciary," Palm Beach County Bar Association, West Palm Beach, Florida. I discussed the topic of general attorney practice issues that arise for judges at hearings and trials in the Circuit Civil division of the Palm Beach County court. I have no notes, transcript or recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

September 2, 2007: Administration of Oath of Office to newly elected Palm Beach County School Board member Bob Kanjian, West Palm Beach, Florida. I have no notes, transcript or recording. The address for the Palm Beach County Governmental Center is 301 North Olive Avenue, West Palm Beach, Florida 33401.

February 2, 2007: Investiture as Circuit Court Judge, Palm Beach County, 15th Judicial Circuit, West Palm Beach, Florida. I discussed the honor bestowed upon me to be sworn in as a circuit judge and acknowledged family, friends and colleagues. I have no notes, transcript or recording. The address for the Palm County Circuit Court is 205 North Dixie Highway, West Palm Beach, Florida 33401.

February 15, 2006: Panelist, "Emerging Technologies for ADR," Palm Beach County Bar Association, West Palm Beach, Florida. I discussed the topic of the use of technology in the field of alternative dispute resolution. I have no notes, transcript or recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

March 24 – 26, 2004: Guest Speaker: Guest Instructor/Mediator for Enhanced Negotiation and Mediation Advocacy Seminar, Alternative Dispute Resolution Program, U.S. Department of Justice, Executive Office for United States Attorneys, National Advocacy Institute, Columbia, South Carolina. I discussed the topic of the role and importance of mediation in the judicial process. I have no notes, transcript or recording. The address for the Executive Office for United States Attorneys is United States Department of Justice, 950 Pennsylvania Avenue, Northwest, Room 2242, Washington, D.C. 20530.

September 21, 2003: Guest Speaker at PALMS Group Midyear Conference, West Palm Beach, Florida. I discussed the Fair Labor Standards Act. I have no notes, transcript or recording. The address for the PALMS Group is 2139 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33409.

April 25, 2003: Panelist, "Tools of the Trade: An Overview of Employment Law for the Non-Practitioner," Palm Beach County Bar Association, Employment CLE Seminar, West Palm Beach, Florida. I discussed the topic of state and federal employment laws that impact the workplace. I have no notes, transcript or recording. The address for the Palm Beach County Bar Association is 1507 Belvedere Road, West Palm Beach, Florida 33406.

January 15, 2003: Guest Speaker for Lorman Education Services, West Palm Beach Florida. The speech was on alternative dispute resolution in Florida. I discussed the topic of the role and importance of mediation in the judicial process. I have no notes, transcript or recording. The address for Lorman Education Services is Department 5382, P.O. Box 2933, Milwaukee, Wisconsin 53201.

August 13-15, 2002: Guest Instructor/Mediator for Basic Alternative Dispute Resolution Seminar, U.S. Department of Justice, Executive Office for United States Attorneys, Office of Legal Counsel, National Advocacy Center, Columbia, South Carolina. I discussed the topic of the role and importance of mediation in the judicial process. I have no notes, transcript or recording. The address for the Executive Office for United States Attorneys is United States Department of Justice, 950 Pennsylvania Avenue, N.W., Room 2242, Washington, D.C. 20530.

May 1998: Panelist, NCAA Title IX Institute. I have no notes, transcript or recording. I discussed the topic of how to protect schools from lawsuits under Title VII. I have no notes, transcript or recording, but press coverage is supplied. I have been unable to locate an address for the NCAA Title IX Institute.

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.

Jason Davis, "*In the Long Run*," PALM BEACH ILLUSTRATED, May 2011, at 74. Copy supplied.

"*Ninth Annual Read Across Palm Beach County*," PALM BEACH COUNTY BAR BULLETIN, May 2010. Copy supplied.

Grier Pressly, "*Judicial Profile; Judge Robin Rosenberg*", PALM BEACH COUNTY BAR BULLETIN, November 2007. Copy supplied.

Alexandra Clough, Column, PALM EACH POST, November 16, 2003. Copy supplied.

Matthew Haggman and Gary Young, "*Failing Grades*," DAILY BUSINESS REVIEW, April 3, 2003. Copy supplied.

Jane Musgrave and Marie Speed, "*20 on the Fasttrack*," FASTTRACK INSIDE SOUTH FLORIDA BUSINESS, Fall 2002. Copy supplied.

Mary Thurwachter, "*Moving Up,*" PALM BEACH POST, May 20, 2002. Copy supplied.

Alexandra Clough, "*Law Firm Gets Start Power for W. Palm Office*," PALM BEACH POST, March 18, 1999. Copy supplied.

Anne L. Boles, "*Manson Video Oddly Coveted*," PALM BEACH POST, April 23, 1997. Copy supplied.

"'*Noogie Affair' Rubs Police Department Wrong Way a West Palm Beach Detective Gave a Sergeant a "Noogie," now the Sergeant is Suing*," Orlando Sentinel, January 27, 1997. Copy supplied.

"*Horseplay Stirs Legal Woes for Police Department*," MIAMI HERALD, January 27, 2007. Copy supplied.

Scott Hiassen, "*To Police, Old Noogie Still Hurts*," PALM BEACH POST, January 26, 1997. Copy supplied.

Robin L. Rosenberg Update, "Alumni Notes," Duke Policy News, December 1995. Copy supplied.

Robin L. Rosenberg Update, "Alumni Activities," Duke Law Magazine, Winter 1995. Copy supplied.

"*Judge to Set Damages in Bias Lawsuit*," RICHMOND TIMES DISPATCH, November 20, 1991. Copy supplied.

Doug Cooney, "*Aspiring Elected Official is Gaining Hands-On Experience At Grass Roots*," PALM BEACH DAILY NEWS, October 24, 1988. Available at: http://tinyurl.com/myqergz.

Claude A. Allen and D. Willas Miller, "*For the Children's Sake: Duke Law Students Represent the Abused and Neglected*," DUKE LAW MAGAZINE, Summer 1988. Copy supplied.

Dena Kleiman, "*A Homecoming for Jordan's Queen*," THE NEW YORK TIMES, November 6, 1981. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial office 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 2007, I have served as a Circuit Judge, Fifteenth Judicial Circuit in and for Palm Beach County. I was elected without opposition in a countywide, non-partisan election to this position in 2006 and my first term began in 2007. After I was re-elected without opposition in 2012, I began my second term in 2013. The Fifteenth Judicial Circuit is a general jurisdiction court and encompasses all of Palm Beach County, Florida. The Fifteenth Judicial Circuit is comprised of five Circuit Court Divisions and two County Court Divisions. I have served in three of the Circuit Court Divisions - the Civil Division from January 2007 to April 2013, the Foreclosure Division from April 2013 to September 2013 and the Criminal Division from September 2013 to the present. As a Circuit Judge in the Fifteenth Judicial Circuit, I preside over jury and non-jury trials, conduct evidentiary hearings and conduct hearings on dispositive and non-dispositive motions. In addition, I handle criminal duty, including issuing search warrants, arrest warrants and presiding over criminal duty court for first appearances.

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

I have presided over approximately 200 cases that have gone to verdict or judgment.

i. Of these, approximately what percent were:

1. Jury trials: % 75%
2. Bench trials: % 25%

1. Civil proceedings: % 95%
2. Criminal proceedings: % 5%

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

As a Circuit Judge in the Fifteenth Judicial Circuit, I have issued oral rulings and written orders on such issues as motions for summary judgment, motions to dismiss, discovery-related motions, motions to suppress, motions for bond reduction and motions in limine. Circuit court written orders generally are not published. The orders that I have issued are kept in the official court files which are maintained by the Clerk and Comptroller Office for Palm Beach County. The orders can be accessed by case number and the parties' names. I also sit by designation as an Associate Judge on the Fourth District Court of Appeal and have issued published opinions that are listed below.

Aicheson v. Florida Dep't of Highway Safety and Motor Vehicles, 117 So.3d 854 (Fla. 4th DCA 2013)

Rich v. Kaiser Gypsum Company, Inc. et al., 103 So.3d 903 (Fla. 4th DCA 2012)

Baker v. State of Florida, 102 So.3d 756 (Fla. 4th DCA 2012)

Hoesch and South Florida Siberian Husky Rescue, Inc. v. Broward County, Florida, 53 So.3d 1177 (Fla. 4th DCA 2011)

Rasabi et al. v. Salomon, 51 So.3d 1284 (Fla. 4th DCA 2011)

Cadejuste v. State of Florida, 993 So.2d 122 (Fla. 4th DCA 2008)

Goodall v. Whispering Woods Center, L.L.C., 990 So.2d 695 (Fla. 4th DCA 2008)

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (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 listed these cases in reverse chronological order.

1. *Rich v. Kaiser Gypsum Company, Inc. et al.*, 103 So.3d 903 (Fla. 4th DCA 2012).

   While sitting by designation as an Associate Judge on the Florida Fourth District Court of Appeal in the July 2012 term, I authored a case of first

impression in Florida on the issue of whether the trial court erred by allowing defendants to use the former testimony of unavailable witnesses without establishing that the plaintiffs, or their predecessors in interest, were afforded an opportunity to examine the witnesses. The case involved a products liability claim brought by Rich, both in her individual capacity and as the personal representative of her husband's estate, against the defendants, Kaiser Gypsum Company, Inc., R.T. Vanderbilt Company, Inc. and Union Carbide Corporation for injuries the plaintiff's husband suffered as a result of contracting mesothelioma. At trial, each defendant focused its respective arguments on the plaintiff's exposure to its asbestos in particular. Each defendant presented testimony showing why its products could not have been purchased by the plaintiff or that it did not supply asbestos to the other defendants during the relevant time period. Both defendants sought to publish the former testimony of two unavailable witnesses to support this contention. Florida's hearsay exception rule on former testimony (Section 90.804(2), Florida Statutes) requires that the party against whom the evidence is offered, or his privy, was a party in the former trial. Federal Rule of Evidence 804(b)(1) was enacted shortly before Florida amended section 90.804 and was, therefore, significant to the court's analysis because the pertinent language on Rule 804(b)(1) mirrors section 90.804(2). I wrote the unanimous opinion holding that the former testimony exception to Florida's hearsay rule did not require strict privity between the present party and the former party and the federal courts' interpretation of the Federal Rules of Evidence may be relied upon as persuasive authority when interpreting the corresponding provisions of the Florida Evidence Code. As a result, we affirmed the verdict and judgment.

Plaintiff/Appellant Rich

Juan Bauta
The Ferraro Law Firm
600 Brickell Avenue
Miami, Florida 33131
800-275-3332

Defendant/Appellee Vanderbilt
Raoul G. Cantero
White & Case LLP
Southeast Financial Center
200 South Biscayne Boulevard
Suite 4900
Miami, Florida 33131
301-371-2700

Defendant/Appellee Union Carbide
Matthew J. Conigliaro

Carlton Fields, P.A.
360 Central Avenue #1500
St. Petersburg, Florida 33701
727-821-7000

Defendant/Appellee Kaiser Gypsum
Dinah Stein
Hicks, Porter, Ebenfeld & Stein, P.A.
799 Brickell Plaza
Suite 900
Miami, Florida 33131
305-374-8171

2. *Hoesch and South Florida Siberian Husky Rescue v. Broward County, Florida*, 53 So.3d 1177 (Fla. 4th DCA 2011).

While sitting by designation as an Associate Judge on the Florida Fourth District Court of Appeal in the May 2010 term, I authored the court's opinion in *Hoesch and South Florida Siberian Husky Rescue v. Broward County, Florida*, 53 So.3d 1177 (Fla. 4th DCA 2011), in which the appellate court found that two Broward County ordinances regulating dangerous dogs were unconstitutional on the grounds that they were in conflict with state law. The district court had denied plaintiffs' challenge to the ordinances. The appellate court found, however, that by requiring the destruction of a dog that has killed a single animal, Broward had vitiated the framework for dealing with dog attacks on other domestic animals that is set forth in Florida law. The appellate court unanimously concluded that the Broward County Ordinance sections regulating dangerous dogs were null and void insofar as they conflict with state law. The appellate court reversed the decision of the trial court and remanded for entry of final summary judgment in favor of the plaintiffs.

Plaintiffs/Appellants Hoesch and South Florida Siberian Husky Rescue

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305-375-6053

Defendant/Appellee Broward County, Florida

Benjamin Sazillo
Assistant County Attorney
Office of Broward County Attorney
115 South Andres Avenue

Suite 423
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954-357-7600

3. *Baker v. State of Florida*, 102 So.3d 759 (Fla. 4th DCA 2012).

While sitting by designation as an Associate Judge on the Florida Fourth District Court of Appeal in the January 2013 term, I authored the court's opinion in *Baker v. State of Florida*, 102 So.3d 759 (Fla. 4th DCA 2012), in which the court considered whether the trial court erred by admitting evidence that the defendant was previously arrested for failing to appear in court and for possession of marijuana. The charges arose from an incident that occurred when an officer decided to conduct a traffic stop on the defendant because his car's tag was expired and because the defendant's driver's license had been suspended. The officer pulled up behind the defendant and activated his lights. The defendant did not stop, drove all the way home, jumped out of his car and ran over to the officer's vehicle. The defendant was arrested and his vehicle was searched. The officer found marijuana inside the car. On cross-examination, the defendant testified that he had no intention of fleeing and eluding the officer but has had bad experiences with the police and it felt like profiling to him. The court held that the defendant, by testifying regarding prior bad experiences with the police, opened the door to cross-examination about whether he had previously been arrested, but not to cross-examination regarding what he had previously been arrested for. The court found that the defendant's testimony regarding his bad experiences with the police based on what he perceived to be "profiling," while perhaps truthful, did not present a complete picture of the extent of his interaction with law enforcement. The testimony potentially portrayed the defendant as a victim of police wrongdoing in the past and could have provided the jury with a reason that the defendant fled. The court reversed and remanded for a new trial.

Plaintiff/Appellee State of Florida

Katherine Y. McIntire
Assistant Attorney General
Office of Florida Attorney General
1515 North Flagler Drive
West Palm Beach, Florida 33401
561-837-5000

Defendant/Appellant Everton Baker

Tatjana Ostapoff
Assistant Public Defender
Office of Public Defender, 15th Judicial Circuit, Palm Beach County, Florida
421 Third Street

West Palm Beach, Florida 33401
561-355-7500

4. *Piendle v. R.J. Reynolds Tobacco Company, et al.*, Case No. 502008CA038777 (Fla. 15th Cir. Ct.). Orders supplied.

As a Circuit Judge, I presided over the first *Engle* progeny case to be tried in Palm Beach County following the Florida Supreme Court's decision in *Engle v. Liggett Group, Inc.*, 945 So.2d 1246 (Fla. 2006), which held that various tobacco companies had concealed or omitted material information regarding the health effects of cigarettes or their addictive nature, with the intention that smokers and the public would rely on this information to their detriment. In presiding over the jury trial in July to August 2010 relating to the death of Mr. Piendle from lung cancer allegedly as a result of smoking, I rendered orders on motions for summary judgment and motions relating to punitive damage claims. The rulings included interpretations of the res judicata effect of the *Engle* case jury findings, upon decertification of the class, in subsequent lawsuits by individual class members seeking damages from the defendants. At the time of making these rulings, there were no Florida appellate cases addressing these issues. In the compensatory damages phase, the jury found that the percentage of any fault that was a legal cause of Mr. Piendle's death was: Piendle (45%), R.J. Reynolds Tobacco Company (27.5%), Philip Morris USA – Inc. (27.5%); the total amount of damages sustained by the plaintiff Ms. Piendle for the loss of Mr. Piendle's companionship and protection, and her mental pain and suffering as a result of Mr. Piendle's death was $4 million; and found by clear and convincing evidence that punitive damages were warranted against R.J. Reynolds Tobacco Company and Philip Morris USA – Inc. In the punitive damages phase of the trial, the jury returned a verdict of punitive damages against R.J. Reynolds Tobacco Company in the amount of $180,000 and against Philip Morris USA – Inc. in the amount of $90,000.

Plaintiff Piendle

John Scarola
Searcy Denny Scarola Barnhart & Shipley, PA
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
561-686-6300

Defendant RJ Reynolds Tobacco Company, et al.

Stephen Krigbaum
Carlton Fields
525 Okeechobee Boulevard
Suite 1200

Cityplace Tower
West Palm Beach, Florida 33401
561-659-7070

John Wiederhold
Wiederhold, Moses, Kummerien & Waronicki, PA
560 Village Boulevard
Suite 240
West Palm Beach, Florida 33409
561-615-6775

5. *Al-Saleh v. Sargeant, III, et al.*, Case No. 502008CA010187A (Fla. 15th Cir. Ct.). Orders supplied.

As a Circuit Judge, I presided over the jury trial in July 2011 in this case. Plaintiff Al-Saleh sued the defendants regarding his alleged entitlement to proceeds from contracts with the U.S. Defense Energy Support Center to supply fuel to American troops in Iraq by shipment across Jordan. I issued an order denying defendants motion to dismiss for forum non conveniens. The order was affirmed in *Sargeant, III et al. v. Al-Saleh*, 13 So.3d 65 (Fla. 4th DCA 2009). I also issued an order denying defendants' motion for summary judgment. The order addressed acts and statements allegedly attributed to King Abdullah of the Kingdom of Jordan, finding that they did not implicate the act of state doctrine and further that the doctrine of international comity was inapplicable. After an 11-day trial, the jury returned a verdict for Al-Saleh and awarded him $28.8 million in damages. The Fourth District Court of Appeal affirmed the judgment but reversed the denial of pre-judgment interest, *Sargeant, III v. Al-Saleh*, 120 So.3d 86 (Fla. 4th Dist. Ct. App. 2013), and later reversed a non-final order regarding a motion to compel that the debtors turn over certain stock certificates, *Sargeant, III v. Al-Saleh*, 2014 WL 836755 (Fla. 4th Dist. Ct. App. 2014). The case is currently in post-judgment collection proceedings.

Plaintiff Mohammad Anwar Farid Al-Saleh

Barry R. Ostrager
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
212-455-2655

Defendants Harry Sargeant, III, Mustafa Abu-Naba'A, and International Oil Trading Company, LLC

Roger S. Kobert
Weiss Serota Helfman Pastoriza Cole & Boniske

2525 Ponce de Leon Boulevard
Suite 700
Coral Gables, Florida 33134
305-854-0800

6. *Milanese, as Personal Representative of the Estate of C. Milanese v. City of Boca Raton*, Case No.502007CA018509 (Fla. 15th Cir. Ct.). Order supplied.

As a Circuit Judge I wrote an Order Granting defendant's Motion to Dismiss with Prejudice. The issue raised in the motion was whether the police, upon legally releasing an impaired person from custody at a police station or jail, thereafter owe a duty of care to that person when the police have not created any risk which that person may face upon release. The third amended complaint alleged that after a night of heavy drinking, Milanese got in his truck and began driving erratically. His cousin, who was following him in her car, called 911. The police officer pulled Milanese over and took him into custody because he appeared impaired and arranged for the plaintiff's truck to be towed. The officer transported Milanese to the police station where he was issued five traffic citations. The police officer called a cab for Milanese and, when the cab arrived at the police station, the officer escorted Milanese to the front door of the station and released him. Milanese was still impaired and because the cab driver did not see Milanese, the cab driver left. Following his release from the police station, Milanese was struck and killed by a train after lying next to nearby railroad tracks. I held that the police did not owe a duty of care under those circumstances. The order was affirmed by the Fourth District Court of Appeal on rehearing en banc, *Peter Milanese, as Personal Representative of the Estate of C. Milanese v. City of Boca Raton, Florida*, 84 So.3d 339 (Fla. 4th DCA 2012), on the grounds that the police did not create or permit dangers to Milanese to exist, were no longer holding Milanese in custody, were no longer detaining Milanese, and did not otherwise subject Milanese to danger.

<u>Plaintiff</u>

Charles Wender
1900 West Palmetto Park Road
Boca Raton, Florida 33432
561-368-7004

<u>Defendant City of Boca Raton, Florida</u>

Matthew H. Mandel
Weiss Serota Helfman Pastoriza Cole & Boniske, PL
200 East Broward Boulevard
Suite 1900

Ft. Lauderdale, Florida 33301
945-763-4242

7. *Proudfoot Consulting Company v. Prosser, Highland Consulting Company and Highland Consulting GMBH*, Case No. 502006CA009881 (Fla. 15th Cir. Ct.). Order supplied.

As a Circuit Judge, I presided over litigation involving a contract dispute arising from alleged trade secret violations and non-compete violations. The case was pending before me for at least four years while I served in the Civil Division. I declared the case complex under a newly adopted state court rule of procedure for designating complicated matters as complex. I was one of the first judges in Palm Beach County to utilize this new rule of procedure. The case in question presented several difficult legal issues, including jurisdictional questions as to the reach of Florida's long-arm jurisdiction and statute with respect to foreign citizens who had transacted business in Florida (including transactions that were primarily electronic in nature), the management of substantial trade secrets information that was the subject of extensive discovery efforts, several interlocutory appeals involving multiple issues including assertions of the Fifth Amendment by one party, and monetary claims exceeding several million dollars. The case concluded with a settlement prior to trial.

Plaintiff Proudfoot Consulting Company

Scott Hawkins
Jones, Foster, Johnston & Stubbs
505 South Flagler Drive
West Palm Beach, Florida 33401
561-659-3000

Defendants Prosser, Highland Consulting Company, and Highland Consulting GMBH

Louis Silber
Silber and Davis
1806 Old Okeechobee Road
West Palm Beach, Florida 33409
561-615-6266

John M. Burman
Law Firm of Burman, Critton, Luttier & Coleman
303 Banyan Boulevard
Suite 400
West Palm Beach, Florida 33401
561-842-2820

8. *Miller et al. v. Bethesda Memorial Hospital, Inc. et al.*, Case No. 502005CA6735 (Fla. 15th Cir. Ct.). Orders supplied.

As a Circuit Judge, I presided over a medical malpractice trial that lasted approximately two months. The plaintiff, an achondroplastic dwarf, was three years old when the alleged malpractice occurred. The allegations in the complaint were that the defendants, a pediatrician (specializing in ear, nose and throat problems), anesthesiologist, and hospital, were negligent during a surgical procedure on the plaintiff for operative removal of tympanostomy tubes. During the surgery and immediately thereafter, it was alleged that the plaintiff's airway was compromised, resulting in severe oxygen deprivation for an extended period of time. The plaintiff alleged that he suffered serious and permanent injuries to the brain and respiratory system. During the course of the litigation, I granted summary judgment brought on behalf of the defendants Bethesda Memorial Hospital, Inc., Bethesda Health City, Inc. and Bethesda Healthcare System based on the lack of existence of an apparent agency relationship and a joint venture between these defendants and the other defendants in the lawsuit. I also denied a motion for summary judgment brought by defendant Kelson Physician Partners, Inc. based on the existence of genuine issues of material fact as to that defendant's relationship with the other defendants. The case went to trial in 2009 and resulted in a hung jury after which I declared a mistrial. The case subsequently settled.

Plaintiff

Darryl L. Lewis
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
561-686-6300

Defendant Bethesda Outpatient Surgery Center, LLC

Anthony P. Corsini
Bob, Ciotoli, Bocchino, Newman & Corsini, P.A.
1240 U.S. Highway One
Suite 200
North Palm Beach, Florida 33408
561-684-6600

Defendant Anesthesia Associates, P.A. & Dr. Maisel

Keith J. Puya
Stephen Lynn Klein Cava Hoffman & Puya, P.A.
515 North Flagler Drive

Suite 1600
West Palm Beach, Florida 33401
561-655-1500

Defendant Dr. Spektor & Otolaryngology Consultants, P.A.

Thomas E. Dukes, III
McEwan, Martinez & Dukes, P.A.
108 East Central Boulevard
Post Office Box 753
Orlando, Florida 32802
407-423-8571

9. *Coleman (Parent Holdings), Inc. v. Morgan Stanley & Co., Inc.* Case No. 2003CA005045 (Fla. 15th Cir. Ct.). Order supplied.

As a Circuit Judge, I issued an order finding that the plaintiff did not raise a colorable entitlement to relief and denied the plaintiff's verified motion to vacate the judgment and grant a new trial on damages. This case arose from an alleged conspiracy between defendant Morgan Stanley and the now-defunct Sunbeam Corporation. Coleman (Parent) Holdings, Inc. purchased Sunbeam, allegedly in reliance on misrepresentations of Sunbeam's investment banker, Morgan Stanley. Sunbeam went bankrupt within two years and Coleman sued Morgan Stanley for fraudulent conspiracy to misrepresent Sunbeam's financial health at the time of sale. A jury had returned a verdict (before another Circuit Judge) in the plaintiff's favor for $604,334,000 in compensatory damages and $850 million in punitive damages. On appeal, the Florida Fourth District Court of Appeal reversed both the compensatory and punitive damage awards and remanded the case with directions to enter final judgment for Morgan Stanley. In its motion, the plaintiff asked the court to vacate the final judgment of dismissal in favor of Morgan Stanley, enter a default as to all elements of the plaintiff's claims, and order a new trial on damages. The motion asserted that it was properly brought under Florida Rule of Civil Procedure 1.540 because the defendant perpetrated a fraud upon the court and a fraud upon the plaintiff. I issued a 28-page order in which I concluded that the plaintiff was unable to show that the fraud alleged affected the outcome of the case. The order was affirmed by the Fourth District Court of Appeal in *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.* 20 So.3d 952 (Fla. 4th DCA 2009), rehearing denied, review denied, 37 So.3d 846.

Plaintiff Coleman (Parent Holdings), Inc.

John Scarola
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard

West Palm Beach, Florida 33409
561-686-6300

Defendant Morgan Stanley & Co., Inc.

Bruce Rogow
Bruce S. Rogow, P.A.
500 East Broward Boulevard
Suite 1930
Ft. Lauderdale, Florida 33394
954-767-8909

10. *Mendez et al. v. Florida Department of Agriculture and Consumer Services, et al.*, Case No. 2002CA013717 (Fla. 15th Cir. Ct.). Orders supplied.

As a Circuit Judge, I presided over a three-week bench trial on liability in October 2007 in this case, in which the primary issue was whether the defendants' physical destruction of the plaintiffs' exposed citrus trees constituted a "taking" under Article X, § 6(a) of the Florida Constitution requiring full and just compensation. This case was the first of five class action lawsuits filed in the state of Florida challenging the Florida Department of Agriculture and Consumer Services' authority to cut down residential citrus trees. The Department destroyed 66,468 residential citrus trees owned by members of the class in Palm Beach County from 2000 until the end of the eradication program in early 2006. The destroyed residential citrus trees were located on the property of 40,937 owners in Palm Beach County. I issued an order on the liability claims and defenses in December 2007, finding that the defendants' destruction of the plaintiffs' citrus trees constituted a "taking" under Article X, section 6(a) of the Florida Constitution requiring full and just compensation. After determining that there was a taking, I presided over a two-week jury trial on damages, which resulted in a verdict of over $19 million. I subsequently entered final judgment and issued a writ of execution against the appellant Department of Agriculture and Consumer Services in an inverse condemnation action. The Fourth District Court of Appeal concluded that the plaintiffs had to collect through a different procedure. *Florida Dep't of Agriculture and Consumer Services v. Mendez et al.*, 98 So.3d 604 (Fla. 4th DCA 2012). The appellate court then affirmed my rulings as to liability, finding that the destruction of the trees constituted a taking, that the exposed trees did not constitute a public nuisance and that the presumption contained in section 11.066(2), Florida Statutes, as well as the burden of proof to overcome that presumption, did not apply. *Florida Dep't of Agriculture and Consumer Services v. Mendez, et al.*, 126 So.3d 367 (Fla. 4th DCA 2013). However, the court reversed the exclusion of some of the scientific evidence regarding citrus canker, as well as other citrus pests and their effects at the damages phase and remanded for a new trial on damages. Because I am

currently assigned to the Criminal Division, the new jury trial has been assigned to a judge in the Civil Division.

Plaintiff David and Lillian Mendez et al. (class action)

Robert Gilbert
Grossman Roth, P.A.
2525 Ponce de Leon
Suite 1150
Coral Gables, Florida 33134
888-296-1681

Defendant Florida Department of Agriculture and Consumer Services, et al.

Wesley R. Parsons
Clarke Silvergate
799 Brickell Plaza
Suite 900
Miami, Florida 33131
305-347-3123

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

1. *Baker v. State of Florida*, 102 So.3d 756 (Fla. 4th DCA 2012).

Appellant Everton Baker

Tatjana Ostapoff
Assistant Public Defender
Office of Public Defender, 15th Judicial Circuit, Palm Beach County, Florida
421 Third Street
West Palm Beach, Florida 33401
561-355-7500

Appellee State of Florida

Katherine Y. McIntire
Assistant Attorney General
Office of Florida Attorney General
1515 North Flagler Drive
West Palm Beach, Florida 33401
561-837-5000

2. *Rich v. Kaiser Gypsum Company, Inc. et al.*, 103 So.3d 903 (Fla. 4th DCA 2012).

   Appellant Abbey Rich

   Juan Bauta
   The Ferraro Law Firm
   600 Brickell Avenue
   Miami, Florida 33131
   800-275-3332

   Appellee Kaiser Gypsum Company, Inc. et al.

   Raoul G. Cantero
   White & Case LLP
   Southeast Financial Center
   200 South Biscayne Boulevard
   Suite 4900
   Miami, Florida 33131
   3015-371-2700

   Matthew J. Conigliaro
   Carlton Fields, P.A.
   360 Central Avenue #1500
   St. Petersburg, Florida 33701
   727-821-7000

3. *Rasabi et al. v. Salomon*, 51 So.3d 1284 (Fla. 4th DCA 2011).

   Appellant Shlomo Rasabi

   Matthew R. Simrig
   Law Offices of Matthew R. Simrig
   990 West Sample Road
   Suite 300
   Coral Springs, Florida 33065
   954-825-0466

   Appellee David Salomon

   Allen H. Libow
   Libow & Shaneen LLP
   3351 North West Boca Raton Boulevard
   Boca Raton, Florida 33427
   561-367-7300

4. *Hoesch and South Florida Siberian Husky Rescue, Inc. v. Broward County, Florida*, 53 So.3d 1177 (Fla. 4th DCA 2011).

Appellant Brian Hoesch and South Florida Siberian Husky Rescue

Jason M. Wander
Law Office of Jason M. Wander
200 South Biscayne Boulevard
Suite 2690
Miami, Florida 33131
305-375-6053

Appellee Broward County, Florida

Benjamin Sazillo
Assistant County Attorney
Office of Broward County Attorney
115 South Andres Avenue
Suite 423
Ft. Lauderdale, Florida 33301
954-357-7600

5. *Piendle v. R.J. Reynolds Tobacco Company, et al.*, Case No. 502008CA038777 (Fla. 15th Cir. Ct.). (Orders previously supplied in response to 13c).

Plaintiff Margaret Piendle

John Scarola
Searcy Denny Scarola Barnhart & Shipley, PA
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
561-686-6300

Defendant RJ Reynolds Tobacco Company et al.

Stephen Krigbaum
Carlton Fields
525 Okeechobee Boulevard
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Cityplace Tower
West Palm Beach, Florida 33401
561-659-7070

John Wiederhold
Wiederhold, Moses, Kummerien & Waronicki, PA

560 Village Boulevard
Suite 240
West Palm Beach, Florida 33409
561-615-6775

6. *Cadejuste v. State of Florida*, 993 So.2d 122 (Fla. 4th DCA 2008).

Appellant Marco Cadejuste

Margaret Good-Earnest
Assistant Public Defender
Office of Public Defender, 15th Judicial Circuit, Palm Beach County, Florida
421 Third Street
West Palm Beach, Florida 33401
561-355-7500

Appellee State of Florida

Daniel P. Hyndman
Assistant Attorney General
Office of Florida Attorney General
1515 North Flagler Drive
West Palm Beach, Florida 33401
561-837-5000

7. *Goodall v. Whispering Woods Center, L.L.C.*, 990 So.2d 695 (Fla. 4th DCA 2008).

Appellant Michael Goodall

Michael P. Hamaway
Mombach, Boyle & Hardin, P.A.
Broward Financial Centre
Suite 1950
Ft. Lauderdale, Florida 33301
954-467-2200

Appellee Richard H. Bergman

Richard H. Bergman
Bergman & Jacobs, P.A.
2001 Hollywood Boulevard
Suite 200
Hollywood, Florida 33020
954-923-3533

8. *Al-Saleh v. Sargeant, III, et al.*, Case No. 502008CA010187 (Fla. 15th Cir. Ct.); *aff'd* 13 So.3d 65 (Fla. 4th DCA 2009); *rev'd in part* Sargeant, III v. Al-Saleh, 120 So.3d 86 (Fla. 4th Dist. Ct. App. 2013); *Sargeant, III v. Al-Saleh*, 120 So.3d 86 (Fla. 4th Dist. Ct. App. 2013). (Orders previously supplied in response to 13c).

   Plaintiff Mohammad Anwar Farid Al-Saleh

   Barry R. Ostrager
   Simpson Thacher & Bartlett LLP
   425 Lexington Avenue
   New York, New York 10017
   212-455-2655

   Defendants Harry Sargeant, III, Mustafa Abu-Naba'A, and International Oil Trading Company, LLC

   Roger S. Kobert
   Weiss Serota Helfman Pastoriza Cole & Boniske
   2525 Ponce de Leon Boulevard
   Suite 700
   Coral Gables, Florida 33134
   305-854-0800

9. *Proudfoot Consulting Company v. Prosser, Highland Consulting Company and Highland Consulting GMBH*, Case No. 502006CA009881 (Fla. 15th Cir. Ct.). (Orders previously supplied in response to 13c).

   Plaintiff Proudfoot Consulting Company

   Scott Hawkins
   Jones, Foster, Johnston & Stubbs
   505 South Flagler Drive
   West Palm Beach, Florida 33401
   561-659-3000

   Defendants Anthony Prosser, Highland Consulting Company and Highland Consulting GMBH

   Louis Silber
   Silber and Davis
   1806 Old Okeechobee Road
   West Palm Beach, Florida 33409
   561-615-6266

John M. Burman
Law Firm of Burman, Critton, Luttier & Coleman
303 Banyan Boulevard
Suite 400
West Palm Beach, Florida 33401
561-842-2820

10. *Coleman (Parent Holdings), Inc. v. Morgan Stanley & Co., Inc.* Case No. 2003CA005045 (Fla. 15th Cir. Ct.). (Order previously supplied in response to 13c).

Plaintiff Coleman (Parent Holdings), Inc.

John Scarola
Searcy Denny Scarola Barnhart & Shipley, PA
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409-6601
561-686-6300

Defendant Moran Stanley & Co., Inc.

Bruce Rogow
Law Office of Bruce S. Rogow
500 East Broward Boulevard
Suite 1930
Ft. Lauderdale, Florida 33394
954-767-8909

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.

The following cases represent a summary of and citations for all of my decisions that were reversed by a reviewing court.

Sargeant, III, Abu-Naba'a and International Oil Trading Company, LLC v. Al-Saleh, 2014 WL 836755 (Fla. 4th Dist. Ct. App. 2014). The Fourth District Court of Appeal reversed a non-final order granting the defendants/debtors motion to compel the debtors to turn over stock certificates evincing their ownership interest in several foreign entities. Decision previously supplied in response to 13c.

O'Malley v. Ranger Construction Industries, Inc., 2014 WL 51682 (Fla. 4th Dist. Ct. App. 2014). The Fourth District Court of Appeal reversed the order granting summary judgment on inapplicable inference stacking rules. Decision supplied.

Allen Holmes, Inc. v Jim Molter, Inc., 127 So.3d 695 (Fla. 4th Dist. Ct. App. 2013). The Fourth District Court of Appeal disagreed with the finding that neither party was the "prevailing party" for purposes of recovering attorney's fees and costs. Decision supplied.

Sargeant, III, Abu-Naba'a and International Oil Trading Company, LLC v. Al-Saleh, 120 So.3d 86 (Fla. 4th Dist. Ct. App. 2013). The defendants appealed the judgment entered based on the exclusion of expert testimony concerning whether there is condition precedent, under Jordanian law, that notice had to be given to a certain Jordanian ministry, prior to plaintiff instituting suit. The appellate court affirmed on this issue and the judgment but reversed the denial of pre-judgment interest. Decision previously supplied in response to 13c.

Florida Dep't of Agriculture and Consumer Services v. Mendez et al., 126 So.3d 367 (Fla. 4th DCA 2013). The Fourth District Court of Appeal reversed the final judgment as to compensation, concluding that the scientific evidence regarding citrus canker, which had been excluded, was relevant to the evaluation of the various appraisers' determinations of value of the homeowners' destroyed trees. Decision previously supplied in response to 13c.

Sterling Financial & Management, Inc. v. Gitenus et al., 117 So.3d 790 (Fla. 4th DCA 2013). The Fourth District Court of Appeal reversed the denial of a directed verdict in favor of the appellant, concluding that the evidence demonstrated that the appellant did not participate in the details of the work to the extent necessary to make it liable to an employer of an independent contractor for the negligence of the contractor. Decision supplied.

Atlantis Estate Acquisitions, Inc. v. Depierro et al., 125 So.3d 889 (Fla. 4th DCA 2013). The Fourth District Court of Appeal reversed the final judgment awarding the appellee tenant a return of the remaining rent on a lease because the court found that the rent was not "advance rent" within the meaning of the statute. Decision supplied.

Bradshaw et al. v. Boynton-JCP Associates, LTD. Et al., 125 So.3d 289 (Fla. 4th DCA 2013). The Fourth District Court of Appeal reversed a final judgment awarding attorneys' fees pursuant to an offer of judgment because ambiguities in the offer prevented its enforceability. Decision supplied.

Home Construction Management, LLC et al. v. Comet, Inc., 125 So.3d 221 (Fla. 4th DCA 2013). The Fourth District Court of Appeal reversed the treble damage award against the individual defendant. Decision supplied.

City of Boynton Beach v. Janots et al., 101 So3d 864 (Fla. 4th DCA 2012). The Fourth District Court of Appeal reversed the denial of the appellant's motion to use proceeds from a taking to satisfy an outstanding code enforcement lien and found that the appellant City did not need to file a separate action to enforce its code enforcement liens. Decision supplied.

Florida Dep't of Agriculture and Consumer Services v. Mendez et al., 98 So.3d 604 (Fla. 4th DCA 2012). The Fourth District Court of Appeal reversed the writs of execution against the Department of Agriculture and Consumer Services because the appellate court found that the statute permitting the issuance of a writ of execution against the State for judgment in eminent domain actions did not permit the issuance of a writ of execution against the appellant Department of Agriculture and Consumer Services in inverse condemnation actions. Decision previously supplied in response to 13c.

Poland et al. v. Zaccheo, 82 So.3d 133 (Fla. 4th DCA 2012). The Fourth District Court of Appeal reversed the jury verdict, concluding that the full cross-examination of the appellee's medical expert regarding the proximate cause of the appellee's injuries and resulting surgeries should have been permitted. Decision supplied.

Wilson v. Palm Beach County, 62 So.3d 1247 (Fla. 4th DCA 2011). The Fourth District Court of Appeal reversed the order granting summary judgment in favor of the appellee, concluding that there were genuine issues of material fact as to whether the special permit conditions and setbacks limit farming operations. Decision supplied.

Mercedes-Benz USA, LLC v. Popham, 65 So.3d 47 (Fla. 4th DCA 2011). The Fourth District Court of Appeal reversed the award of attorney's fees to the appellee under Florida's "Lemon Law" during arbitration of the refund option because damages under section 681.112, Florida Statutes (2010) do not include attorney's fees incurred in pursuing the refund option through arbitration. Decision supplied.

Drucker et al. v. Duvall, 61 So.3d 468 (Fla. 4th DCA 2011). The Fourth District Court of Appeal reversed an order denying appellants' motion to transfer the case for improper venue, finding that none of the appellee's causes of action accrued in Palm Beach County. Decision supplied.

Rastaedt v. Mercedes-Benz USA, LLC, 63 So3d 41 (Fla. 4th DCA 2011). The Fourth District Court of Appeal reversed the order granting appellee's motion for judgment on the pleadings because the appellate court found that the appellant had stated a cause of action for breach of express warranty under the Magnuson Moss Warranty Act. Decision supplied.

Citizens Property Insurance Corp. v. European Woodcraft & Mica Design, Inc. et al., 49 So.3d 774 (Fla. 4th DCA 2010). The Fourth District Court of Appeal reversed a final judgment finding that the appellant was not bound by the appellee insurance agent's actions because the reviewing court found that appellee insured was put on notice of inquiry as to the limitation on the agent's actual authority. Decision supplied.

Asinmaz v. Semrau, 42 So.3d 955 (Fla. 4th DCA 2010). The Fourth District Court of Appeal reversed the award of attorneys' fees, which had been based on the finding that the plaintiff and his attorney had no evidence to support that the appellee acted with express malice when she made a police report accusing the plaintiff of stealing her jewels. The appellate court found, instead, that evidence in possession of the plaintiff presented a justiciable issue. Decision supplied.

The King's Academy, Inc. et al. v. Joe Doe et al., 29 So.3d 439 (Fla. 4th DCA 2010). The Fourth District Court of Appeal reversed a non-final order denying a motion to compel arbitration, concluding that the trial court should have held an evidentiary hearing on the appellee's unconscionability challenge because there existed a substantial disputed issue concerning the making of the arbitration provision. Decision supplied.

W&W Lumber of Palm Beach, Inc. v. Town & Country Builders, Inc., 35 So.3d 79 (Fla. 4th Dist. Ct. App. 2010). The Fourth District Court of Appeal reversed a damage award based on the appellate court's decision to grant the appellee's motion to amend its affirmative defenses to include setoff. Decision supplied.

Carsillo v. City of Lake Worth, 995 So.2d 1118 (Fla. 4th DCA 2008). The Fourth District Court of Appeal reversed a grant of summary judgment in favor of the appellee, concluding that because the Florida Civil Rights Act is patterned after the federal Civil Rights Act, which considers pregnancy discrimination to be sex discrimination, the Florida Act bars such discrimination. Decision supplied.

Lankheim v. Florida Atlantic University, Board of Trustees, 922 So.2d 828 (Fla. 4th DCA 2008). The Fourth District Court of Appeal reversed a grant of summary judgment in favor of the appellee, concluding that the appellant, as a student already enrolled at a state college on a state university campus, had a legitimate claim of entitlement to continued enrollment at the school such that she could demand the procedural protections of due process. Decision supplied.

Almendares v. State of Florida et al., 979 So.2d 448 (Fla. 4th DCA 2008). The Fourth District Court of Appeal reversed an order denying the appellant's motion for reconsideration of his indigent status because the reviewing court found that the issue was not addressed in the appellant's original petition for writ of mandamus. Decision supplied.

Weiss Capital Management, Inc. v. Crowder, 964 So.2d 865 (Fla. 4th Dist. Ct. App. 2007). The Fourth District Court of Appeal reversed an order staying the civil action and compelling arbitration because the appellate court found that there was no express agreement between Weiss Capital Management that required Weiss to arbitrate its dispute with Crowder. Decision supplied.

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

I have issued over 100 unpublished opinions on motions to dismiss, motions for summary judgment, motions for temporary injunction, motions to suppress, motions to compel and motions for protective order and motions to transfer for forum non conveniens; I also have issued unpublished circuit appellate opinions. The orders that I have issued are kept in the official court files which are maintained by the Clerk and Comptroller Office for Palm Beach County. The orders can be accessed by case number and the parties' names. The circuit appellate opinions that I have issued are maintained on the 15th Judicial Circuit website and can be searched by date and by topic.

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 opinion.

Hoesch and South Florida Siberian Husky Rescue v. Broward County, Florida, 53 So.3d 1177 (Fla. 4th DCA 2011)

Proudfoot Consulting Company v. Prosser, Highland Consulting Company and Highland Consulting GMBH, Case No. 502006CA009881 (Fla. 15th Cir. Ct.). Opinion previously supplied in response to 13c.

Mendez et al. v. Florida Department of Agriculture and Consumer Services, et al., Case No. 2002CA013717 (Fla. 15th Cir. Ct.). *Florida Department of Agriculture and Consumer Services, et al. v. Mendez*, 126 So.3d 367 (Fla. 4th DCA 2013), *rev'd on other grounds*. Opinion previously supplied in response to 13c.

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

As a general matter, I recuse myself in cases where an objective, disinterested, and fully informed lay observer would entertain a significant doubt about my impartiality. On motions for disqualification, I follow the requirements of Florida Rule of Judicial Administration 2.330 on Disqualification of Trial Judges and Florida Statute 38.10. Pursuant to Rule 2.330, the trial judge shall determine only the legal sufficiency of the motion for disqualification and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason shall be stated, and an order of denial shall not take issue with the motion. Fla. R. Jud. Admin. 2.330(f). In accordance with court rules, my orders of recusal do not provide a reason for recusal.

I have recused myself *sua sponte* from the following cases, which I have listed in alphabetical order:

All Care Medical Services, Inc. and Dr. Shaheed Kalloo v. Jodi Neely, Case No. 2006CA11154 (Fla. 15th Cir. Ct.).

American Express Bank, FSB v. Lewis Kasman and Eileen Kasman, Case No. 2007CA00055 (Fla. 15th Cir. Ct.).

Amhad Dastjerdi v. Roberta Fox, Case No. 2010CA016157 (Fla. 15th Cir. Ct.).

Anna Marie Hernandez v. Laurie P. Rapaport and Jonathan Rapaport, Case No. 2008CA 1369 (Fla. 15th Cir. Ct.).

Angel v. State Farm Mutual Automobile Insurance Company, Gary Lesser and Cory Boisvert, Case No. 2009CA2168 (Fla. 15th Cir. Ct.).

Arthur P. Bellis v. Mark A. Guzzetta, Docket Nos. 1999CA11818 and 2001CA6978 (Fla. 15th Cir. Ct.).

Broadus L. Hill v. State of Florida, Case No. 2009CA12944 (Fla. 15th Cir. Ct.).

Charles Navarro v. Mark Elhilow and Susan Clark Elhilow, Case No. 2011CA4466 (Fla. 15th Cir. Ct.).

Christopher McMahon v. State of Florida, Case No. 2009CA22722 (Fla. 15th Cir. Ct.).

City of Delray Beach v. Palm Beach County Police Benevolent Association, Inc., Case No. 2010CA24837 (Fla. 15th Cir. Ct.).

City of West Palm Beach v. Calida Johnson, Case No. 2009CA04673 (Fla. 15th Cir. Ct.).

City of West Palm Beach v. Roger Tucker, Cory Hutchins, Ronald "Little Ron" Bowers, Courtney "Bump or CJ" Jones, Bryan Omer Gerald, Tanoris Judd, Joshua "Spro" Judd, Tavaris Jemario Junter, Jamal Paulk, Joey Canady, Freddie Canady, Lavar McClendon, Case No. 2007CA013462 (Fla. 15th Cir. Ct.).

City of West Palm Beach v. Palm Beach County PBA, Case No. 2009CA38628 (Fla. 15th Cir. Ct.).

David W. Mahan v. State of Florida, Case No. 2009CA26292 (Fla. 15th Cir. Ct.).

Edit Tolnai, M.D. and Edit Tolnai, M.D., P.A., Case No. 2010CA000408 (Fla. 15th Cir. Ct.).

Fane Lozman v. City of Riviera Beach, Case No. 2008CA27882 (Fla. 15th Cir. Ct.).

Florida Ventures, Inc. v. Harald Dude, Mobile Management, et al., Docket Nos. 1997CA9126, 1997CA8006 (Fla. 15th Cir. Ct.).

HPSC, Inc. v. Perrin L. Blank, D.D.S., P.A. and Perrin L. Blank, Case No. 2009CA4207 (Fla. 15th Cir. Ct.).

In Re: Forfeiture of Funds Totaling Approximately $496,916.45 in US Currency Seized from a Specific Merrill Lynch Account in the Name of Sherri Pinsley and Michelle Pinsley, Case No. 2011CA10780 (Fla. 15th Cir. Ct.).

Iva Dozier v. Robert Rubin and Mercury Insurance Company of Florida, Case No. 2011CA5436 (Fla. 15th Cir. Ct.).

Jacques R. Rubin v. KPMG LLP and Proskauer Rose, Case No. 2007CA20908 (Fla. 15th Cir. Ct.).

John F. McGregor, et al. v. Merco Group of the Palm Beaches, Inc., et al., Case No. 2006CA11826 (Fla. 15th Cir. Ct.).

John Kevin Lawler v. Deidre E. Newton, Case No. 2008CA34914 (Fla. 15th Cir. Ct.).

John Tutlock, Joann Tutlock, Charles Tutlock, Darrell Covell and Melissa Covell v. Merco Group of the Palm Beaches, Inc. and Gunster, Yoakley & Stewart, P.A., Case No. 2008CA108 (Fla. 15th Cir. Ct.).

John Valentino, Scott Gartner and Ethan Levinson v. Fantasma Productions, Inc. of Florida, Case No. 2008CA10043 (Fla. 15th Cir. Ct.).

Julien Garcon v. West Palm Beach Police Department, Case No. *2010CA1545* (Fla. 15th Cir. Ct.).

Kast Construction Company, LLC, and Bay Erectors & Rigging, Inc., Case No. 2006CA4164 (Fla. 15th Cir. Ct.).

Mark Elliot Roberts v. Eddie Stephen, et al., Case No. 2010CA4262 (Fla. 15th Cir. Ct.).

Mark P. Arzoumanian and Amelia Gallo, Arzoumanian v. Cole, Scott & Kissane, Case No. 2009CA40939 (Fla. 15th Cir. Ct.).

M & L Realty Holdings, LLC v. Medical Office Concepts, Inc., Case No. 2008CA00657 (Fla. 15th Cir. Ct.).

Michael Corn v. State of Florida, Case No. 2009CA29605 (Fla. 15th Cir. Ct.).

Michael F. McAuliffe v. Pasquale Gervasio and Rosney Gervasio, Case No. 2011CA9813 (Fla. 15th Cir. Ct.).

Michael J. Mahoney, Nora M. Mahoney and Dee's "T" Shirt, Inc. v. Boathouse Real Property, Inc. and City of Riviera Beach, Case No. 2008CA36935 (Fla. 15th Cir. Ct.).

Michael S. Nelson v. Warden D. Harris, Case No. 2010CA18553 (Fla. 15th Cir. Ct.).

Nantucket Enterprises, Inc. Robert Abruzzo and Eric Gordon v. Palm Beach Florida Hotel and Office Building Limited Partnership, Case No. 2010CA27919 (Fla. 15th Cir. Ct.).

Palm Beach Florida Hotel and Office Building Limited Partnership and Ashford TRS Lessee II, LLC, Case No. 2008CA39646 (Fla. 15th Cir. Ct.).

Palm Beach Newspapers, Inc. v. Palm Beach Real Estate, Inc., Case No. 2008CA37675 (Fla. 15th Cir. Ct.).

Pine Trail Square, LLC v. Zuccarelli's Italian Kitchen, Inc. and Ralph Zuccarelli, Case No. 2010 CA 30487 (Fla. 15th Cir. Ct.).

Randal A. Ferguson v. Kelly Bertisch, Case No. 2011CA9428 (Fla. 15th Cir. Ct.).

RBC Bank (USA) v. Tropioc Real Estate Holdings LLC; David A. Behringer; Mark D. Behringer, Unknown Tenant 1; Unknown Tenant 2, Case No. 2011CA2699 (Fla. 15th Cir. Ct.).

Renee Cerulli v. Angelo Forte, DMD, Yves Semean, DDS and Florida Dental & Denture Center, Case No. 2007CA11228 (Fla. 15th Cir. Ct.).

Ricardo Mejia, M.D. et al. v. Carlos Gonzalez JR., M.D. and Proskauer Rose, LLP, Case No. 2007CA17782 (Fla. 15th Cir. Ct.).

Ronald Nathaniel Miller v. Social Security Office of West Palm Beach, Florida, et al., Case No. 2008CA 10063 (Fla. 15th Cir. Ct.).

Tough Construction v. Celia A. Terenzio and Rhonda H. Nasser, Case No. 2006CA14088 (Fla. 15th Cir. Ct.).

The Community Foundation for Palm Beach and Martin Counties, Inc. v. Kolter Property Management, Inc.; Morrow Equipment Company, LLC, LC; Kolter City Plaza II, Inc., Kast Construction Company, LLC, and Bay Erectors & Rigging, Inc., Case No. 2006CA4164 (Fla. 15th Cir. Ct.)

Valery Bell v. Walgreen Co., Case No. 2009CA42300 (Fla. 15th Cir. Ct.).

William I. Koch v. Rock Island Auction Company and Patrick Hogan, Case No. 2010CA25309 (Fla. 15th Cir. Ct.).

I have granted motions for disqualification as legally sufficient in the following cases:

Certified Alarm Technicians, Inc. v. Village of Sailboat Bend Master Association, Inc., Case No. 2008CA499 (Fla. 15th Cir. Ct.).

Chase Home Finance, LLC v. Badarul A. Chowdhury, Case No. 2010CA017662 (Fla. 15th Cir. Ct.).

Jeremy Marquise Carter v. Moss Towing, Case No. 2010CA19767 (Fla. 15th Cir. Ct.).

Kathryn Jordan v. James Pappas, Case No. 2008CA15518 (Fla. 15th Cir. Ct.).

Paradise Entertainment Corp. v. City of West Palm Beach, Case No. 2005CA9307 (Fla. 15th Cir. Ct.).

SIR Electric, Inc. v. State Companies, Inc., Chris Naismith, A-Z Tech and John David Giffin, Case No. 2007CA05758 (Fla. 15th Cir. Ct.).

State of Florida v. Anthony Laterza, Case No. 2011CF1935A (Fla. 15th Cir. Ct.).

State of Florida v. Julius Franklin Rocker, Case No. 2009CF010846 (Fla. 15th Cir. Ct.).

T. Michael Cappuccio v. The Insurance Company for The State of Pennsylvania and Alisha S. Lalli, Case No. 2006CA005597 (Fla. 15th Cir. Ct.).

I have denied motions for disqualification in the following cases:

Booksmart Enterprises, Inc. v. Dennis P. Gallon and Palm Beach Community College, Case No. 2007CA019224 (Fla. 15th Cir. Ct.).

HEARUSA, Inc. v. Celestial Asset Holdings, LLC, Case No. 2007CA5763 (Fla. 15th Cir. Ct.).

Stacey Patrick and Terrell Patrick v. Palm Beach County, The Palm Beach County School Board, The School District of Palm Beach County, George and Mary Webster and James and Catherine Webster, Case No. 2003CA11779 (Fla. 15th Cir. Ct.).

State of Florida v. George Behar, Case No. 2008CF007611 (Fla. 15th Cir. Ct.).

State of Florida v. Sandra Nealy, Case No. 2008CF007611 (Fla. 15th Cir. Ct.).

State of Florida v. Thomas Burgess, Case No. 2007CF013696 (Fla. 15th Cir. Ct.).

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

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

I have held no public offices other than judicial office. I have not had any successful 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.

After consulting my records and the Internet, the following is all of the information that I can recall regarding my political activities. On occasion, I have

been a committee member or host for campaign fundraisers. These fundraisers have been on behalf of the following campaigns: Barbara Boxer for U.S. Senate (2004), Hillary Rodham Clinton for U.S. Senate (2003), Bill Nelson for U.S. Senate (2000), and Bob Graham for U.S Senate (1998 and 1996). From August to November 1988, I volunteered as a Field Coordinator with the Florida Democratic Party, which involved enlisting volunteers and assisting voters in getting to the polls in Palm Beach County, Florida as part of the campaign to elect Michael Dukakis for President. Finally, while I worked for Senator Bill Bradley on his legislative staff in Washington, D.C., I volunteered for limited campaign work during Senator Bradley's campaign for re-election to the United States Senate in 1983 and 1984.

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

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

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

From 1989 to 1990, I served as a law clerk to the Honorable James C. Paine, United States District Judge for the Southern District of Florida.

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

None.

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 - 1994
U.S. Department of Justice
Civil Rights Division, Employment Litigation Section
United States Department of Justice
950 Pennsylvania Avenue, Northwest
Washington, D.C. 20530
Trial Attorney

1994 - 1995
Foley & Lardner
777 South Flagler Drive
West Palm Beach, Florida 33401
Associate

1995 - 1997
City of West Palm Beach
401 Clematis Street, Fifth Floor
West Palm Beach, Florida 33401
Assistant City Attorney

1997 - 1999
Holland & Knight LLP
222 Lakeview Avenue, Suite 1000
West Palm Beach, Florida 33401
Partner

1999 - 2001
Slim-Fast Foods Company
(West Palm Beach office no longer exists; company merged with Unilever in April 2000)
Vice President and General Counsel

2002 - 2006
ARC Mediation
1601 Forum Place, Suite 301
West Palm Beach, Florida 33401
Co-founder, principal, mediator and arbitrator

2001 - 2006
Rosenberg & McAuliffe, PL
1601 Forum Place, Suite 301
West Palm Beach, Florida 33401
Partner

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

I served as a mediator and arbitrator in alternative dispute resolution proceedings from 2002 to 2006. I have not maintained a list of the matters with which I was involved in my capacity as a mediator and arbitrator. All of my mediations were conducted through the mediation company that I founded in 2002, ARC Mediation. I sold ARC Mediation in 2006, prior to becoming a judge. All of my arbitrations were conducted through the American Arbitration Association. All of the cases that I arbitrated were employment-related cases.

b. Describe:

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

From 1990 to 1994, as a trial attorney with the United States Department of Justice, Civil Rights Division, Employment Litigation Section, I conducted investigations into alleged discriminatory practices and represented the United States in federal courts nationally in employment discrimination lawsuits. From 1993 to 1994, I was on a leave of absence from the United States Department of Justice and taught at the University of West Bohemia through the international not-for-profit organization Civic Education Project (CEP).

From 1994 to 1995, as an associate with Foley & Lardner, I had a general civil litigation practice primarily representing businesses. I concentrated my practice in employment-related litigation.

From 1995 to 1997, as an Assistant City Attorney with the City of West Palm Beach, I represented the City in employment discrimination and police misconduct lawsuits, labor grievances and arbitration proceedings. I also provided legal counsel to the mayor and other city officials.

From 1997 to 1999, as a partner with Holland & Knight LLP, I worked in the litigation department with an emphasis on representing corporate and governmental management and employers in employment and labor disputes including Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Florida Civil Rights Act, the Family Medical Leave Act and the Fair Labor Standards Act. My practice included counseling companies concerning employee misconduct, drug testing and other workplace issues.

From 1999 to 2001, as General Counsel of Slim Fast Foods Company, I served on a six-person executive committee that managed all company operations and activities. I led the company's legal team in the $2.3 billion merger with Unilever and $100 million like-kind tax exchange transaction for purchase of land and construction of a company manufacturing plant. I managed all legal matters for the company, including corporate, litigation, U.S. and international trademark, manufacturing and quality assurance, antitrust, products liability, labor and employment, contracts and business relations, real estate, Internet website and advertising. I coordinated all outside legal counsel. I served as the company's contact with government agencies including the Federal Trade Commission, Food and Drug Administration and local regulatory bodies.

From 2001 to 2006, as a partner at Rosenberg & McAuliffe, P.L., my practice included mediation, arbitration and employment litigation in representation of

employees and corporate entities in U.S. District Court. I also counseled and represented employers in employment matters.

From 2002 to 2006, I also operated and managed ARC Mediation, a full-service dispute resolution firm comprised of 20-25 mediators and arbitrators. I served as a mediator and arbitrator in civil litigation matters. I developed the mediation software to help run the mediation company.

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

While at the U.S. Department of Justice, the United States government was my exclusive client, which I represented in employment discrimination litigation against state and local governments.

While at Foley & Lardner, my typical clients were corporate entities involved in general litigation including employment-related litigation and employees in employment-related litigation.

While at the City of West Palm Beach, the City was my exclusive client in all employment-related and police misconduct matters and litigation.

While in practice at Holland & Knight LLP, my typical clients were large employers and businesses in employment-related litigation and counseling.

While at Slim Fast Foods Company, the company was my exclusive client, which I represented in all legal areas relating to its business activities.

While in practice at Rosenberg & McAuliffe, PL, my typical clients included both employees (and former employees) and small to medium sized employer businesses in employment–related litigation and counseling.

While operating and managing ARC Mediation, the company's clients were lawyers and law firms throughout South Florida that sought mediation and arbitration services.

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.

95% of my practice was in litigation. At the United States Department of Justice, I appeared in federal court occasionally for motion practice and trials. At Foley & Lardner, I appeared in state court occasionally for motion practice. At the City of West Palm Beach, I appeared in federal court occasionally for motion practice and trials. At Holland & Knight LLP, I appeared in federal court occasionally for

motion practice and trials. At Rosenberg & McAuliffe, PL, I appeared in federal court frequently for motion practice and trials.

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: 100%
   2. Criminal proceedings: 0%

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

   I have tried four cases to verdict or judgment in courts of record. I was lead counsel in one case and co-counsel in three cases.

   i. What percentage of these trials were:
      1. Jury: 75%
      2. Non-jury: 25%

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

   Brief for Amici Curiae American Council on Education et al., *National Collegiate Athletic Association v. R.M. Smith*, 1998 WL 798589 (United States Supreme Court, October Term, 1998).

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. *Zuccala v. Dias Brothers Gardens Services, Inc. and Dias*, Case No. 05-81165 (S.D. Fla. 2005 – 2006): Judge Hurley and Magistrate Hopkins presiding.

   Rosenberg & McAuliffe, PL represented the defendants Dias Brothers Gardens Services, Inc. and Dias in a lawsuit alleging that the defendants failed to pay the plaintiff overtime compensation for her hours worked in excess of 40 hours per work week and that the defendant terminated the plaintiff because she asserted her right to overtime wages. The plaintiff worked for the defendants from approximately 2004 to 2005 and was employed as a salaried employee. I fully participated with my co-counsel in all aspects of the litigation. The case resulted in a settlement at mediation.

   Co-counsel:
   Michael F. McAuliffe
   (formerly Rosenberg & McAuliffe, PL)
   c/o Oxbow Carbon LLC
   1601 Forum Place
   Suite P2
   West Palm Beach, Florida 33401
   561.512.9422

   Counsel Plaintiff:
   Christine Duignan
   Shavitz Law Group
   2000 Glades Road
   Suite 200
   Boca Raton, Florida 33431
   561-447-8888

2. *Fernandez v. Elder Care Services, Inc.*, Case No. 03-21998 (S.D. Fla. 2003 - 2005); Judge Lenard & Magistrate Klein presiding.

   Rosenberg & McAuliffe, PL represented Elder Care Services, Inc. in an action brought under the Fair Labor Standards Act by a former independent contractor who provided home health care services on behalf of Elder Care Services, Inc. The plaintiff worked for Elder Care Services, Inc. providing companionship services and claimed that he was entitled to overtime compensation for hours worked over 40 hours in a week. The case involved a novel issue regarding the validity of a Department of Labor regulation that applied to third parties, such as Elder Care Services, Inc., regarding the statutory exemption from overtime compensation for companionship services. The jury rendered a verdict in favor of Elder Care Services, Inc. As co-counsel, I shared equally in all aspects of the case, including extensive discovery, motion practice and the trial.

Co-counsel:
Michael F. McAuliffe
(formerly Rosenberg & McAuliffe, PL)
c/o Oxbow Carbon LLC
1601 Forum Place
Suite P2
West Palm Beach, Florida 33401
561.512.9422

Counsel for Plaintiff:
J.H. Zidell
J.H. Zidell, P.A.
300 71st Street
Suite 605
Miami Beach, Florida
305.865.6766

3. *Bradshaw v. School Board of Broward County*, Case No. 03-6215 (S.D. Fla. 2002 - 2005); Judge Martinez and Magistrate Bandstra presiding.

Rosenberg & McAuliffe, PL, represented Leola Bradshaw against the School Board of Broward County in a sexual harassment case under Title VII of the Civil Rights Act of 1964 and the Florida Civil Rights Act. Ms. Bradshaw was employed as a custodian at the Broward County School Board. The jury found that Ms. Bradshaw's supervisor sexually harassed her and awarded her $500,000 in damages. After considering the novel issue of the combined effect of state and federal law limits on damages, the Eleventh Circuit Court of Appeals reduced the award to $300,000. As co-counsel, I shared equally in all aspects of the case, including extensive discovery, motion practice, the trial and the appeal.

Co-counsel:
Michael F. McAuliffe
(formerly Rosenberg & McAuliffe, PL)
c/o Oxbow Carbon LLC
1601 Forum Place
Suite P2
West Palm Beach, Florida 33401
561.512.9422

Counsel for Defendant:
Michael T. Burke
Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A.
2455 East Sunrise Boulevard, Suite 1000
Ft. Lauderdale, Florida 33304
954.463.0100

4. *McGriff et al. v. Southern Waste Systems, LLC and Gusmano*, Case No. 02-80638 (S.D. Fla. 2002 - 2003): Judge Ryskamp and Magistrate Vitunac presiding.

   Rosenberg & McAuliffe, PL represented the plaintiffs against Southern Waste Systems, LLC and Charles Gusmano in a Fair Labor Standards Act overtime lawsuit in which the complaint alleged that the plaintiffs and all others similarly situated worked for the defendants as truck drivers transporting waste within Palm Beach County. The complaint alleged that the plaintiffs worked in excess of 40 hours in a week from at least 1999 - 2002 and that the defendants failed to compensate them at a rate of one and one half times their regular rate for all hours worked in excess of 40 hours in a single work week in violation of 29 U.S.C. § 207. I fully participated with my co-counsel in all aspects of the litigation. The case resulted in a favorable settlement at mediation for approximately eight employees and former employees of the defendants.

   Co-counsel:
   Michael F. McAuliffe
   (formerly Rosenberg & McAuliffe, PL)
   c/o Oxbow Carbon LLC
   1601 Forum Place
   Suite P2
   West Palm Beach, Florida 33401
   561.512.9422

   Counsel for the Defendants:
   Gregg Shavitz
   Shavitz Law Group
   2000 Glades Road
   Suite 200
   Boca Raton, Florida 33431
   561-447-8888

5. *Findlay v. Broward County*, Case No. 02-61715 (S.D. Fla. 2002); Judge Dimitrouleas presiding.

   Rosenberg & McAuliffe, PL represented a certified class of plaintiffs against the Broward County School Board in overtime litigation under the Fair Labor Standards Act. The plaintiffs were all hourly employees who worked over 40 hours a week for the Broward County School Board in two jobs, primarily as food service providers and custodians. The plaintiffs were not paid overtime compensation for their hours worked over 40 hours in a week. As co-counsel, I shared equally in all aspects of the case. The case required a review of all the employment records of the plaintiffs over a three-year period of time in order to establish the extent of the overtime violations. The case settled at mediation and the plaintiffs each recovered their full pay, including liquidated damages.

Co-counsel:
Michael F. McAuliffe
(formerly Rosenberg & McAuliffe, PL)
c/o Oxbow Carbon LLC
1601 Forum Place
Suite P2
West Palm Beach, Florida 33401
561.512.9422

Counsel for Defendant:
Michael T. Burke
Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A.
2455 East Sunrise Boulevard, Suite 1000
Ft. Lauderdale, Florida 33304
954.463.0100

6. *Lyes v. City of Riviera Beach, et al.*, No. 95-8285 (S.D. Fla. 1997 - 1999); Judge Ryskamp presiding. 126 F.3d 1380 (11th Cir. 1997), *vacated and reh'g en banc granted*, 136 F.3d 1295 (1998); *reh'g en banc and remanded,* 166 F.3d 1332 (11th Cir. 1999).

   I was co-counsel in the representation of the defendants City of Riviera Beach, the Community Redevelopment Agency and the Executive Director of CRA, Neil Crilly, in a gender discrimination case brought under Title VII and 42 U.S.C. § 1985(3). I was successful in obtaining summary judgment in favor of the Executive Director on all of the federal claims. The judgment was appealed and was reversed on, among other issues, a finding that the defendants did meet the definition of a single employer under Title VII and the conspiracy to discriminate claim based on sex was actionable under 42 U.S.C. § 1985. The Eleventh Circuit Court of Appeals opinion was subsequently vacated and was reheard by the Eleventh Circuit en banc. I wrote the brief and argued the appeal to the Eleventh Circuit en banc, which reversed on one of the two issues presented to the court in a five-to-four decision, holding that the conspiracy claim was actionable under 42 U.S.C. § 1985(3) and that there was insufficient evidence to support finding that the City and the Agency should be treated as a single employer for purposes of Title VII.

   Co-counsel:
   Glen Torcivia
   Law Office of Glen J. Torcivia & Associates, P.A.
   701 Northpoint Parkway, Suite 209
   West Palm Beach, Florida 33401
   561.686.8700

Richard McDuff
Johnson, Anselmo, Murdoch, Piper & McDuff, P.A.
2455 East Sunrise Boulevard, Suite 1000
Ft. Lauderdale, Florida 33304
954.463.0100

Counsel for Plaintiff:
Michael McHale (deceased)
(formerly with) Daves, Whalen, McHale & Considine
West Palm Beach, Florida

7. *James v. City of West Palm Beach*, Case No. 96-8552 (S.D. Fla. 1996 - 1998); Judge Moreno & Magistrate Johnson presiding.

   Holland & Knight represented the City of West Palm Beach in a sex and race discrimination case under Title VII of the Civil Rights Act of 1964. The plaintiff applied for the position of City Attorney for the City of West Palm Beach. When the plaintiff was not selected, she sued the City alleging that the Mayor of the City of West Palm Beach discriminated against her based on her race and gender. The case required the defense of the City's personnel policies, procedures and practices as administered in the City's selection of its City Attorney. The jury returned a verdict in favor of the City of West Palm Beach. As co-counsel, I was responsible for the majority of the pre-trial practice, including all discovery matters and motion practice, for the examination of a number of the witnesses at trial.

   Co-counsel:
   Sanford Bohrer
   Holland & Knight LLP
   701 Brickell Avenue
   Suite 3000
   Miami, Florida 33131
   305.374.8500

   Counsel for Plaintiff:
   Robert Weisberg
   Law Offices of Robert E. Weisberg
   1450 Madruga Avenue, #302
   Coral Gables, Florida 33146
   305.666.6095

8. *Wagner v. City of West Palm Beach et al.*, Case No. 95-8533 (S.D. Fla. 1995 - 1997); Judge Moreno presiding.

   I represented the City of West Palm, Chief of Police Billy Riggs and Assistant Chief of Police Ric Bradshaw in a five-count complaint brought by the plaintiff,

Edward Wagner, under the Americans with Disabilities Act (ADA). The plaintiff alleged that the City discriminated against him under the ADA by denying him a position on the Police Department's SWAT team. The plaintiff argued that the City and individual defendants perceived him as having a disability, based on his back injury, which limited him in a major life activity. I litigated the case and prevailed on a motion for summary judgment.

Counsel for Plaintiff:
James K. Green, James K. Green P.A.
222 Lakeview Avenue, Suite 1650
West Palm Beach, Florida
561.659.2029

9. *United States v. State of New Jersey*, 75 FEP Cases 1602 (D.N.J. 1995) (1990 – 1993); 1995 WL 1943013 (D.N.J.); 194 F.3rd 426 (3rd Cir. 1999).

While with the Department of Justice, I represented the United States in an action involving alleged discriminatory hiring practices for entry-level law enforcement positions engaged in by the State of New Jersey, in violation of Title VII of the Civil Rights Act. The complaint alleged that the State utilized unlawful written and physical performance examinations and other procedures in processing and selecting candidates for appointment to State law enforcement positions, as well as county and municipal positions that are covered by State civil service laws. Approximately 5,300 persons were identified as possibly having been subjected to the allegedly discriminatory hiring practices. The case involved complex statistical analysis to identify and prove the disparate impact of a testing instrument on minority groups of individuals. The parties entered into a Consent Decree to resolve all of the issues raised by the complaint. I litigated the case with co-counsel from the Department of Justice during the period of time subsequent to the filing of the complaint and prior to the entry of the Consent Decree.

Co-counsel:
Katherine A. Baldwin, (former) Trial Attorney (retired)

Eric L. Siegel (former) Trial Attorney, United States Department of Justice
HenrichSiegel
1150 Connecticut Avenue, Northwest, #900
Washington, D.C. 20036
202.293.7766

Counsel for Defendant:
Douglass L. Derry
Deputy Attorney General
Office of Attorney General, State of New Jersey
P.O. Box 46001

Newark, N.J. 07102
973.648.2700

10. *United States v. Gregory, Sheriff of Patrick County*, 818 F.2d 1114 (4th Cir. 1987) (1990 - 1993); Judge Kiser presiding.

While with the Department of Justice, I represented the United States in an action against the defendant in his official capacity as the Sheriff of Patrick County, Virginia, alleging that the defendant engaged and continued to engage in employment practices, which discriminated against women and deprived them of employment as deputies in the Patrick County, Virginia Sheriff's Department. I tried the case in a non-jury trial on the issue of damages, after the case had been remanded from the Fourth Circuit Court of Appeals. I obtained monetary relief for the plaintiff.

Co-counsel:
Alysse Bass, Trial Attorney
United States Department of Justice
950 Pennsylvania Avenue, Northwest
Washington, D.C. 20530
202.514.2000

Counsel for other party:
Anthony Paul Giorno
(Current business contact information unavailable)

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 and information protected by the attorney-client privilege).

I have not performed lobbying activities on behalf of any client(s) or organization(s).

As a lawyer, I took a leave of absence from the Department of Justice to teach at the University of West Bohemia in Pilsen, Czech Republic, from 1993 to 1994. I participated as a member of the Civic Education Project (CEP), an international non-profit organization, which has promoted pluralism and international standards in social science education in countries striving to develop their civil society capacity. I helped to develop and teach in a graduate program in public administration at the University of West Bohemia. I also mentored many of the students, including locating opportunities for them to further their studies abroad in the United States.

As Vice-President and General Counsel of Slim Fast Foods Company, I helped lead the company's $2.3 billion merger with Unilever. I worked at Slim Fast prior to, during and subsequent to the merger. I actively participated in presenting Slim Fast to public companies interested in acquiring the company and, once the merger was effectuated, worked in conjunction with a multitude of counsel to prepare the closing documents that finalized the transaction on April 11, 2000. I remained with Slim Fast for approximately one year following the transaction and assisted with the merger of the company's West Palm Beach operations into Unilever's national and international components.

In conjunction with my law practice in 2001 - 2006, I established the then first Palm Beach County based alternative dispute resolution firm. The firm, ARC Mediation, was comprised of 20 to 25 mediators and arbitrators who conducted mediations and arbitrators primarily throughout south Florida. As part of the firm's services, I provided office space where the mediations were conducted, marketing for the firm and the mediators, the requisite forms for the mediations, and the collections and disbursement of monies to the mediators. I also helped develop a mediation computer software, called MIMS (mediation information management system). The MIMS program was one of the first of its kind in the alternative dispute resolution industry.

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.

    For the academic years, 2010 - 2011 and 2011 - 2012, I have taught at a local high school, the A.W. Dreyfoos School of the Arts, through the Justice Teaching program, an initiative of then Florida Supreme Court Chief Justice R. Fred Lewis. The ultimate goal of this program is to pair a legal professional with every elementary, middle, and high school in the state of Florida. The program aims to benefit students in the following ways: promote an understanding of Florida's justice system and our laws, develop critical thinking abilities and problem solving skills, and demonstrate the effective interaction of our courts within the constitutional structure. In each of these academic years, I co-taught, with Judge Jonathan Gerber, a judge on the Florida 4th District Court of Appeals, approximately six classes to high school students enrolled in the American Government class. No syllabi available.

    I taught at the University of West Bohemia in Pilsen, Czech Republic, in the academic year from 1993 to 1994. I taught a graduate program in public administration at the University of West Bohemia. No syllabus available.

20. **Deferred Income/Future Benefits:** List the sources, amounts and dates of all anticipated receipts form 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 to pursue outside employment, with or without compensation.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

       If I am confirmed, I will recuse in all cases involving any of my family members or businesses or entities with which they have an affiliation and in cases involving close friends as parties or witnesses. I would also recuse in any case where a close friend served as counsel, and I would use the Southern District of Florida's electronic conflict system primarily to identify such cases.

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

       If I am confirmed, I will apply the standards set forth in 28 U.S.C. §§ 144 and 455 to any scenario involving a potential conflict of interest or appearance of partiality.

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

    As a judge, I am not allowed to practice law on behalf of others, so I have not engaged in any pro bono legal work during my tenure as a Circuit Court judge starting in January 2007. Prior to becoming a judge, I always fulfilled my pro bono responsibilities as set forth by the Florida Bar requirements. I was very active with the local Cystic Fibrosis Foundation and in 1996 I co-founded Arthur's Jam in memory of Arthur Weiss, a friend of mine, who lost his battle with Cystic Fibrosis in 1996 at the age of 36. Arthur's Jam has been an annual event since its inception and is intended to channel resources to find a cure for this genetic disease of children and young adults. I also was active with the Community Alliance of Florida. The Community Alliance is in existence to support the Department of Children & Families with the intent to encourage communities, through local providers, advocacy groups and others, to play an active role in the well-being and safety of children.

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 2012, I submitted an application to the Federal Judicial Nominating Commission that was convened by Senators Nelson and Rubio. On April 27, 2012, I was interviewed by the Commission in Miami, Florida, which recommended me to the Senators on the same date. On June 5, 2012, I interviewed with Senators Nelson and Rubio in Washington, D.C. In December 2013, I was contacted by an official from the Office of Legal Policy at the Department of Justice, who inquired if I was still interested in being considered to serve as a judge for the District Court in the Southern District of Florida. I replied that I was, and I have been in contact with officials from the Office of Legal Policy since then. On February 24, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 26, 2014, the President submitted my nomination to the Senate.

    b. Has anyone involved in the process of selecting you as a judicial 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
Rosenberg, Robin L.	United States District Court, Southern District of Florida	02/26/2014
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 02/26/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 02/17/2014
7. Chambers or Office Address		
Palm Beach County Circuit Courthouse 205 North Dixie Hwy West Palm Beach, Florida 33401		

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.	Circuit Judge	Fifteenth Judicial Circuit of Florida
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

Name of Person Reporting	Date of Report
Rosenberg, Robin L.	02/26/2014

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	State of Florida Judicial Salary	$129,867.64
2. 2013	State of Florida Judicial Salary	$132,062.61
3. 2014	State of Florida Judicial Salary	
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	Oxbow Carbon LLC - Member compensation and distributions
2. 2014	Oxbow Carbon LLC - Member compensation and distributions
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

Name of Person Reporting	Date of Report
Rosenberg, Robin L.	02/26/2014

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	child's school tuition	K
2.	FACTS	child's school tuition	K
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Rosenberg, Robin L.	02/26/2014

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

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

A. Description of Assets (including trust assets)	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. BB&T Account	A	Interest	K	T	Exempt				
2. AMEX Bank Account	A	Interest	O	T					
3. USAA Cash Accounts	A	Int./Div.	O	T					
4. Florida Pre-Paid College Plan Blended Equity Portfolio	D	Dividend	K	T					
5. USAA Cornerstone Aggressive Strategy Fund	A	Dividend	K	T					
6. USAA Cornerstone Moderate Strategy Fund	B	Dividend	L	T					
7. USAA Extended Market Fund	A	Dividend	M	T					
8. USAA International Stock Fund	A	Dividend	L	T					
9. USAA NASDAQ 100 Index Fund	A	Dividend	L	T					
10. USAA S&P 500 Index Stock Fund	D	Dividend	N	T					
11. USAA Small Cap Stock Fund	A	Dividend	L	T					
12. USAA Value Fund	B	Dividend	M	T					
13. Vanguard Retirement 2025 Fund	A	Dividend	K	T					
14. Florida Ret. (FRS) Select Aggressive Balanced A30 Fund	A	Dividend	M	T					
15. Eventus Diagnostics, Inc.		None	M	W					
16. Oxbow Carbon LLC	F	Distribution	P1	U					
17. Florida Retirement (FRS) Moderate Balanced A20 Fund	A	Dividend	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
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		

Name of Person Reporting	Date of Report
Rosenberg, Robin L.	02/26/2014

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Rosenberg, Robin L.	Date of Report 02/26/2014

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 L. Rosenberg

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	1	388	957	Notes payable to banks-secured (autos)		41	713
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	101	558	Notes payable to relatives			
Unlisted securities – see schedule	1	741	715	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	2	100	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		454	000	Tuition agreements		2	787
Cash value-life insurance							
Other assets itemize:							
Florida Retirement System Pension Plan		314	914				
				Total liabilities		44	500
				Net Worth	7	056	644
Total Assets	7	101	144	Total liabilities and net worth	7	101	144
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		131	000				
Other special debt							

NET WORTH SCHEDULES

Listed Securities	
Florida Prepaid College Plan – Blended Equity Portfolio	$ 36,221
USAA Cornerstone Aggressive Strategy	42,166
USAA Cornerstone Moderate Strategy	53,138
USAA Extended Market Fund	112,684
USAA International Stock Fund	67,969
USAA NASDAQ 100 Index Fund	56,729
USAA S&P 500 Index Stock Fund	390,760
USAA Small Cap Stock Fund	51,523
USAA Value Fund	242,886
Vanguard Retirement 2025 Fund	47,482
Total Listed Securities	$1,101,558

Unlisted Securities	
Eventus Diagnostics, Inc.	$ 241,715
Oxbow Carbon LLC	1,500,000
Total Unlisted Securities	$ 1,741,715

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

2/27/14
(DATE)

Robin L. Rosenberg
(NAME)

Erin L. Brandt
(NOTARY)

Notary Public State of Florida
Erin L Brandt
My Commission FF 062227
Expires 10/13/2017

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Ronnie Lee White

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

   United States Judge for the Eastern District of Missouri

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

   Holloran White Schwartz & Gaertner LLP
   2000 South Eighth Street
   St. Louis, Missouri 63104

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

   1953; St. Louis, Missouri

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

   1980 – 1983, University of Missouri – Kansas City School of Law; J.D., 1983

   1978 – 1979, St. Louis University; B.A., 1979

   1975 – 1977, St. Louis Community College at Meramec; A.A., 1977

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

   2007 – present
   Holloran White Schwartz & Gaertner LLP
   2000 South Eighth Street

St. Louis, MO 63104
Partner

1996 – present
Washington University Law School
One Brookings Drive
St. Louis, MO 63130
Adjunct Professor of Law

1995 – 2007
Supreme Court of Missouri
207 West High Street
Jefferson City, MO 65102
Justice (1995 – 2003, 2005 – 2007)
Chief Justice (2003 – 2005)

1994 – 1995
Missouri Court of Appeals
Eastern District
815 Olive Street
St. Louis, MO 63101
Judge

1993 – 1994
Office of the City Counselor – City of St. Louis, Missouri
1200 Market Street
St. Louis, MO 63103
City Counselor

1988 – 1993
Law Offices of Cahill, White & Hemphill
1221 Locust Street
St. Louis, MO 63103
Partner

1989 – 1993
Missouri General Assembly
State Capitol Building
Jefferson City, MO 65102
State Representative for the 63rd District

1987 – 1989
Office of the Special Public Defender
8008 Carondelet
St. Louis, MO 63105
Special Public Defender, Trial Attorney

1987 – 1988
Law Office of Young, Russell, Crawford & Black
509 Olive Street, Suite 1000
St. Louis, MO 63101
Associate

1984 – 1987, Summer 1983
Office of the Public Defender
1114 Market Street
St. Louis, MO 63101
Trial Attorney (1984 – 1987)
Student Intern (Summer 1983)

1978 – 1984
St. Louis Public School System
St. Louis, Missouri
Substitute Teacher

September 1982 – June 1983
Jackson County Prosecutor's Office
4740 Grand Avenue
Kansas City, MO 64112
Student Intern

1979 – 1983
Abbcco Cleaning Company
2125 Gravois
St. Louis, MO 63104
General Cleaner

Other Affiliations (uncompensated unless otherwise indicated)

2003 – present
Commercial Bank of St. Louis (compensated)
2330 West Port Plaza Drive
St. Louis, MO 63146
Advisory Board Member

2007 – present
Loyola Academy of St. Louis
3851 Washington Boulevard
St. Louis, MO 63108
Board Member

2007 – 2010
Guardian Angel Settlement Association
1127 Vandeventer Avenue
St. Louis, MO 63108
Board Member

1993 – 2000
Jamison Memorial C.M.E. Church Youth Group
609 N. Leffingwell Avenue
St. Louis, MO 63103
Board Member

1994 – 1996
Herbert Hoover Boys and Girls Club of St. Louis
2901 North Grand Boulevard
St. Louis, MO 63107
Board Member

1993 – 1994
Regional Justice Information Services
4255 West Pine Boulevard
St. Louis, MO 63108
Board Member

1987 – 1989
Maria Droste Residence for Women
7660 National Bridge
St. Louis, MO 63121
Board Member

1989 – 1990
St. Louis Housing Authority
3520 Page Boulevard
St. Louis, MO 63106
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 timely registered for selective service and served as follows:

   1971 – 1980
   U.S. Army Reserves F-5 (499-54-2905)
   Honorable Discharge

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

Super Lawyers (2013)
Heschel King Award (2011)
Human Development Corporation of Metropolitan St. Louis Community Service Award (2008)
Mound City Bar Association Distinguished Jurist Award (2007, 2008)
Supreme Court of Missouri, Chief Justice Award (2008)
Missouri Association of Social Welfare Special Public Service Award (2007)
Mound City Bar Association Legal Legend Award (2006, 2007)
MOKAN, Legacy Award in Recognition of Distinguished Career Achievements (2007)
Federal Defense Bars of the Southern District of Illinois and Eastern District of Missouri (2005)
Alpha Kappa Alpha, Community Service Award (2004)
St. Louis Gateway Classic Sports Foundation Walk of Fame (2003)
Mound City Bar Association First African American Presiding Judge Award (2003)
Bar Association of Metropolitan St. Louis Gallery of St. Louis Legal Pioneers Award (2003)
NAACP St. Louis Branch Award for Leadership and Community Service (2003)
Lincoln University Trailblazer Award (2003)
NAACP Jefferson City Branch Community Service Award (2003)
Wayman African Methodist Episcopal Church Award for Meritorious Service to the Community (2003)
Bar Association of Metropolitan St. Louis Distinguished Lawyer Award (2003)
University of Missouri-Columbia School of Law, Distinguished Non-Alumni Award (2002)
St. Louis Board of Alderman, Black History Month Award (2002)
Harris Stowe State University Outstanding Public Service Award (2001)
Dr. Martin Luther King Jr. State Celebration Commission Distinguished Statesman Award (2001)
St. Louis University, Honorary Doctorate Degree (2000)
Harris Stowe State University Honorary Doctorate Degree (2000)
Mound City Bar Association Legal Service Award (2000)
Elijah P. Lovejoy Award (1999)
St. Louis University Honorary Doctorate Award (1998)
St. Louis Community College at Forest Park Distinguished Community Service Award (1997)
National Black Law Students Association Midwest Region Award for Commitment and Service to Law Students (1996)
Bar Association of Metropolitan St. Louis Award in Honor of Appointment to Supreme Court of Missouri (1995)
Youth Build of St. Louis, Certificate of Appreciation (1993)
University of Missouri – St. Louis, Outstanding Public Service Award (1993)

St. Louis Women's Political Caucus, President's "Good Guy Award" (1993)
Harris Stow State College, Award for Effort in Expanding Mission of College (1993)
Women of Color Partnership Program Award (1992)
Dropout Prevention Project – Law & Citizenship Education Unit, Certificate of Gratitude (1992 – 1993)
Missouri Bar Association Award (1992)
Law and Consumer Education, Certificate of Appreciation (1990 – 1991)
American Cancer Society, Certificate of Appreciation (1990)

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

American Association of Justice (2007 – present)
American Association of Trial Attorneys (1987 – 1993)
Appellate Judicial Commission (2003 – 2005)
Chairman
Gender Task Force Committee for the Supreme Court of Missouri (1994 – approximately 1998)
Lawyers Association of St. Louis (2007 – present)
Merit Selection Panel for the Consideration of the Appointment of a United States Magistrate Judge (2013)
Metropolitan Bar Association of St. Louis (1985 – present)
Missourians for Fair and Impartial Courts Committee, Honorary Co-Chair (2007 – 2009)
Missouri Association of Trial Attorneys (1987 – 1993, 2007 – present)
Mound City Bar Association (1985 – present)
St. Louis County Bar Association (2007 – 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.

Missouri, 1984

There have been no lapses in membership.

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

United States District Court for the Eastern District of Missouri, 1987
United States District Court for the Western District of Missouri, 1984
State Courts of Missouri, 1984

There have been no lapses in membership.

11. **Memberships**:

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

Anniversary Club (2007 – present)
Commercial Bank of St. Louis (2003 – present)
Advisory Board Member
Eta Boule Fraternity (1995 – present)
Member (inactive)
Guardian Angel Settlement Association (2007 – 2010)
Board Member
Herbert Hoover Boys & Girls Club of St. Louis (1994 – 1996)
Board Member
Jamison Memorial C.M.E. Church Youth Group (1993 – 2000)
Board Member
Loyola Academy of St. Louis (2007 – present)
Board Member
Maria Droste Residence for Women (1987 – 1989)
Board Member
Missouri Drug Card Program (2008 – 2009)
Program Director
Regional Justice Information Services (1993 – 1994)
Board Member
St. Louis Housing Authority (1989 – 1990)
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.

The Eta Boule Fraternity, founded in 1908, is a social fraternity, and membership was eventually opened so that women could join all-female chapters. I joined in 1995, but my status with this organization has been inactive since 1998 due to other commitments. The Anniversary Club, which was founded in 1892, is the

oldest continuing black men's organization in St. Louis. To the best of my knowledge, none of the other organizations listed in 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

March 20, 2012, Attorney Ronnie L. White Advertisement. Video available at https://www.youtube.com/watch?v=-_QUxKiRLdw.

March 20, 2012, Attorney Ronnie L. White Advertisement. Video available at https://www.youtube.com/watch?v=V7L5QAV28fM.

In 2012, I launched a website advertising my services, available at http://www.heknowsjustice.com/.

In February 2008, I wrote a column regarding the gubernatorial election of Jay Nixon in the *St. Louis American*. Although I have been unable to obtain a copy of the original column, I have supplied a copy of an article that excerpts from this column.

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.

"Open Letter from 6 Former Missouri Chief Justices," *St. Louis Business Journal*, April 28, 2008. Copy supplied.

Missouri Judicial Report, Fiscal Year 2003. Copy supplied.

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

January 18, 2001: Testimony before the United States Senate Committee on the Judiciary. Video available at http://www.c-spanvideo.org/ronniewhite.

May 14, 1998: Testimony before the United States Senate Committee on the Judiciary. Transcript and written testimony supplied.

When I sponsored legislation as a member of the House of Representatives from 1989 to 1993, I would testify in front of committees of the Missouri General Assembly explaining the legislation and urging its passage. The testimony was provided extemporaneously and not from written text. During my four years in the Missouri House, this legislation included, but was not limited to, creating a state board of registration for physical therapists; establishing a program of house arrest in certain cities; expanding the crime of ethnic intimidation; creating a Missouri Bureau of Investigations; establishing a statewide Court Automation Fund; setting fees for certain transcripts of court testimony; raising the age of compulsory school attendance to eighteen; changing laws relating to abuse and neglect of children; defining light rail transit; and raising the Circuit Attorney's compensation to be the same as a Circuit Court Judge. These statements and testimony occurred at the Missouri House of Representatives, which is located at 201 West Capitol Avenue, Jefferson City, Missouri 65101.

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

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

February 20, 2013: Speaker, Jackson Park Elementary School's Black History Program, St. Louis, Missouri. My remarks focused on Judge Thurgood Marshall and the introduction of Judge George Draper. I have no notes, transcripts or recording, but press coverage is supplied. The address of Jackson Park Elementary School is 7400 Balsom Avenue, University City, Missouri 63130.

May 4, 2012: Speaker, "The Art of Voir Dire," Mound City Bar Association, St. Louis, Missouri. My remarks focused on how to conduct an effective voir dire. I have no notes, transcripts or recording. The address of the Mound City Bar Association is P.O. Box 1543, St. Louis, Missouri 63188.

May 15, 2011: Recipient, 7th Annual Heschel-King Awards Celebration of Jews United for Justice, St. Louis, Missouri. I gave brief remarks when accepting the

award. I have no notes, transcripts or recording. The address of Jews United for Justice is 1633 Connecticut Avenue, NW, Suite #300, Washington, DC 20009.

October 1, 2010: Panelist, "Civility In The Legal Profession," Missouri Bar Association Annual Meeting, Jefferson City, Missouri. We addressed questions from the audience on how to remain civil while being an advocate. I have no notes, transcripts or recording. The address of the Missouri Bar Association is P.O. Box 119, 326 Monroe Street, Jefferson City, Missouri 65102.

September 16, 2009: Speaker, "Picking Your Judges, One or Two – But Who Picks 'Em? Them or You?," Ferguson, Missouri. My remarks focused on the Non-Partisan Court Plan of Missouri. I have no notes, transcripts or recording. The address of the St. Louis Community College at Florissant Valley is 3400 Pershall Road, Ferguson, Missouri 63135.

May 2, 2009: Speaker, "The Non-Partisan Court Plan," Mound City Bar Association, St. Louis, Missouri. I spoke about the need to extend the Non-Partisan Court Plan of Missouri to select judges in urban areas where the population exceeded 300,000. The judges in the affected counties would be selected by a judicial commission. I have no notes, transcripts or recording. The address of the Mound City Bar Association is P.O. Box 1543, St. Louis, Missouri 63188.

September 18, 2008: Panelist, "Diversity in the Profession – Where We Have Been, Where We Are Going and Why Is It Important," Missouri Bar Annual Meeting, Columbia, Missouri. I discussed diversity efforts at law firms. I have no notes, transcripts or recording, but press coverage is supplied. The address of the Missouri Bar Association is P.O. Box 119, 326 Monroe Street, Jefferson City, Missouri 65102.

September 18, 2008: Recipient, Chief Justice Awards Ceremony, Missouri Bar Annual Meeting, Columbia, Missouri. I gave brief remarks thanking the Court for the award. I have no notes, transcripts or recording. The address of the Missouri Bar Association is P.O. Box 119, 326 Monroe Street, Jefferson City, Missouri 65102.

January 30, 2008: Panelist, "How To Avoid Ethical Problems With The Office of Disciplinary Counsel," Mound City Bar Association, St. Louis, Missouri. The panel addressed questions from the audience on how to properly respond to an inquiry from the Office of Disciplinary Counsel. I have no notes, transcripts or recording. The address of the Mound City Bar Association is P.O. Box 1543, St. Louis, Missouri 63188.

December 11, 2007: Panelist, Panel on the Non-Partisan Court Plan of Missouri, St. Louis, Missouri. I spoke in support of continuing the Missouri Plan, the nonpartisan system by which state judges are selected. I have no notes,

transcripts or recording, but press coverage is supplied. The address of the Missourians for Fair and Impartial Courts is P.O. Box 1063, Jefferson City, Missouri 65102.

December 9, 2007: Keynote Speaker, "Yes, I Can" Banquet, St. Louis, Missouri. I discussed my career as a lawyer. I have no notes, transcripts or recording. The address of the Sentinel Newspaper is 2900 Market Street, St. Louis, Missouri 63108.

June 27, 2007: Keynote Speaker, "Diversity + Inclusion = Success," MOKAN's 32nd Annual Awards Dinner, St. Louis, Missouri. I discussed working together in our community to create success for everyone. I have no notes, transcripts or recording. The address for MOKAN is 4666 Natural Bridge, St. Louis, Missouri 63115.

May 9, 2007: Speaker, Tribute to Fallen Police Officers and Firefighters, St. Louis County Police Department, Clayton, Missouri. My remarks focused on the need to recognize and appreciate the work of fallen police officers and fire fighters. I have no notes, transcripts or recording. The address of the St. Louis County Police Department is 7900 Forsyth, Clayton, Missouri 63105.

September 28, 2006: Speaker, Posthumous Law License Award to Lloyd Gaines, Missouri Bar's Annual Convention, St. Louis, Missouri. I discussed the legacy of Lloyd Gaines. I have no notes, transcripts or recording, but press coverage is supplied. The address of the Missouri Bar Association is P.O. Box 119, 326 Monroe Street, Jefferson City, Missouri 65102.

June 2005: Panelist, Panel on the Non-Partisan Court Plan of Missouri, Lake of the Ozarks, Missouri. I spoke about the Non-Partisan Court Plan. I have no notes, transcripts or recording. The address of the Bar Association of Metropolitan St. Louis is 555 Washington Avenue, St. Louis, Missouri 63101.

January 12, 2005: Speaker, State of the Judiciary, Missouri General Assembly, Jefferson City, Missouri. Remarks supplied.

October 8, 2004: Speaker, Admission to the Missouri Bar Ceremony, Jefferson City, Missouri. My remarks focused on welcoming new lawyers to the Missouri Bar. I have no notes, transcripts or recording, but press coverage is supplied. The address of the Missouri Bar is P.O. Box 119, 326 Monroe Street, Jefferson City, Missouri 65102.

September 30, 2004: Speaker, The Missouri Bar/Judicial Conference, St. Louis, Missouri. Remarks supplied.

September 30, 2004: Speaker, Missouri Judicial Conference Annual Recognition Ceremony, St. Louis, Missouri. I presented awards to Missouri legislators. I have

no notes, transcripts or recording, but press coverage is supplied. The address of the Missouri Bar Association is P.O. Box 119, 326 Monroe Street, Jefferson City, Missouri 65102.

May 22, 2004: Panelist, "The Yellow Brick Road in 21st Century American Law and Public Policy: State Courts, Judicial Independence, and Adherence to Stare Decisis," St. Louis, Missouri. My remarks focused on the expansion of the Missouri non-partisan court. I have no notes, transcripts or recording, but press coverage is supplied. The address of the St. Louis University Institute for Political History is 3500 Lindell Boulevard, St. Louis, Missouri 63108.

May 2004: Speaker, Annual Conference of the Missouri Municipal and Associate Circuit Judges Association, Lake of the Ozarks, Missouri. My remarks focused on the role of municipal and associate judges in the judicial system. I have no notes, transcripts or recording. The address of the Missouri Municipal and Associate Circuit Judges Association is 1717 East Republic Road, Springfield, Missouri 65804.

February 20, 2004: Panelist, Forum on Lawyers in Public Service, Saint Louis University School of Law, St. Louis, Missouri. My remarks focused on the need for lawyers to be involved in public service. I have no notes, transcripts or recording. The address of the Saint Louis University School of Law is 3500 Lindell Boulevard, St. Louis, Missouri 63108.

January 27, 2004: Speaker, Law School for Legislators Graduation Ceremony, Missouri Bar Association, Jefferson City, Missouri. I delivered introductory remarks at the event. I have no notes, transcripts or recording. The address of the Missouri Bar Association is P.O. Box 119, 326 Monroe Street, Jefferson City, Missouri 65102.

January 14, 2004: Speaker, State of the Judiciary, Missouri General Assembly, Jefferson City, Missouri. Remarks supplied.

December 9, 2003: Speaker, "The Non-Partisan Court Plan," St. Charles County Bar Association, St. Charles, Missouri. My remarks focused on the need to expand the Non-Partisan Court Plan of Missouri for selecting judges to growing cities like St. Charles, Missouri. I have no notes, transcripts or recording, but press coverage is supplied. The address of the St. Charles County Bar Association is P.O. Box 953, St. Charles, Missouri 63302.

November 13, 2003: Speaker, Association of Family and Conciliation Courts (AFCC) Midwest Regional Conference Welcome, St. Louis, Missouri. I delivered welcoming remarks to the delegates of the conference. I have no notes, transcripts or recording. The address of the AFCC is 6525 Grand Teton Plaza, Madison, Wisconsin 53719.

November 2, 2003: Speaker, NAACP Freedom Fund Dinner, Jefferson City, Missouri. My remarks focused on encouraging the audience to get involved in their communities. I have no notes, transcripts or recording, but press coverage is supplied. The address of the NAACP is 5019 Westport Drive, Jefferson City, Missouri 65109.

October 15, 2003: Speaker, "The Non-Partisan Court Plan," Springfield Bar Association, Springfield, Missouri. My remarks focused on the need to expand the Non-Partisan Court Plan of Missouri for selecting judges to growing cities like Springfield, Missouri. I have no notes, transcripts or recording. The address of the Springfield Bar Association is 901 St. Louis Street, Second Floor, Springfield, Missouri 65806.

October 3, 2003: Speaker, Missouri Judicial Conference Annual Recognition Ceremony, St. Louis, Missouri. My remarks focused on recognizing lawyers for their contributions to the bar. I have no notes, transcripts or recording, but press coverage is supplied. The address of the Missouri Bar Association is P.O. Box 119, 326 Monroe Street, Jefferson City, Missouri 65102.

October 2, 2003: Speaker, "The Missouri Bar/Judicial Conference," Columbia, Missouri. Remarks supplied.

Fall 2003: Speaker, Matriculation Ceremonies, Washington University, St. Louis, Missouri. My remarks focused on how to become a successful lawyer. I have no notes, transcripts or recording. The address of Washington University is One Brookings Drive, St. Louis, Missouri 63105.

August 17, 2003: Speaker, Dr. Monroe Fordham Black History Forum, First Shiloh Baptist Church, Buffalo, New York. My remarks focused on my career as a lawyer and judge. I have no notes, transcripts or recording, but press coverage is supplied. The address of the First Shiloh Baptist Church is 15 Pine Street, Buffalo, New York 14204.

January 30, 2003: Speaker, State Education Commission Seminar, Jefferson City Missouri. My remarks focused on encouraging all parties involved to work together to address the issue of academic performance. I have no notes, transcripts or recording, but press coverage is supplied. The address of the State Education Commission is P.O. Box 480, Jefferson City, Missouri 65102.

March 29, 2002: Speaker, Drug Court Program Graduation Ceremony, St. Louis County Drug Court, St. Louis, Missouri. My remarks focused on congratulating the participants on the successful completion of the drug court program. I have no notes, transcripts or recording, but press coverage is supplied. The address of the St. Louis County Drug Court is 7900 Carondelet Avenue, Clayton, Missouri 63105.

November 8, 2001: Speaker, Annual Magic City Scholarship Banquet, Magic City Bar Association, Birmingham, Alabama. My remarks focused on the road I traveled to become a judge. I have no notes, transcripts or recording. The address of the Magic City Bar Association is P.O. Box 12501, Birmingham, Alabama 35202.

April 2001: Speaker, Unity Dinner, Missouri Asian Bar Association, St. Louis, Missouri. My remarks focused on welcoming the new bar association and its members. I have no notes, transcripts or recording. The address of the Missouri Asian Bar Association is 215 Chesterfield Business Parkway, St. Louis, Missouri 63005.

January 15, 2001: Speaker, Martin Luther King, Jr. Commemoration Service, St. Louis, Missouri. My remarks focused on the life and legacy of Dr. Martin Luther King. I have no notes, transcripts or recording. There is no physical address for this committee.

January 6, 2001: Speaker, Program in Honor of Martin Luther King, Jr., Harris-Stowe State College, St. Louis, Missouri. My remarks focused on the life and legacy of Dr. Martin Luther King. I have no notes, transcripts or recording. The address of the Harris-Stowe State College is 3026 Laclede Avenue, St. Louis, Missouri 63103.

September 21, 2000: Panelist, Forum on Diversity, Missouri Bar, St. Louis, Missouri. My remarks focused on diversity in the bar. I have no notes, transcripts or recording, but press coverage is supplied. The address of the Missouri Bar is P.O. Box 119, Jefferson City, Missouri 65102.

January 20, 1997: Speaker, Dr. Martin Luther King Commemoration, St. Louis, Missouri. My remarks focused on the life and legacy of Dr. Martin Luther King. I have no notes, transcripts or recording. There is no physical address for the Dr. Martin Luther King Commemoration Committee.

February 24, 1996: Speaker, Douglas High School Alumni Luncheon, Festus, Missouri. My remarks focused on the successes of the alumni of Douglas High School. I have no notes, transcripts or recording. The address of the Douglas High School Alumni Association is 6400 Wise Street, St. Louis, Missouri 63139.

February 22, 1996: Speaker, Mound City Bar Association's Annual Dinner, St. Louis, Missouri. My remarks focused on the history of the Mound City Bar Association. I have no notes, transcripts or recording, but press coverage is supplied. The address of the Mound City Bar Association is P.O. Box 1543, St. Louis, Missouri 63188.

January 25, 1996: Speaker, Dr. Martin Luther King Celebration, the Berkeley Neighborhood Watch Association and the Prevention Partnership. My remarks

focused on the life and legacy of Dr. Martin Luther King. I have no notes, transcripts or recording. The address of Berkeley City Hall is 6141 North Hanley Road, St. Louis, Missouri 63134.

January 22, 1996: I made brief remarks at my swearing-in ceremony as a Justice on the Missouri Supreme Court in Jefferson City, Missouri. I have no notes, transcripts or recording, but press coverage is supplied. The address of the Missouri Supreme Court is 207 West High Street, Jefferson City, Missouri 65101.

January 14, 1996: Speaker, Dr. Martin Luther King Celebration, Storman-Stuflin School, St. Louis, Missouri. My remarks focused on the life and legacy of Dr. Martin Luther King. I have no notes, transcripts or recording, but press coverage is supplied. The address of Storman-Stuflin School is 1826 Chambers Road, St. Louis, Missouri 63136.

January 1996: Speaker, Career Day, Mesnier Elementary School, Affton, Missouri. My remarks focused on my career as a lawyer. I have no notes, transcripts or recording, but press coverage is supplied. The address of Mesnier Elementary School is 6930 Weber Road, Affton, Missouri 63123.

October 24, 1995: Speaker, Press Conference regarding my appointment to the Missouri Supreme Court, St. Louis, Missouri. My remarks focused on thanking the Governor for my appointment to the Supreme Court. I have no notes, transcripts or recording, but press coverage is supplied. The address of the Missouri Court of Appeals is One Post Office Square, 815 Olive Street, St. Louis, Missouri 63101.

July 1995: Instructor, National Institute for Trial Advocacy Regional Trial Training, Washington University Law School, Clayton, Missouri. I worked with new lawyers on the essential skills needed to be an effective trial lawyer. I have no notes, transcripts or recording. The address of Washington University Law School is One Brookings Drive, Clayton, Missouri 63105.

While I was a judge between 1994 and 2007, I presided over a number of swearing-in ceremonies for various elected officials in my capacity as a judge. I have no notes, transcripts or recording of those events.

September 1991: Speaker, Rally regarding St. Mary's Honor Center, St. Louis, Missouri. My remarks focused on closing the St. Mary's Honor Center. I have no notes, transcripts or recordings. There was no official sponsoring group.

June 1989 – May 1993: I participated in community forums while running for State Representative to the Missouri General Assembly. These forums were usually sponsored by political organizations, neighborhood associations, bar associations and churches. I have no notes, transcripts or recording of these events.

October, 1993: Panelist, Ad Hoc Committee to study the Public Defender System. My remarks focused on the work experience of the lawyers in the office of the Public Defender. I have no notes, transcripts or recording of these events. The address of the Missouri General Assembly is the State Capitol Building, Jefferson City, Missouri 65102.

October, 1989: Panelist, "The Study of Potential Changes in St. Louis' Independent Patronage Offices," Jefferson City, Missouri. My comments focused on how to combine functions of some offices and eliminate those that would no longer serve the City's financial interest. I have no notes, transcripts or recording. The address of the Missouri General Assembly is the State Capitol Building, Jefferson City, Missouri 65102.

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

The only interviews I recall having given are listed below. I have searched my files and Internet databases to refresh my memory in an effort to produce as complete a list of interviews as I could but it is still possible there are some interviews that I was not able to locate.

"Former State Court Judge Ronnie L. White Launches New Website," *St. Louis American*, April 3, 2012. Copy supplied.

Chris King, "Nixon Appoints Judge Draper to Missouri Supreme Court," *St. Louis American*, October 19, 2011. Copy supplied.

Angela Riley, "Three Firms at Odds Over Fees From St. Louis City Jury's *Survivair* Verdict," *Missouri Lawyers Media*, March 1, 2010. Copy supplied.

Chris King, "Missouri AG Koster Selects Local Black Attorney Robert Kenney as New Chief of Staff," *St. Louis American*, December 10, 2008. Copy supplied.

Donna Walter, "Republican Gubernatorial Candidate Pitches 'Novel' Missouri Nonpartisan Court Plan Reform," *Daily Record*, September 24, 2008. Copy supplied.

Mary Jo Feldstein, "Discounts on Drugs Extended," *St. Louis Post-Dispatch*, July 30, 2008. Copy supplied.

Jake Wagman, "Ronnie White: I'm Not Running for Mayor," *St. Louis Post-Dispatch*, January 22, 2008. Copy supplied.

Press Release, "Coalition Names Six Former Chiefs as Honorary Co-Chairs," Committee for County Progress, October 30, 2007. Copy supplied.

John DeMoor, "Missouri Supreme Court Judge Ronnie L. White: Leaving 'On My Own Terms,'" *Missouri Lawyers Weekly*, July 16, 2007. Copy supplied.

Maria Hickey, "Judge Ronnie White Leaves Missouri Supreme Court," Kansas City Public Media (July 16, 2007). Recording available at http://kcur.org/post/judge-ronnie-white-leaves-missouri-supreme-court.

John DeMoor, "Retiring Justice Ronnie L. White Becomes Partner in New Law Firm in St. Louis," *Daily Record*, July 10, 2007. Copy supplied.

"White Joins St. Louis Law Firm," *Associated Press*, July 9, 2007. Copy supplied.

Press Release, "Judge White to Retire From Missouri's High Court," Supreme Court of Missouri, May 18, 2007. Copy supplied.

Associated Press, "Missouri Chief Justice Ronnie White" Biography, May 18, 2007. Copy supplied.

Scott Lauck, "Judge Elections a Test Case for Missouri Court Plan," *Missouri Lawyers Media*, October 30, 2006. Copy supplied.

Deb Peterson, "Judge's Conduct on Course Nets Him Country Club Suspension," *St. Louis Post-Dispatch*, June 28, 2006. Copy supplied.

Allen Palmeri, "Judge Renders Latest Pro-Life Law Comatose," *The Pathway*, September 20, 2005. Copy supplied.

Kelly Wiese, "Wolff Takes Helm of Missouri Supreme Court," *Associated Press*, June 30, 2005. Copy supplied.

Bob Watson, "White Ready to End Term as Chief Justice, Offers Positive Review of the Past Two Years," *Jefferson City News-Tribune*, June 29, 2005. Copy supplied.

Donna Walter, "Bench and Bar Panels Focus on Independent Judiciary at Lake of the Ozarks Conference," *Missouri Lawyers Media*, June 8, 2005. Copy supplied.

Interview with Barry Latzer & James N.G. Cauthen, which was incorporated into "Justice Delayed? Time Consumption in Capital Appeals: A Multistate Study" (2007). Copy of research report supplied.

David A. Lieb, "Supreme Court More 'Deliberative' on Death Penalty," *Associated Press*, January 12, 2005. Copy supplied.

David A. Lieb, "White Defends Court's Role to GOP Legislature," *Associated Press*, January 12, 2005. Copy supplied.

Staff, "Missouri Supreme Court Announces Firsts," *Missouri Lawyers Media*, October 18, 2004. Copy supplied.

Staff, "Commission Chooses Panel for Supreme Court of Missouri Vacancy," *Missouri Law Media*, September 8, 2004. Copy supplied.

Virginia Young, "Names Surface for Benton's Seat on Missouri Supreme Court," *St. Louis Post-Dispatch*, June 27, 2004. Copy supplied.

Staff, "Missouri Supreme Court Displays Judicial History Exhibit," *Missouri Lawyers Media*, April 12, 2004. Copy supplied.

Kevin Murphy, "Missouri Agencies Mull Effect of Cutbacks," *Kansas City Star*. January 14, 2004. Copy supplied.

"Cole Country Circuit Court Wins 3rd Time-Standards Award," *Jefferson City News-Tribune*, October 7, 2003. Copy supplied.

Staff, "Ronnie L. White Takes the Helm at Missouri Supreme Court," *Missouri Lawyers Media*, July 21, 2003. Copy supplied.

Radio interview on KWIX/KRES with Bill Preston regarding my plans for the state judiciary during my tenure as Chief Justice (July 16, 2003). I have no notes, transcripts or recording.

"Gephardt, Clay Press Bush for Re-Nomination of Ronnie White," *Jefferson City News-Tribune*, July 15, 2003. Copy supplied.

Radio interview on KLIL Party Line with Brian Housewith regarding my plans for the state judiciary during my tenure as Chief Justice (July 8, 2003). I have no notes, transcripts or recording.

Virginia Young, "Courting Change," *St. Louis Post-Dispatch*, June 30, 2003. Copy supplied.

Associated Press Staff, "The Nation: Missouri to Get a Black Chief Justice," *Los Angeles Times*, June 29, 2003. Copy supplied.

Kevin Murphy, "High Court's First Black Poised to be Chief," *Kansas City Star*, June 26, 2003. Copy supplied.

Paul Sloca, "White to Make Diversity a Priority in System," *Southeast*

Missourian, June 26, 2003. Copy supplied.

Desiree Cooper, "Champion of Legal Diversity to Tell His Tale," *Detroit Free-Press*, October 4, 2001. I have been unable to obtain a copy.

Patricia Merritt, "Civil Leaders Honor Gov. Carnahan," *St. Louis Post-Dispatch*, January 7, 2001. Copy supplied.

"Bosley Rushed to Fill Posts," *St. Louis Post-Dispatch*, April 23, 1997. Copy supplied.

Gregory Freeman, "Thurgood Marshall's FBI Link Must Be Seen in Context of Times," *St. Louis Post-Dispatch*, December 8, 1996. Copy supplied.

Virginia Young, "Judge White Set to Make History," *St. Louis Post-Dispatch*, November 3, 1996. Copy supplied.

"Both Sides of Justice," *St. Louis Post-Dispatch*, November 1, 1995. Copy supplied.

"White Will Commute to New Job in Capital," *St. Louis Post-Dispatch*, October 29, 1995. Copy supplied.

Virginia Young, "New Supreme Court Judge Puts Child Support Case Behind Him," *St. Louis Post-Dispatch*, October 29, 1995. Copy supplied.

"Carnahan Names Two as Judges," *St. Louis Post-Dispatch*, May 25, 1994. Copy supplied.

"Caning 'Message' Hits Home," *Houston Chronicle*, May 21, 1994. Copy supplied.

Jim Salter, "St. Louis Alderman Seeks Caning for Graffiti Writers," *Associated Press*, May 20, 1994. Copy supplied.

Thom Gross, "City Struggles to Reduce Jail Overcrowding," *St. Louis Post-Dispatch*, March 28, 1994. Copy supplied.

Terry Ganey et al., "Missouri High Court Delays Riverboat Gambling," *St. Louis Post-Dispatch*, January 26, 1994. Copy supplied.

"12 Who Made Gateway Verdict," *St. Louis Post-Dispatch*, January 25, 1994. Copy supplied.

"City to Appeal Request About MSD Trustees," *St. Louis Post-Dispatch*, December 23, 1993. Copy supplied.

Joe Holleman, "City, Villa Gain Big in Lease Deal," *St. Louis Post-Dispatch*, December 22, 1993. Copy supplied.

Charlene Prost, "City Seeks Ruling on All Leases," *St. Louis Post-Dispatch*, December 1, 1993. Copy supplied.

Phil Sutin, "Judges Balk at Role in Confirming MSD Trustees," *St. Louis Post-Dispatch*, November 25, 1993. Copy supplied.

Joe Holleman, "Union Sending Bosley, Aides to Las Vegas Fight," *St. Louis Post-Dispatch*, November 6, 1993. Copy supplied.

"Briefs," *St. Louis Post-Dispatch*, November 3, 1993. Copy supplied.

Jo Mannies & Joe Holleman, "Bosley Announces First Staff Appointments," *St. Louis Post-Dispatch*, April 23, 1993. Copy supplied.

Kim Bell, "Bill Aims New Weapon at Gang Members," *St. Louis Post-Dispatch*, April 11, 1993. Copy supplied.

Fred W. Lindecke, "GOP Seeks Inquiry on Griffin," *St. Louis Post-Dispatch*, April 6, 1993. Copy supplied.

Phyllis Brasch Librach & Fred W. Lindecke, "Students Seek Control Over School Papers," *St. Louis Post-Dispatch*, February 14, 1993. Copy supplied.

Virginia Young, "Phone Company Seeks Change in Rate Process," *St. Louis Post-Dispatch*, February 3, 1993. Copy supplied.

William C. Lhotka, "Aide Acquitted of Sex Charge," *St. Louis Post-Dispatch*, December 4, 1992. Copy supplied.

Marcia L. Koenig, "Shelton Accuses Opponent of Exaggerating Leadership," *St. Louis Post-Dispatch*, July 30, 1992. Copy supplied.

Jim Mosley, "Movement Expected in Missouri," *St. Louis Post-Dispatch*, June 30, 1992. Copy supplied.

Jim Mosley, "Abortion is Key in Races in Missouri," *St. Louis Post-Dispatch*, June 30, 1992. Copy supplied.

Virginia Young, "NRA Led Blitz on Concealed Weapons," *St. Louis Post-Dispatch*, March 25, 1992. Copy supplied.

"Defeat of a Hot Potato Bill," *St. Louis Post-Dispatch*, March 5, 1992. Copy supplied.

"Abortion Bill Lawmaker Reports Phone Threats," *St. Louis Post-Dispatch*, March 5, 1992. Copy supplied.

"Defeat of Abortion Ban Elates Opponents, Angers Proponents," *St. Louis Post-Dispatch*, March 4, 1992. Copy supplied.

David Aguillard, "Missouri Abortion Ban Blocked," *St. Louis Post-Dispatch*, March 3, 1992. Copy supplied.

Virginia Young, "5 Legislators Urge New Crime-Fighting Agency," *St. Louis Post-Dispatch*, January 17, 1992. Copy supplied.

Virginia Young "New Map Upsets Some Legislators," *St. Louis Post-Dispatch*, August 22, 1991. Copy supplied.

Virginia Young "'Mystic Power' Helps Clay Jr. Ascend," *St. Louis Post-Dispatch*, June 6, 1991. Copy supplied.

Jo Mannies, "Rep. Ronnie White Won't Seek Senate Seat Held by John Bass," *St. Louis Post-Dispatch*, May 23, 1991. Copy supplied.

Jo Mannies, "Maverick Legislator in Battle for Turf Clash is One of Many Spurred by Redistricting," *St. Louis Post-Dispatch*, May 17, 1991. Copy supplied.

Virginia Young, "No Money to Convert Bliss to Honor Center Residents of Lafayette Square Win," *St. Louis Post-Dispatch*, May 9, 1991. Copy supplied.

Mark Schlinkmann, "Legislator to Quit Black Caucus," *St. Louis Post-Dispatch*, March 8, 1991. Copy supplied.

Mark Schlinkmann, "Former Mayor of KC May Cross Swords with Bond Again," *St. Louis Post-Dispatch*, February 7, 1991. Copy supplied.

Judith VandeWater, "Halfway House May Prompt Suit," *St. Louis Post-Dispatch*, January 9, 1991. Copy supplied.

Thom Gross, "Plan to Convert Hospital to Prison Angers Neighborhood," *St. Louis Post-Dispatch*, December 2, 1990. Copy supplied.

Thom Gross, "Missouri to Build 2 Mental Hospitals at St. Louis Sites," *St. Louis Post-Dispatch*, November 27, 1990. Copy supplied.

Tim O'Neil, "Honor Center Relocation is Opposed," *St. Louis Post-Dispatch*, November 17, 1990. Copy supplied.

Fred W. Lindecke & Patricia Corrigan, "In the Air," *St. Louis Post-Dispatch*, October 25, 1990. Copy supplied.

"License-Revocation Bill Faulty," *St. Louis Post-Dispatch*, May 11, 1990. Copy supplied.

Mark Schlinkmann, "GOP Hopeful No Stranger to Elections," *St. Louis Post-Dispatch*, August 3, 1989. Copy supplied.

"Political Circuit Column," *St. Louis Post-Dispatch*, April 9, 1989. Copy supplied.

Louis J. Rose and Ralph Dummit, "Peach Seeks Probe Into Police Work," *St. Louis Post-Dispatch*, March 27, 1988. Copy supplied.

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

From 1994 to 1995, I served as a Judge on the Missouri Court of Appeals for the Eastern District of Missouri. I was appointed by the Governor in 1994 after the nonpartisan Appellate Judicial Commission recommended me. The Missouri Court of Appeals for the Eastern District of Missouri is a court of general appellate jurisdiction. Cases that are appealed from the lower state courts are within the jurisdiction of this court.

From 1995 to 2007, I served as a Justice on the Supreme Court of Missouri, including as the Chief Justice from 2003 to 2005. I was appointed by the Governor in 1995 after the nonpartisan Appellate Judicial Commission recommended me. I was retained in a 1998 general election for a twelve-year term. This is a court of limited jurisdiction with exclusive jurisdiction in those cases involving: the validity of a statute or treaty of the United States; validity of a Missouri statute or state constitution; the state's revenue laws, challenges to the title of any state office; and death sentences.

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

I have not presided over any trials because I have only served as an appellate judge.

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.

See attached list of cases.

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

1. *State v. Forrest*, 183 S.W. 3d 218 (Mo. 2006), *cert. denied*, 549 U.S. 840 (2006).

The defendant was convicted of three counts of first-degree murder. Consistent with the jury's recommendation, the trial judge imposed three death sentences. On appeal to the Supreme Court of Missouri, defendant claimed, among other things, that the admission of police officers' out-of-court statements constituted improper bolstering of trial testimony and was reversible error; admission of adjudicated criminal conduct was in error; the victim impact evidence was inadmissible; and the jury was deprived of evidence in mitigation. We rejected defendant's claims and affirmed the convictions and sentences.

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2. *Smith v. State*, 152 S.W.3d 275 (Mo. 2005) (J. White, concurring).

This case required the Supreme Court of Missouri to decide whether the City of St. Louis Board of Police Commissioners and Police Officers, who were named as defendants in various lawsuits because of actions taken in their official capacities, were entitled to coverage under the State Legal Expense Fund (SLEF). The board members and police officers brought a declaratory judgment action against the State, the Attorney General, the Commissioner of Administration, and the State Treasurer. The trial court granted board members' and police officers' motion for summary judgment. We affirmed the trial court's ruling granting summary judgment in favor of the board members and police officers. We held that the board was an agency of the State and that police officers were officers of the State within the meaning of SLEF and entitled to coverage under SLEF.

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3. *Holm v. Director of Revenue*, 148 S.W. 3d 313 (Mo. 2004).

The Holms were out-of-state residents who bought a vehicle while they were living in Missouri and sought to avoid paying Missouri state and local sales tax on the purchase. They failed to comply with the out-of-state law that allowed for the

transfer of license plates from an old vehicle to a new one as long as the owners register and title vehicle out-of-state within 60 days. The Administrative Hearing Commissioner ruled that the Holms were not liable for the tax and penalties due to Missouri. The Director of Revenue sought judicial review of the ruling before the Supreme Court of Missouri. We held that because the taxpayers did not timely register their vehicle out-of-state, they could not avoid the responsibility of registering the vehicle in Missouri and paying the state and local sales tax.

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For Appellee
Pro Se Appellee

4. *State v. Buchanan*, 115 S.W. 3d 841 (Mo. 2003) (*per curiam*).

The issue before the Supreme Court of Missouri was whether a trial judge could impose a sentence of death when the jury could not agree on punishment. After a jury trial, the defendant was convicted of first-degree murder. We held that under controlling state precedent, a jury rather than a judge must determine each fact leading to an increase in punishment. Thus, a judge could not impose a death sentence after a jury deadlocked and was unable to agree upon the punishment.

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For Appellee
John M. Morris (deceased)

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5. *State v. Kinder*, 89 S.W. 3d 454 (Mo. 2002) (*per curiam*).

The issue before the Supreme Court of Missouri involved the question of whether the Attorney General could file a *quo warranto* asking one circuit court to bar circuit judges in another county from acting in a case. The Attorney General filed this case to bar circuit judges from exercising supervisory authority over receivership funds. After the case was dismissed by the trial judge, the Attorney General filed an appeal. We affirmed the trial court's dismissal of the case, holding that the state constitution prohibited exercise of power by the judge of one county to issue a *quo warranto* against judges of another county.

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6. *Board of Education of the City of St. Louis, et al v. State*, 47 S.W. 3d 366 (Mo. 2001).

The Supreme Court of Missouri was asked to decide the constitutionality of a state statute concerning the election of school board members. The Board of Education of the City of St. Louis filed a declaratory judgment action to determine the constitutionality of a statute governing the election of school board members. After the trial court ruled in favor of the school board by finding the statute void for vagueness, the State appealed to our court. We affirmed the trial court's ruling on the issue of vagueness under the Missouri Constitution but also held that the unconstitutional subsections were severable from the otherwise constitutional subsections of the statute.

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For Appellee
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7. *State ex rel. Nixon v. American Tobacco Company, Inc.*, 34 S.W. 3d 122 (Mo. 2000).

The State of Missouri brought suit against certain tobacco manufacturers. The defendant tobacco manufacturers agreed to pay the private attorneys hired by the Attorney General to bring the lawsuit as Special Assistant Attorney General because of the costs and burden the case would put on the Attorney General's staff. Several groups objected to the agreement and sought to intervene. A number of state senators brought an action as taxpayers seeking a declaratory judgment declaring the agreement invalid. Both cases were consolidated on appeal. We concluded that the state senators had standing as taxpayers to participate in the case and that other groups seeking intervention did not. We held

that the fee arrangement was permissible unless the General Assembly enacted legislation related to the fee arrangement by December 31, 2001.

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8. *Committee for Educational Equality, et al. v. State,* 967 S.W. 2d 62 (Mo. 1998).

The issue before the Supreme Court of Missouri was the constitutionality of the state's education funding system under the Missouri Constitution. The Committee for Educational Equality brought suit seeking a court ruling declaring the education funding system unconstitutional. After briefing and argument before the trial court, the trial judge entered judgment upholding the constitutionality of the system. After an appeal by the Committee, we held that the funds received from the federal government were not "state revenue" within the meaning of the constitutional provision requiring that the public school finance system allocate a minimum of 25% of state revenue for support of the public schools. We affirmed the trial court's ruling upholding the constitutionality of the statute.

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9. *W.B. v. M.G.R.*, 955 S.W. 2d 935 (Mo. 1997).

The issue before the Supreme Court of Missouri involved a determination of the rights of parties under the Uniform Parentage Act. The parties were seeking to have the alleged biological father declared to be the father of a child born while the mother was married to another man. The case was dismissed by the trial court. It was alleged on appeal that application of the Uniform Parentage Act violated the biological father's equal protection rights, open access to the courts, and due process rights. We affirmed the trial court's dismissal of the action, holding that the constitutional prohibition on retroactive laws precluded application of the amendment to the Act to allow a challenge to the presumed father after the child's fifth birthday.

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For Appellee
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10. *Cox v. Tyson Foods, Inc.*, 920 S.W. 2d 534 (Mo. 1996).

The claimant (the employee) filed a claim for worker's compensation benefits for injuries sustained as a result of a fall while walking to his employer's premises from a nearby parking lot. The issue before the Court was whether the employee's injuries arose out of or in the course of his employment. The Labor and Industrial Relations Commission denied his claim, and the employee appealed the decision. The Court of Appeals affirmed the Commission's decision. After transfer to the Supreme Court of Missouri, we held that under the extended premises doctrine, the employee's injuries arose out of and in the course of his employment. The Supreme Court of Missouri reversed and remanded.

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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. *State v. Forrest*, 183 S.W. 3d 218 (Mo. 2006), *cert. denied*, 549 U.S. 840 (2006).

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2. *Smith v. State*, 152 S.W. 3d 275 (Mo. 2005) (J. White, concurring).

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3. *State v. Deck,* 136 S.W. 3d 481 (Mo. 2004), *rev'd,* 544 U.S. 622, 125 S.Ct. 2007, 161 L. Ed 2d 953 (2005).

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4. *In re Estate of Krauber,* 59 S.W.3d 512 (Mo. 2001)

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5. *State ex rel. Nixon v. Am. Tobacco Co., Inc.*, 34 S.W. 3d 122 (Mo. 2000).

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6. *Comm. For Educ. Equal v. State*, 967 S.W. 2d 62 (Mo. 1998).

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7. *W.B. v. M.G.R.*, 955 S.W. 2d 935 (Mo. 1997).

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8. *State v. Kinder*, 942 S.W. 2d 313 (Mo. 1996) (J. White, dissenting).

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9. *Cox v. Tyson Foods, Inc.*, 920 S.W. 2d 534 (Mo. 1996).

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10. *State v. Nunley*, 923 S.W. 2d 911 (Mo. 1996), *cert. denied*, 117 S.Ct. 772 (1997).

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

State v. Forrest, 183 S.W.3d 218 (Mo. 2006), *cert. denied*, 549 U.S. 840 (2006)

State v. McFadden, 191 S.W.3d 648 (Mo. 2006), *cert. denied*, 549 U.S. 1071 (2006)

State of Zink, 181 S.W.3d 66 (Mo. 2005), *cert. denied*, 547 U.S. 1135 (2006)

Cole v. State, 152 S.W.3d 267 (Mo. 2004), *cert. denied*, 545 U.S. 1131 (2005)

State v. Deck, 136 S.W.3d 481 (Mo. 2004), *rev'd*, 544 U.S. 622, 1255 Ct. 2007, 161 Ed. 2d 953 (2005)

State ex rel. Simmons v. Roper, 112 S.W. 3d 397 (Mo. 2003) *aff'd sub nom. Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183, 161 L. Ed. 2d 1 (2005)

State v. Taylor, 134 S.W.3d 21 (Mo. 2004), *cert. denied*, 543 U.S. 928 (2004)

Johnson v. State, 22 S.W.3d 183 (2000) (J. White, concurring in opinion), *cert. denied*, 531 U.S. 935 (2000)

Ringo v. State, 30 S.W.3d 811 (2000) (J. White, concurring), *cert. denied*, 532 U.S. 932 (2001)

State v. Cole, 71 S.W.3d 163 (Mo. 2002), *cert. denied*, 537 U.S. 865 (2002)

State v. Tisius, 92 S.W.3d 751 (Mo. 2002), *cert. denied*, 539 U.S. 920 (2003)

State v. Taylor, 18 S.W. 3d 366 (Mo. 2000) (J. White, concurring in opinion), *cert. denied*, 531 U.S. 901 (2000)

State v. Knese, 985 S.W.2d 759 (Mo. 1999), *cert. denied*, 526 U.S. 1136 (1999)

State v. Hall, 955 S.W.2d 198 (Mo. 1997), *cert. denied*, 523 U.S. 1053 (1998)

State v. Lyons, 951 S.W.2d 584 (Mo. 1997), *cert. denied*, 522 U.S.1130 (1998)

State v. Smith, 944 S.W.2d 901 (Mo. 1997), *cert. denied*, 522 U.S. 954 (1997)

State v. Basile, 942 S.W.2d 342 (Mo. 1997) (J. White, concurring in opinion), *cert. denied*, 522 U.S. 883 (1997)

White v. State, 939 S.W.2d 887 (Mo. 1997) (J. White, concurring in part, dissenting in part), *cert. denied*, 522 U.S. 948 (1997)

State v. Taylor, 929 S.W.2d 209 (Mo. 1996), *cert. denied*, 519 US 1152 (1997)

State v. Smulls, No. 75511, 1996 WL 344673 (Mo. June 25, 1996), *opinion modified and superseded*, 935 S.W.2d 9 (Mo. 1996), *cert. denied*, 520 U.S. 1254 (1997)

State v. Nunley, 923 S.W.2d 911 (Mo. 1996), 519 U.S. 1094 (1997)

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

State v. Deck, 136 S.W.3d 481 (Mo. 2004), *rev'd*, 544 U.S. 622, 125 S.Ct. 2007, 161 L.Ed. 2nd 953 (2005).

The defendant filed a motion for post-conviction relief from a murder conviction and death sentence, alleging ineffective assistance of counsel. The Supreme Court of Missouri upheld the death sentence recommended by the trial court. The United States Supreme Court reversed the Supreme Court of Missouri, finding among other things that the trial court committed error in deciding to restrain the defendant in front of the jury.

State v. Smulls, No. 75511, 1996 WL 344673 (Mo. June 25, 1996), *opinion modified and superseded*, 935 S.W.2d 9 (Mo. 1996), *cert. denied*, 520 U.S. 1254 (1997).

The defendant was convicted of first degree murder and sentenced to death. The defendant appealed the conviction, sentence and denial of post-conviction relief. The Missouri Supreme Court affirmed the conviction and sentence but reversed the judgment entered for defendant's post-conviction motion because the trial court erred in refusing to recuse. After the language in the original opinion regarding the trial judge's recusal was criticized, the Missouri Supreme Court

overruled the motion for rehearing but modified the language describing the recusal and issued a new opinion on its own motion.

State v. Bledsoe, 1995 Mo. App. LEXIS 1713 (Mo. App. 1995), *rev'd,* 920 S.W.2d 538 (Mo. App. 1996) (en banc).

Defendant was convicted in the circuit court of two counts of second-degree assault and two counts of armed criminal action. Defendant appealed. I wrote an opinion in which the two judges on my panel concurred reversing the assault convictions. We held the State failed to prove a serious disfigurement injury as defined by statute. Defendant filed a motion for rehearing by the court *en banc*. The court granted the hearing and held that the evidence was sufficient to find serious disfigurement supporting a conviction for second-degree assault thereby overruling the earlier opinion.

Beatty v. Metropolitan St. Louis Sewer District, 1995 WL 128401 (Mo. App. March 28, 1995), *rev'd*, 914 S.W.2d 791 (Mo. 1995).

A landowner brought an action challenging Metropolitan Sewer District's authority to issue revenue bonds and increase its charges without a public vote. The district court eventually found that the suit was a representative taxpayer suit and ordered the district to credit all taxpayers. Writing for the majority of the Court of Appeals, I ordered the district to credit customers' bills. The Supreme Court reversed, holding that the case was not filed as a "representative taxpayer" suit, that sovereign immunity did not apply, and that only the named plaintiffs were entitled to relief. As a result, our opinion ordering the district to credit customers' bills was vacated.

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

None.

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 ex rel. Simmons v. Roper, 112 S.W. 3d 397 (Mo. 2003) *aff'd sub nom. Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183, 161 L. Ed. 2d 1 (2005)

Weinschenk v. State, 203 S.W. 3d 201 (Mo. 2006)

Bernat v. State, 194 S.W. 3d 863 (Mo. 2006)

State v. Deck, 136 S.W. 3d 481 (Mo. 2004), *rev'd,* 544 U.S. 622, 125 S.Ct. 2007, 161 L. Ed. 2d 953 (2005)

Brooks v. State, 128 S.W. 3d 844 (Mo. 2004)

State ex rel. Amrine v. Roper, 102 S.W. 3d 541 (Mo. 2003)

State ex rel. Diehl v. O'Malley, 95 S.W. 3d 82 (Mo. 2003)

State v. Kinder, 89 S.W. 3d 454 (Mo. 2002)

State ex rel. Nixon v. American Tobacco Company, Inc. 34 S.W. 3d 122 (Mo. 2000)

Ring v. Metropolitan St. Louis Sewer District, 969 S.W. 2d 716 (Mo. 1998)

Comm. For Educ. Equal v. State, 967 S.W. 2d 62 (Mo. 1998)

Nat'l Solid Waste Mgmt Ass'n v. Dir. Of Dep't of National Res., 964 S.W. 2d 818 (Mo. 1998)

St. Charles Cnty v. Dir. Of Revenue, 961 S.W. 2d 44 (Mo. 1998)

Missouri Coal. For Env 4 v. Joint Comm. on Admin. Rules, 948 S.W. 2d 125 (Mo. 1997)

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 Missouri Court of Appeals, Eastern District, does not have an automatic recusal system. I utilized Rule 2.03, Canon 3E of the Missouri Judicial Code of Conduct to determine whether I should recuse myself in any specific case. No party ever requested my recusal. During my time as a member of this court, there was not a database or system that kept records of voluntary recusals or the reasons for recusals, and I do not recall any recusals.

The Supreme Court of Missouri does not have an automatic recusal system. I utilized Rule 2.03, Canon 3E of the Missouri Judicial Code of Conduct to determine whether I should recuse myself in any specific case. I also consulted with the Chief Justice on recusal issues, such as how to handle cases that were submitted before I became a member of the Court. I consulted with the Chief Justice and other Justices on how to proceed on cases that were submitted before I left the Court that would be published after my departure. No party ever requested my recusal. During my time as a member of the Court, there was not a database or system that kept records of our voluntary recusals or the reasons for those recusals, but I have listed those that I can identify below. In the following list of recusals, I have included all cases resulting in opinions during the time I served on the Court.

Ethridge v. Tier One Bank, 226 S.W.3d 177 (Mo. 2007)

Walton v. City of Berkeley, 223 S.W.3d 126 (Mo. 2007)

Dudley v. Agniel, 207 S.W.3d 617 (Mo. 2006)

Jones v. Fife, 207 S.W.3d 614 (Mo. 2006)

State ex rel. Hill v. Baldridge, 186 S.W.3d 258 (Mo. 2006)

State ex rel. Stecher v. Dowd, 912 S.W.2d 452 (Mo. 2005)

Brown v. First Horizon Home Loan Corp., 150 S.W.3d 287 (Mo. 2004)

State ex rel. Leonardi v. Sherry, 137 S.W.3d 462 (Mo. 2004)

State ex rel. Liberty School Dist. v. Holden, 121 S.W.3d 232 (Mo. 2003)

Crouch v. J&J Home Builders, 118 S.W.3d 593 (Mo. 2003)

Harvey v. Washington, 95 S.W.3d 93 (Mo. 2003)

State ex rel. Dowdy v. Neill, 90 S.W.3d 469 (Mo. 2002)

In re Carey, 89 S.W.3d 477 (Mo. 2002)

State ex rel. Kinder v. McShane, 87 S.W.3d 256 (Mo. 2002)

Wilkes v. State, 82 S.W.3d 925 (Mo. 2002)

State v. Larson, 79 S.W.3d 891 (Mo. 2002)

Middleton v. State, 80 S.W.3d 799 (Mo. 2002)

Treadway v. State, 988 S.W.2d 508 (Mo. 1999)

State ex rel. Young v. City of St. Charles, 977 S.W.2d 503 (Mo. 1998)

State v. Reese, 920 S.W.2d 94 (Mo. 1996)

Bold v. Bold, 912 S.W.2d 477 (Mo. 1995)

Krane v. Krane, 912 S.W.2d 473 (Mo. 1995)

Lay v. Lay, 912 S.W.2d 466 (Mo. 1995)

Beatty v. Metropolitan St. Louis Sewer Dist., 914 S.W.2d 791 (Mo. 1995)

Beatty v. State Tax Com'n, 912 S.W.2d 492 (Mo. 1995)

State v. Weaver, 912 S.W.2d 499 (Mo. 1995)

State ex rel. Leggett v. Sovran Leasing Corp., 909 S.W.2d 664 (Mo. 1995)

State ex rel. Yarber v. McHenry, 915 S.W.2d 325 (Mo. 1995)

Bass v. National Super Markets, Inc., 911 S.W.2d 617 (Mo. 1995)

Johnson v. Denton Const. Co., 911 S.W.2d 286 (Mo. 1995)

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.

State Representative, State of Missouri, 63rd District (1989 – 1993), elected position.

City Counselor, City of St. Louis (1993 – 1994), appointed in 1993 by Mayor Bosley, Jr.

St. Louis Housing Authority (1989 – 1990), appointed in 1989 by Mayor Schoemehl.

I have never been an unsuccessful candidate for elective public office.

In 1997 and again in 1999, President Bill Clinton nominated me to be United States District Court Judge for the Eastern District of Missouri. My nomination was favorably reported by the Senate Judiciary Committee twice, but on October 5, 1999, it was disapproved by the Senate by a vote of 45-54.

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 volunteered for the Nixon for Missouri Campaign in 2008 and 2012. I traveled with candidate and Governor Jay Nixon to several campaign events. I also recorded a radio campaign commercial (2008 and 2012). In 2008, I also worked as a co-chair of Governor-Elect Nixon's Citizen Transition Team.

In 1991, I endorsed then-Lieutenant Governor Mel Carnahan for Governor of Missouri.

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

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

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

I never served as a 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.

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Partner

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

I have never served as 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 1984 I started practicing law as an assistant Public Defender assigned to represent indigent children charged with violations of the juvenile code. After serving nine months in Juvenile Court, I was promoted to the misdemeanor division of the Public Defender's Office, where I represented numerous indigent adults charged with misdemeanor crimes. My representation included bench trials, jury trials and motion hearings. I was in court almost every day on behalf of my clients. After nine months I was moved up to the felony division where I was assigned to a trial team to represent indigent adults charged with felony crimes. Over time, I tried a significant number of cases to a jury. After a year and a half, I became a trial team leader and supervised four attorneys. In my role as team leader, I carried a full caseload that included several first degree murder cases.

When I entered private practice at the Law Offices of Cahill, White & Hemphill in 1987, I continued to represent individuals charged with crimes. I also accepted an assignment to represent clients from the Office of the Special Public Defender who were charged with A & B felonies, the most serious charges under the state criminal code. In addition to my criminal practice, I represented clients with damage claims, such as injured victims in automobile accidents, those in slip and fall and those in worker's compensation cases.

In 1993, I left private practice to take a position as City Counselor for the City of St. Louis, Missouri, where I was in charge of an office with approximately 70 employees. In addition to my responsibilities in managing the office, I directed the negotiation and resolution of major cases that were assigned to my assistants.

After serving on the Supreme Court of Missouri, I returned to private practice at Holloran White Schwartz & Gaertner LLP, which specializes in personal injury suits. I have represented numerous individuals in cases seeking civil damages. Over the years, I have been involved in all of the major cases for which the office has been retained. The list includes representing plaintiffs in serious automobile and truck accident cases, defending the owners of small corporations, and serving as an expert witness in legal malpractice cases. In addition, I am consulted on appellate and trial matters by lawyers outside of my office.

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

During my career, I have not specialized in any particular area of the law, although my practice has changed regarding the type of cases I accept. In the early years I represented individuals charged with juvenile code

violations, misdemeanors and felonies in the Office of the Public Defender in St. Louis City and County.

While a partner at Cahill, White & Hemphill, I continued to represent individuals charged with criminal violations. I also accepted small cases such as minor auto accidents, traffic matters, non-contested divorces and small probate matters.

When I served as City Counselor for the City of St. Louis, I was in charge of the law department which represented the city in lawsuits brought against the city, all of the city departments and employees, the Mayor's Office and the Board of Aldermen.

At Holloran White Schwartz & Gaertner, LLP, I have focused primarily on personal injury lawsuits, representing individuals. I also defend small corporations from time to time in lawsuits brought against their companies. I am retained by plaintiff and defense counsel in legal malpractice cases.

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

Essentially 100% of my practice has been litigation. In the early years of my practice it was 98% criminal litigation and now it is 100% civil litigation. I have appeared in courts frequently over the years of my practice.

i. Indicate the percentage of your practice in:
   1. federal courts: 3%
   2. state courts of record: 97%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 60%
   2. criminal proceedings: 40%

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

To the best of my recollection, I have tried a total of 28 cases to verdict or judgment, all of which were tried to a jury. Of those, 25 were criminal jury trials where I was sole counsel and three were civil jury trials where I was co-counsel.

i. What percentage of these trials were:
   1. jury: 100%
   2. non-jury: 0%

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

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

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

a. the date of representation;

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

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

1. *In re: The Matter of the Honorable B. T. Peebles, Respondent*, Supreme Court No. SC92811, Supreme Court of Missouri (2013). Judge Richard Tietelman.

I was co-counsel representing a Missouri Associate Circuit Judge in a disciplinary matter. After a hearing, the Commission of Retirement, Removal and Discipline after hearing, recommended the judge be removed from office. While I consulted with my co-counsel during the hearing before the Commission, I did not participate in the hearing. I argued the case on appeal before the Supreme Court of Missouri, which has supervisory powers over all lower court judges. The Supreme Court of Missouri suspended the judge for six months.

Co-Counsel:
Paul J. D'Agrosa
Law Office of Wolff & D'Agrosa
7710 Carondelet Avenue, Suite 200
Clayton, MO 63105
(314) 725-8019

Opposing Counsel:
James M. Smith

2190 South Mason Road, Suite 201
St. Louis, MO 63131
(314) 966-1007

2. *Brodie v. Novartis Pharmaceuticals Corporation*, Case No. 4:10-cv-00138-HEA U.S. District Court – Eastern District of Missouri (2012). Judge Henry Autrey.

I was co-counsel and local counsel to attorneys from out of state who filed a failure to warn claim on behalf of the plaintiff in the U.S. District Court for the Eastern District of Missouri. Plaintiff alleged that after he used the pharmaceutical company's drug prescribed to him by his doctor, he sustained injuries to his jaw bone because the label on the drug was inadequate to warn him or his doctor of the drug's side effects. The case proceeded to trial, and I conducted the voir dire, cross-examined several witnesses and shared the closing argument with the lead attorney. The jury returned a verdict in favor of the defendant.

Co-Counsel:
Daniel Osborn
Osborn Law, P.C.
295 Madison Avenue
New York, NY 10017
(212) 725-9800

Opposing Counsel:
Bruce J. Berger
Hollingsworth, LLP
1350 First Street, NW
Washington, DC 20005
(202) 898-5800

3. *Martin, et al v. Survivair, Inc., et al.*, Cause No. 042-08883, Circuit Court, City of St. Louis, State of Missouri (2010). Judge Michael David.

I was co-counsel in a fee dispute among several attorneys in a wrongful death case. The lead attorney filed several motions after the apportionment proceedings claiming attorney fees from a plaintiff that he did not have a contract to represent. I represented one of the plaintiffs and her attorneys. I prepared the pleadings and argued the motions and responses to the court. The lead attorney's motion for attorney fees from plaintiffs with whom he did not have a contract was sustained in part and denied in part. The trial court ruled that the lead attorney was not entitled to attorney fees from the compensatory award but was entitled to collect attorney fees from the punitive award. The case was settled after the trial court judge entered his order, affirming in part and reversing in part the lead attorney's motion for attorney's fees.

Co-Counsel:
James P. Holloran
Holloran White Schwartz & Gaertner LLP
2000 South Eighth Street
St. Louis, MO 63104
(314) 772-8989

Opposing Counsel:
Jerome J. Schlichter
Schlichter, Bogard & Denton
100 South Fourth Street, Suite 900
St. Louis, MO 63102
(314) 621-6115

4. *Bachman, et al v. A.G. Edwards, Inc., et al.*, Cause No. 4:09-cv-0057ERW, U.S. District Court, Eastern District of Missouri (2009). Judge Richard Webber.

I was co-counsel with attorneys from around the country who represented Ms. Bachman and others in a shareholder class action lawsuit. The shareholders alleged that the defendants wrongly kept fees that should have been distributed to the shareholders. I participated in the preparation of a number of pleadings filed and argued the motion for class certification to the court. The motion for class certification was granted and the case was settled before trial.

Co-Counsel:
Robert D. Blitz
Christopher O. Bauman
Blitz, Bardgett & Deutsch, L.C.
120 South Central Avenue, Suite 1650
St. Louis, MO 63105
(314) 863-1500

Opposing Counsel:
Jeffrey J. Kalinowski
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102
(314)-259-2000

5. *In Regard the Matter of Hubbard v. Jones and Carnahan, Secretary of State of Missouri*, Cause No. 0822-CC08277, Circuit Court, City of St. Louis, Missouri (2008). Judge Edward Sweeney

I was co-counsel for the defendants in an election contest lawsuit. My clients won a representative election by 96 votes. The plaintiff filed suit claiming among other

things that the counting of the casted votes was fraudulent. I prepared all pleadings in the matter and argued them to the trial judge. The court sustained the defendants' motion to dismiss, thus affirming the final vote count.

Co-Counsel:
Susan E. Block
Paule, Camazine & Blumenthal, P.C.
165 North Meramec Avenue, Sixth Floor
St. Louis, MO 63105
(314) 727-2266

Opposing Counsel:
N. Scott Rosenblum
Rosenblum, Schwartz, Rogers & Glass, P.C.
120 South Central Avenue, Suite 130
St. Louis, MO 63105
(314) 862-4332

6. *Bi-State Development Agency of the Missouri-Illinois Metropolitan District D/B/A Metro v. Cross County Collaborative Joint Venture, et al.*, Cause No. 04CC-003335, Circuit Court, St. Louis County, State of Missouri (2007). Judge Carolyn Whittington.

I was co-counsel defending the Cross County Collaborative Joint Venture ("Cross County") in a significant contract dispute over construction costs overruns. Our clients were sued for over $100 million in damages. The jury returned a verdict in favor of Cross County against the plaintiffs and awarded Cross County $6 million on its cross-claim. I conducted part of the voir dire, cross-examined the main witness for the plaintiff, and argued several motions to the court during the trial.

Co-Counsel:
James Bennett
Edward Dowd
Dowd & Bennett LLP
7733 Forsyth Boulevard, Suite 1900
St. Louis, MO 63105
(314) 863-2111

Opposing Counsel:
Pamela Meanes
Gordon Ankey
Thompson Coburn
505 North Seventh Street
St. Louis, MO 63101
(314) 552-6349

7. *State ex rel., the City of St. Louis, Mayor Bosley, Jr. and the Metropolitan St. Louis Sewer District, Relators v. Honorable Thomas C. Mummert III*, Circuit Court, St. Louis City, et al., Respondents. State ex rel., City of St. Louis v. Mummert, 875 S.W. 2d 108 (Mo. 1994). Judge John Holstein.

As co-counsel, I represented the mayor in an effort to have the judges of the 22nd Judicial Circuit Court approve his nominees to the Metropolitan Sewer District Board. I argued this case before the Supreme Court of Missouri and was successful in having a section of the statute in question severed so that the mayor's nominees could sit as board members.

Co-Counsel:
James M. Byrne
2000 Hampton Avenue
St. Louis, MO 63139
(314) 768-6234

Opposing Counsel:
John F. Galvin
Fox Galvin, LLC
One South Memorial Drive, 12th Floor
St. Louis, MO 63102
(314) 588-7000

8. *Taylor v. Poeschel and the City of Berkeley, Missouri*, Cause No. 492V00693, U.S. District Court – Eastern District of Missouri (1993). Judge Jean Hamilton.

As sole counsel, I represented the plaintiff, Taylor, in a Section 1983 action against the defendants in a jury trial. Taylor alleged that the defendant police officer Poeschel had beaten her and that the City of Berkeley was negligent in failing to train and supervise Officer Poeschel. The jury returned a verdict in favor of the defendants.

Opposing Counsel:
Robert J. Krehbiel
Donna Morrison
200 North Broadway, 12th Floor
St. Louis, MO 63102
(314) 621-7755

9. *State of Missouri v. Huffman*, Cause No. 87-03032, Circuit Court, City of St. Louis, State of Missouri (1987). I cannot recall the name of the trial judge.

As sole counsel, I represented defendant Huffman, who was charged with assault first degree and armed criminal action. I was responsible for presenting the case to the

jury, including putting the defendant on the stand despite his numerous prior convictions. The jury returned a verdict of not guilty on all counts.

Opposing Counsel:
George Draper III
(Former Prosecutor, City of St. Louis, MO)
Judge, Supreme Court of Missouri
207 West High Street
Jefferson City, MO 65102
(573) 751-6644

10. *State of Missouri v. Dailey*, Cause No. 861-01026B, Circuit Court, City of St. Louis, State of Missouri (1987). Judge James S. Corcoran (deceased).

As sole counsel, I represented defendant Dailey, who was charged with assault first degree. The defendant was charged with assaulting her own child who had suffered severe injuries. I was successful in convincing the jury of the defendant's innocence of the greater charge. The jury returned a verdict of guilty on the lesser charge of endangering the welfare of a child and assessed punishment as a fine to be set by the court.

Opposing Counsel:
Dee Joyce Hayes
(Former Prosecutor, City of St. Louis, MO)
General Counsel Metro Transit
707 North First Street
St. Louis, MO 63102
(314) 982-1400

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 1994 to approximately 1998, I served on the "Gender Task Force Committee" established by the Supreme Court of Missouri. The work of this committee resulted in establishing Supreme Court Rule 8 prohibiting gender bias by judicial officials.

As Chairman of the Appellate Judicial Commission from 2003 to 2005, my responsibilities included ensuring that each of the members received complete files from all applicants for judicial office and scheduling a date, time and place that was convenient for the Commission to interview the applicants. After the applicants were interviewed by each commissioner, I presided over the meeting to discuss, select and forward three

names to the governor so that he could appoint one person to the position of appellate judge. This process is used to select all appellate judges including all members of the supreme court. It is also used in most of the urban judicial circuits in Missouri.

I was appointed by U.S. District Court judges to serve as a member of the Merit Selection Panel for the selection of a U.S. Magistrate Judge in the District Court for the Eastern District of Missouri in 2013. We met and screened thirty applicants before interviewing nine individuals. After we conducted our group interview of each applicant, we discussed each applicant's qualifications and then we took a vote on the candidates. The top five candidates were forwarded to the U.S. District Court judges for their review.

I have not performed any lobbying activities or registered as a lobbyist.

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

    I have taught Trial Practice & Procedure at Washington University Law School from 1996 through 2013. The course involves teaching the basic trial skills that a lawyer would need to represent a client in court. The major topics taught are Jury Selection, Opening Statements, Direct & Cross Examinations, and Foundations and Closing Arguments. 2013 syllabus supplied.

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

    None.

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

    If confirmed, I hope to continue serving as an adjunct faculty member for Washington University in St. Louis 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 would recuse from cases involving members of my current law firm for a reasonable period of time. In addition, I have some former law clerks who practice in the Eastern District of Missouri, and I would likely recuse on their matters. I am not aware of any family members or parties 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 would handle all matters involving actual or potential conflicts of interest through thoughtful application of the Code of Conduct for United States Judges, pertinent advisory opinions, and any other relevant rules or procedures.

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 served for two years as a former advisory board member for the Maria Droste Residence Organization. This group assisted homeless women in finding shelter and employment.

    I served for three years as a commissioner with the St. Louis Housing Authority. This board established policy and procedures for implementing federally funded low-income housing in St. Louis, Missouri. The board had seven members appointed to two-year terms by the Mayor of St. Louis. I served as a commissioner for approximately a year-and-a-half.

    I have also served as a board member of the Herbert Hoover Boys and Girls Club of St. Louis for two years. We established policy for implementing athletic and educational

programs for inner-city youth. We also assisted in fund-raising activities to support the operation of the club.

I have volunteered and served as a coach for both T-ball and baseball at the Emerson Family YMCA in St. Louis, Missouri. I coached a team of boys and girls during the baseball season for three years. My teams consisted of children from diverse backgrounds.

I volunteered as a mentor for seven years with the Jamison Memorial Christian Methodist Episcopal Church Youth Group. We interacted with the youth members of our church as well as with the youth who live in the neighborhood by planning activities and inviting guest speakers to address the youth.

26. **Selection Process**:

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

In November 2012, I called Senator Claire McCaskill to express my interest in being considered as a candidate for the position of U.S. District Court Judge. In May 2013, I received a call from Senator McCaskill advising that my name would be sent to the White House for consideration. Since May 30, 2013, I have been in contact with officials from the office of Legal Policy at the Department of Justice. On July 19, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 7, 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
White, Ronnie L.	U.S. District Court, Eastern District of Missouri	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. District Judge	☑ Nomination Date 11/07/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 10/31/2013
7. Chambers or Office Address		
2000 South 8th Street St. Louis, Missouri 63104		

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	Holloran White Schwartz & Gaertner LLP
2.		
3.		
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	1984	Missouri State Employees Defined Pension Plan
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting White, Ronnie L.	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	Missouri State Employees Retirement - Pension Payment	$82,454.00
2. 2012	Missouri State Employees Retiremnet - Pension Payment	$79,283.00
3. 2011	Missouri State Employees Retirement - Pension Payment	$76,233.00
4. 2013	Washington University School of Law - Teaching Salary	$1,500.00
5. 2012	Washignton University School of Law - Teaching Salary	$1,500.00
6. 2011	Washington University School of Law - Teaching Salary	$1,500.00
7. 2013	Ronnie L. White, P.C. - Legal Salary	$28,555.00
8. 2012	Ronnie L. White, P.C. - Legal Salary	$22,250.00
9. 2011	Ronnie L. White, P.C. - Legal Salary	$174,034.00
10.		

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	Public School Retirement System of Missouri - Pension Payment
2. 2012	Public School Retirement System of Missouri - Pension Payment
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				

Name of Person Reporting	Date of Report
White, Ronnie L.	11/07/2013

2.

3.

4.

5.

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
White, Ronnie L.	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.	Chase Bank	Mortgage on Rental Property St. Louis, Missouri (Pt VII, line 1)	K
2.	Bank of America	Credit	J
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
White, Ronnie L.	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. Rental Property St. Louis, Missouri	A	Rent	M	W					
2. American Funds Fundamental Investors Fund	A	Dividend	K	T					
3. Columbia Acorn International Fund	A	Dividend	K	T					
4. Fidelity New Insights Fund	A	Dividend	L	T					
5. Fidelity Small Cap Fund	B	Dividend	L	T					
6. Fidelity VIP Contrafund Portfolio	B	Dividend	L	T					
7. ING Fixed Account	A	Dividend	K	T					
8. ING International Value Portfolio	A	Dividend	J	T					
9. ING JP Morgan Small Cap Core Equity Portfolio	B	Dividend	L	T					
10. ING Limited Maturity Bond Portfolio	A	Dividend	K	T					
11. JP Morgan Mortgage Backed Securities	A	Dividend	K	T					
12. Principal MidCap Fund	A	Dividend	K	T					
13. Vanguard Total Bond Market Index Fund	A	Dividend	J	T					
14. Virtus Emerging Markets Emerging Markets Opportunities Fund	A	Dividend	K	T					
15. Commercial Bank STL cash account	A	Interest	J	T					
16. Neighbors Credit Union cash account	A	Interest	J	T					
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 =Bank Value; V =Other; W =Estimated

Name of Person Reporting	Date of Report
White, Ronnie L.	11/07/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting White, Ronnie L.	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/ Ronnie L. White

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		6	780	Notes payable to banks-secured (auto)		10	228
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		399	124	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		18	102
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		399	979
Real estate owned – see schedule		575	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		18	272				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		428	309
				Net Worth		570	867
Total Assets		999	176	Total liabilities and net worth		999	176
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		129	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 Funds Fundamental Investors Fund	$ 29,450
Columbia Acorn International Fund	27,475
Fidelity New Insights Fund	29,235
Fidelity Small Cap Fund	52,938
Fidelity VIP Contrafund Portfolio	51,382
ING Fixed Account	28,076
ING International Value Portfolio	13,247
ING JPMorgan Small Cap Core Equity Portfolio	52,283
ING Limited Maturity Bond Portfolio	24,305
JPMorgan Mortgage Backed Securities	22,649
Principal MidCap Fund	46,676
Vanguard Total Bond Market Index Fund	30
Virtus Emerging Markets Opportunities Fund	21,378
Total Listed Securities	$ 399,124

Real Estate Owned	
Personal residence	$ 475,000
Rental property	100,000
Total Real Estate Owned	$ 575,000

Real Estate Mortgages Payable	
Personal residence	$ 351,919
Rental property	48,060
Total Real Estate Mortgages Payable	$ 399,979

AFFIDAVIT

I, Ronnie Lee White, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1-15-14
(DATE)

Ronnie Lee White
(NAME)

MONICA MORELAND
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis County
My Commission Expires: September 20, 2014
Commission Number: 10493801

Monica Moreland
(NOTARY)

Senator Grassley
Questions for the Record

André Birotte, Jr.,
Nominee, U.S. District Judge for the Central District of California

1. Your responses to the Committee's questionnaire indicate that you were a panelist at an event in 2011 celebrating the *Brown v. Board of Education* decision. The notes you submitted from the event state that "the Constitution is a living document that should relate to current times." The notes also state that "the times have changed" and that the "interpretation of the Constitution must also reflect those changes."

    a. If you are confirmed, would you consider "evolving standards" or, as your notes put it, "changing times" when you're called upon to interpret the meaning of the Constitution?

    b. How would you describe your judicial philosophy?

    c. Do you believe it is ever appropriate for a federal judge to consider his or her own policy preferences when interpreting the Constitution?

    d. Do you believe it is ever appropriate for a federal judge to rely on materials such as legislative history or decisions of foreign courts when deciding a legal question?

2. As US Attorney, you are responsible for the enforcement of federal law in a large part of California, a state that has a medical-marijuana statute. That state law is called the Compassionate Use Act. In 2011, you initiated a number of forfeiture actions against landlords of medical-marijuana dispensaries. You stated that you undertook those actions because the dispensaries had transformed the "Compassionate Use Act into the Commercial Use Act." By 2013, you had dismissed those cases with prejudice.

    a. Why did you abandon the cases your office brought against the landlords?

    b. Did your decision have anything to do with the updated policy guidance you received from the Department of Justice in August 2013?

    c. Were you instructed by anyone at the Department of Justice to dismiss the cases?

    d. Irrespective of the policy guidance from the Department of Justice, do you believe there is a federal interest in prosecuting marijuana distributors who are violating federal drug laws but may be operating legally under state law?

    e. What about actions against landlords who rent to operations that distribute what are controlled substances for purposes of federal law? Do you believe there is a federal interest in prosecuting those individuals?

3. Your office represents the Department of Veterans Affairs ("DVA") and related entities in *Valentini v. Shinseki*. On August 28, 2013, Judge Otero ruled that various land-use agreements between the DVA and private entities, which included a hotel corporation, a movie studio, and a soccer club, were unlawful and void because the private entities were "wholly unrelated to the provision of medical care." The government filed a notice of appeal on October 28, 2013.

   a. Did you make the decision to appeal this judgment or instruct your Assistant United States Attorneys file an appeal? If you or your office did not exercise authority concerning the decision whether to appeal the judgment, please state who did.

   b. Please explain the legal basis for the government's argument that the DVA has unreviewable discretion to enter into enhanced sharing agreements ("ESA") with entities that do not provide health-care resources to veterans. Does your office plan to reassert this argument on appeal?

   c. Your office argued that the DVA had unreviewable discretion to enter into ESAs with entities like 20 Century Fox and Marriot Laundry Services because the DVA is entitled to "determine the optimal uses for its space, land, and property." Is it the position of your office that the "optimal" use of DVA resources with respect to the disputed ESAs is the status quo – i.e., maintaining ESAs with entities wholly unrelated to the provision of medical services to veterans? Does your office plan to reassert this argument on appeal?

   d. Is it the position of your office that maintaining ESAs with entities that provide health-care services to veterans is a sub-optimal use of DVA resources?

   e. How long had the challenged ESAs been effective prior to the district court's finding that they are unlawful?

   f. Prior to the creation of the now-voided ESAs, what was the DVA land being used for?

   g. Please describe whether, during your tenure as US Attorney, your office has initiated or participated in any investigations of mismanagement of DVA facilities or of DVA provision of services in the Central District of California.

4. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

   i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

   ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

   iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

   iv. Are you committed to upholding this precedent?

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.
[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).

ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

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?

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[5] *Id.* (internal citations omitted).

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

John deGravelles,
Nominee: U.S. District Judge for the Middle District of Louisiana

1. You have been critical of some court decisions in maritime law cases. For example, you said that the Supreme Court's decision in *Lozman* created uncertainty and injected complexity into a settled question. You have also said that courts that do not allow punitive damages under the Jones Act are "wrong".

   a. The role of advocate is of course very different from that of a judge. How are you preparing to make this transition?

   b. What do you anticipate will be the hardest part of this transition?

   c. All the nominees who come before the committee assure me that they will follow precedent. But given your scholarly work that calls many cases "unfortunate," I would like to hear a bit more of an explanation from you. What is your commitment to following precedent, even when you disagree with it?

2. Throughout your career, you have been supportive of punitive damages and, as a general matter, plaintiffs being awarded as much in damages as they are able to obtain. After one case, you were interviewed about the amount in damages your client was awarded. You characterized the amount your client received to be within the "range of what's fair." I recognize that as a lawyer representing a plaintiff, your job is to get the best result that you could for your client. But as a judge, how will you determine what is within the range of fairness?

3. In your questionnaire, you indicated you spent the first five years of your practice doing both civil and criminal work. Yet, you also wrote that 0% of your practice has been in criminal law. Will you please clarify your answers to these questions?

4. In criminal law matters, what do you view as the purpose of sentencing?

5. You've written about cases where a court rules in a particular way "in spite of the plain language of the rule", like the Louisiana case of *Edwins*.

   a. Do you believe this case was decided correctly?

   b. How will you approach plain language of the statute?

6. You once spoke about the Republican platform during the Bush/Quayle campaign as one that was against trial lawyers. Will you please explain what you meant by this comment?

7. In your questionnaire, you indicated that you have testified before the Louisiana Legislature on the appointment of judges. Will you please elaborate on this statement? Did you testify on any particular judges? Or the judiciary in Louisiana generally?

8. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?

9. What is the most important attribute of a judge, and do you possess it?

10. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

11. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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?

12. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

    a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

        i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

        ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

        iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

        iv. Are you committed to upholding this precedent?

    b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

13. 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?

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[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

14. 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?

15. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

16. 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.

17. 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?

18. 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?

19. If confirmed, how do you intend to manage your caseload?

20. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

21. You have spent your entire legal career (minus a few months as a temporary judge) 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?

22. 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.

23. Please describe with particularity the process by which these questions were answered.

24. Do these answers reflect your true and personal views?

Senator Grassley
Questions for the Record

Randolph D. Moss,
Nominee, U.S. District Judge for the District of Columbia

1. At a recent event on campaign finance law, you stated that an individual's First Amendment rights were "incredibly important" but that the public also had a right "to participate in meaningful ways in the democratic process." You described that public participation as a "core constitutional principle" that had "equal stature" with an individual's First Amendment rights. Justice Breyer's dissenting opinion in *McCutcheon* made similar claims. Justice Breyer wrote: "the First Amendment advances not only the individual's right to engage in political speech, but also the public's interest in preserving a democratic order in which collective speech matters."

   a. Do you believe that the First Amendment creates a right to "collective speech" in addition to the free-speech rights that an individual enjoys?

   b. Please explain the nature of collective speech rights and explain their origin in the constitution? Do you still think they are of "equal stature" with individual rights?
   c. Please explain what you meant when you said that the public's right to participate in the political process was a "core constitutional principle" of "equal stature" with individual First Amendment rights?

   d. How do you think courts should decide what types of speech should be protected as "collective speech"? What legal principles would guide this inquiry?

2. At a Brookings Institution event in 2008, you were skeptical that the Second Amendment conferred an individual right to keep and bear arms and said that "there is a substantial argument that the amendment is not about protecting individuals versus the state." You were also skeptical that the Fourteenth Amendment incorporated the protections of the Second Amendment. In the meantime, the Supreme Court has held that the Second Amendment confers an individual right – not a collective right – to keep and bear arms. The Court has also held that the Second Amendment is fully incorporated through the Fourteenth Amendment.

   a. In light of your comments on the Second Amendment, please describe which constitutional rights are individual rights as opposed to what Justice Breyer calls collective rights.

   b. Please explain whether you believe there are other constitutional provisions that confer collective, as opposed to individual, rights.

3. As an undergraduate at Hamilton College, you wrote an article entitled "Why the United States Has Failed to Evolve: An Analysis of Current Western Interest Intermediation

Systems." The article compares political and economic centralization – what you refer to generally as "corporatism" – in Europe and the United States. You wrote:

> The United States' political system is based on the principle of participation. Hence, there has always been a cultural hostility express towards organized groups which attempt to dominate policy formation. It is felt that such groups jeopardize the fundamental principles of the United States....I believe that the public of the United States would respond hostilely to any politician endorsing a shift in policy-making emphasis from the legislative branch to a collaborative tripartite system (i.e., a system in which employers, labor, and the government frequently interact through more or less institutionalized channels)

a. I recognize that you wrote this article during your undergraduate years. Nonetheless, please explain whether these comments still reflect your views.

4. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

   a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

      i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

      ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

      iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

      iv. Are you committed to upholding this precedent?

   b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

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?

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[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

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. Your questionnaire indicates you are a member of the American Constitution Society for Law and Policy. There is nothing wrong with membership in such groups, but I do have a question about how the goals of that organization might affect your judgments, if confirmed. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, stated he would help to engage a younger audience about how the law can improve the lives of everyday citizens. "What we want to do is promote a conversation — the idea of what a progressive perspective of the constitution is and what it means for the country." He also indicated that a goal of the organization is "countering right-wing distortions of our Constitution." Also, some of the stated goals and missions of

the organization are "countering right-wing distortions of our Constitution" and "debunking conservative buzzwords such as 'originalism' and 'strict construction' that use neutral-sounding language but all too often lead to conservative policy outcomes."

a. What is your view of the role of the courts on improving the lives of everyday citizens?

b. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered or why concepts such as originalism and strict construction need to be "debunked?"

c. What does the idea of a progressive perspective of the constitution mean for the country, in your view?

d. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered?

e. If you are confirmed as a federal judge how would you seek to promote a "progressive perspective of the Constitution; or counter "right-wing distortions of the Constitution?"

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

Robin Rosenberg,
Nominee: U.S. District Judge for the Southern District of Florida

1. You indicated in your questionnaire that you have limited experience in criminal law, either as an attorney or a judge. What steps have you taken or do you plan to take to address to get up to speed in criminal law matters?

2. You have been involved in the campaigns of several Democratic candidates over the years. What assurances can you give any future potential litigants who may not share your political beliefs that you will be fair and impartial as a judge?

3. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?

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. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

   a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

      i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

      ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

      iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

iv. Are you committed to upholding this precedent?

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

   ii. Will you commit to give this portion of the Court's opinion full force and effect?

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

   i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

ii. Will you commit to give this portion of the Court's opinion full force and effect?

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 Grassley
Questions for the Record

Ronnie Lee White,
Nominee, U.S. District Judge for the Eastern District of Missouri

1. In 2003, you joined the majority opinion in *Simmons v. Roper*, a case in which the Missouri Supreme Court held that the 8th Amendment prohibited the execution of individuals who committed a capital crime when they were under 18 years of age. At the time you joined the majority, there was directly controlling US Supreme Court precedent on that issue, the *Stanford v. Kentucky* case. *Stanford* held that there was no national consensus regarding the execution of 17 and 18 year olds and was still good law when your court decided *Roper* in 2003. Since deciding *Stanford* in 1989, the US Supreme Court had repeatedly reaffirmed its holding – twice in 2002 and again in 2003, the same year you joined the majority in *Roper*.

    a. Can you explain your rationale for joining the Missouri Supreme Court majority in *Roper* even though *Stanford* was binding precedent and contradicted the holding of the Missouri court at that time?

    b. When you joined the majority in *Roper*, were you aware that the US Supreme Court had denied habeas petitions in several cases in 2002 and 2003 that raised the same arguments that you and majority of the state court supported?

2. Shortly before you concluded your term as Chief Justice of the Missouri Supreme Court in 2005, you told the press that that judges must follow the law but that "their opinions can be shaped by their own life experiences."

    a. Your comment indicates that you would consider not just fact and law but that you would also bring your personal experiences to the table when deciding cases. Please explain under what circumstances you would consider your personal experiences in rendering a judicial decision.

    b. Please explain when you consider it appropriate for a judge to decide cases based on the judge's personal preferences.

3. In *State v. Kinder*, the majority of the Missouri Supreme Court found no ruling, statement, or conduct during trial that contained "any hint of bias." You dissented, arguing that the judge's change in party affiliation contributed to an appearance of bias, and said that the majority's "reliance" on the fact that the trial judge "made no obviously unfair ruling during trial is misplaced." Please explain the basis for that contention.

4. In *State v. McFadden*, you reversed a death sentence based on *Batson* challenges. Two of the jurors whose removal from the venire you criticized had never been the subject of a

defense objection at trial. Please explain the basis for your review of the legality of striking those two jurors.

5. You were the sole dissenter in *State v. Johnson*, a case in which the defendant confessed to murdering four people, including a sheriff, two deputy sheriffs, and a sheriff's wife. You argued that the majority's standard of review was too stringent. Please explain the basis for your dissent and explain the legal basis for your reference to the "proper standard" of review.

6. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

   a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

      i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

      ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

      iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

      iv. Are you committed to upholding this precedent?

   b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

      i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

      ii. Will you commit to give this portion of the Court's opinion full force and effect?

   c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.
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i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

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7. What is the most important attribute of a judge, and do you possess it?

8. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

9. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

10. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

13. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

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17. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

18. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

19. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

20. Please describe with particularity the process by which these questions were answered.

21. Do these answers reflect your true and personal views?

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 Grassley
Questions for the Record

André Birotte, Jr.,
Nominee, U.S. District Judge for the Central District of California

1. **Your responses to the Committee's questionnaire indicate that you were a panelist at an event in 2011 celebrating the *Brown v. Board of Education* decision. The notes you submitted from the event state that "the Constitution is a living document that should relate to current times." The notes also state that "the times have changed" and that the "interpretation of the Constitution must also reflect those changes."**

   a. **If you are confirmed, would you consider "evolving standards" or, as your notes put it, "changing times" when you're called upon to interpret the meaning of the Constitution?**

   Response: No. In an effort to provide context to this question, the above-referenced event was known as the Second John G. Gabbert Historical Oral Argument and Lecture Series which was held at the Riverside County Court of Appeals. This was an event organized by local lawyers and judges for law students and lawyers in Riverside and San Bernardino Counties. The event was expressly an historical re-enactment of the *Brown v. Board of Education* oral argument. I, along with two other attorneys, were asked to play the role of counsel for the NAACP who argued before the United States Supreme Court and other volunteer lawyers played the role of counsel for the Board of Education and the State. Each volunteer performed a historical reenactment of the arguments that we as a group believed would have been made by those advocates in the 1950s drawn from the historical record – as closely as we could ascertain. Our reenactment was meant only to theatrically express the views of the historical figures, not our own.

   b. **How would you describe your judicial philosophy?**

   Response: I have not had the opportunity to preside as a trial judge other than in limited jurisdiction small claims matters; as such I do not have a specific judicial philosophy per se. However if I am fortunate enough to be confirmed as a judge, I would follow the relevant law and precedent of the Supreme Court and the Ninth Circuit Court of Appeals. I would seek to be impartial and fair in all cases and to all litigants, I would judge each case on its individual merit and I would work hard and seek to be as prepared as possible for every hearing. Finally, I would seek to provide a forum where litigants feel that their matter was given a full and fair hearing with a reasoned and timely ruling.

   c. **Do you believe it is ever appropriate for a federal judge to consider his or her own policy preferences when interpreting the Constitution?**

   Response: No.

d. Do you believe it is ever appropriate for a federal judge to rely on materials such as legislative history or decisions of foreign courts when deciding a legal question?

Response: If confirmed, my foremost priority would be to faithfully abide by legal precedent. As such, reliance on legislative history would be limited to circumstances where the text of a statute remains ambiguous, there is no Supreme Court or Ninth Circuit precedent and there is no legal authority from other circuits on the issue in question. I also would only consult legislative history to the extent mandated by the Supreme Court or Ninth Circuit Court of Appeals. With respect to decisions of foreign courts, I would rely and faithfully abide by the prevailing precedent of the Supreme Court and the Ninth Circuit Court of Appeals on that and all other issues.

2. As US Attorney, you are responsible for the enforcement of federal law in a large part of California, a state that has a medical-marijuana statute. That state law is called the Compassionate Use Act. In 2011, you initiated a number of forfeiture actions against landlords of medical-marijuana dispensaries. You stated that you undertook those actions because the dispensaries had transformed the "Compassionate Use Act into the Commercial Use Act." By 2013, you had dismissed those cases with prejudice.

a. Why did you abandon the cases your office brought against the landlords?

Response: A number of the cases to which this question refers were actually resolved by way of settlements and consent judgments. There were some dismissals sought without prejudice following the August 29, 2013 "Guidance Regarding Marijuana Enforcement" Memorandum For All United States Attorneys from Deputy Attorney General James M. Cole, which set forth eight priority areas to use as guidance for focusing federal enforcement efforts in this area in order to use our "limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent and rational way." The dismissals were sought without prejudice after a judgment was made that the matters did not fall within the eight priority areas and that dismissal was warranted.

b. Did your decision have anything to do with the updated policy guidance you received from the Department of Justice in August 2013?

Response: Please see my response to Question 2a above.

c. Were you instructed by anyone at the Department of Justice to dismiss the cases?

Response: No.

d. Irrespective of the policy guidance from the Department of Justice, do you believe there is a federal interest in prosecuting marijuana distributors who are violating federal drug laws but may be operating legally under state law?

Response: In my role as United States Attorney, I believe that there is always a federal interest in enforcing federal laws. I also believe that the August 29, 2013 memorandum

reflects the Department's commitment to using its "limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent and rational way." However, if confirmed as a federal judge, I recognize that it would not be appropriate for me to weigh in on policy decisions regarding the federal interests of criminal prosecutions involving the United States. In every case, I would follow the law and binding precedent.

e. **What about actions against landlords who rent to operations that distribute what are controlled substances for purposes of federal law? Do you believe there is a federal interest in prosecuting those individuals?**

Response: In my role as United States Attorney, I believe that there is always a federal interest in enforcing federal laws. I also believe that the August 29, 2013 memorandum reflects the Department's commitment to using its "limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent and rational way." However, if confirmed as a federal judge, I recognize that it would not be appropriate for me to weigh in on policy decisions regarding the federal interests of criminal prosecutions involving the United States. In every case, I would follow the law and binding precedent.

3. **Your office represents the Department of Veterans Affairs ("DVA") and related entities in *Valentini v. Shinseki*. On August 28, 2013, Judge Otero ruled that various land-use agreements between the DVA and private entities, which included a hotel corporation, a movie studio, and a soccer club, were unlawful and void because the private entities were "wholly unrelated to the provision of medical care." The government filed a notice of appeal on October 28, 2013.**

a. **Did you make the decision to appeal this judgment or instruct your Assistant United States Attorneys file an appeal? If you or your office did not exercise authority concerning the decision whether to appeal the judgment, please state who did.**

Response: The case referred to in Question 3 has been handled by attorneys with the United States Department of Justice in Washington, D.C. Lawyers in my office have been local counsel on the matter to assist with logistical support only, such as electronic filings of legal pleadings, but they have not assisted with substantive issues involving the litigation of the matter.

b. **Please explain the legal basis for the government's argument that the DVA has unreviewable discretion to enter into enhanced sharing agreements ("ESA") with entities that do not provide health-care resources to veterans. Does your office plan to reassert this argument on appeal?**

Response: Please see my response to Question 3a above.

c. **Your office argued that the DVA had unreviewable discretion to enter into ESAs with entities like 20 Century Fox and Marriot Laundry Services because the DVA**

is entitled to "determine the optimal uses for its space, land, and property." Is it the position of your office that the "optimal" use of DVA resources with respect to the disputed ESAs is the status quo – i.e., maintaining ESAs with entities wholly unrelated to the provision of medical services to veterans? Does your office plan to reassert this argument on appeal?

Response: Please see my response to Question 3a above.

d. **Is it the position of your office that maintaining ESAs with entities that provide health-care services to veterans is a sub-optimal use of DVA resources?**

Response: Please see my response to Question 3a above.

e. **How long had the challenged ESAs been effective prior to the district court's finding that they are unlawful?**

Response: Please see my response to Question 3a above.

f. **Prior to the creation of the now-voided ESAs, what was the DVA land being used for?**

Response: Please see my response to Question 3a above.

g. **Please describe whether, during your tenure as US Attorney, your office has initiated or participated in any investigations of mismanagement of DVA facilities or of DVA provision of services in the Central District of California.**

Response: To the best of my knowledge, my office has not initiated or participated in any investigations of mismanagement of DVA facilities or of DVA provision of services in the Central District of California.

4. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

Response: Yes. It is my understanding that the quoted language is binding legal precedent.

ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

Response: It is my understanding that Justice Kennedy's reference to "lawful marriages" refers to marriages deemed lawful by the individual states.

iii. ***Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes, that is my understanding.

iv. **Are you committed to upholding this precedent?**

Response: Yes. If confirmed, I will follow the United States Supreme Court's decision in *Windsor* and all other relevant precedent from the United States Supreme Court and the Ninth Circuit Court of Appeals.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I understand that this portion and all portions of the *Windsor* opinion are binding precedent that should be given full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. I commit to giving this and all portions of the *Windsor* opinion full force and effect.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I understand that this portion and all portions of the *Windsor* opinion are binding precedent that should be given full force and effect by the lower courts.

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Response: Yes. I commit to giving this and all portions of the *Windsor* opinion full force and effect.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I understand that this portion and all other portions of the *Windsor* opinion are entitled to full force and effect by the lower courts as binding United States Supreme Court precedent.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. I commit to giving this and all portions of the *Windsor* opinion full force and effect.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I understand that the quoted portion and all portions of the *Windsor* opinion are entitled to full force and effect by the lower courts as binding United States Supreme Court precedent.

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. I commit to giving this portion and all portions of the *Windsor* opinion full force and effect.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: I believe that the most important attribute a judge can possess is the ability to always faithfully and impartially adhere to the rule of law and controlling precedent. I believe that I have demonstrated throughout my career that I do possess the ability to faithfully and impartially follow the law and that I would demonstrate this quality if confirmed as a United States District Court Judge.

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: I believe that a judge should always be calm and even-tempered. A judge should also be a good listener who is respectful of all the litigants and lawyers who appear in court and the public who serve as jurors. I believe that I do possess 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: If confirmed as a United States District Court Judge, I would be fully committed to following all of the precedents of the United States Supreme Court and the Ninth Circuit Court of Appeals, and I would be committed to doing so regardless of whether I personally agree or disagree with those precedents.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In such a case, I would start by looking at the plain language of the written text of the provision, statute, rule or regulation at issue to determine if the language is clear and unambiguous. If the language is clear and unambiguous, then I would make a decision by applying the law to the facts of the case. If, however, the language was not clear and unambiguous, then I would look for guidance in case law from the United States Supreme Court and Ninth Circuit Court of Appeals that was as closely analogous to the matter as I could locate. And if I could not locate analogous case law, then I would seek guidance from other United States Supreme Court and federal appellate court cases for the most applicable persuasive authority I could find for the facts of the case.

9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

   Response: I would apply the applicable precedent without reservation and my personal views would not play any role.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

    Response: Congressional statutes are presumed to be constitutional. An Act of Congress should only be declared unconstitutional when it is clear that Congress has exceeded its constitutional authority.

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. If confirmed, I would not rely on foreign law or the views of the "world community" in determining the meaning of the Constitution.

12. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

    Response: I can assure this Committee that if confirmed all of my decisions would be well grounded in legal precedent and the text of the law rather than any personal or political motivation. I believe that my track record as a lawyer, including my roles as federal prosecutor, deputy public defender, Inspector General for the Los Angeles Police Commission, and the United States Attorney has demonstrated my commitment 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: I have served as prosecutor, deputy public defender and also as a private criminal and civil practitioner during my career. I believe that the reputation I have earned during that time in the legal community of the Los Angeles region is that of a person who is fair and objective. Despite the natural differences of opinion that one finds in adversarial proceedings, I believe that those whom I have worked with feel that they were treated fairly and with respect. If confirmed, I will continue to strive to maintain and nurture that reputation as a United States District Court Judge.

14. **If confirmed, how do you intend to manage your caseload?**

    Response: If confirmed, I will be active in managing every aspect of the docket. I will 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, and I will stay engaged to ensure that cases are 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: I do believe that judges play a vital role in controlling the pace and conduct of litigation, especially in districts like the Central District of California where the civil and criminal caseload is very high. If confirmed, I will use the methods described in the previous answer, and I will strive to resolve matters promptly, efficiently and fairly.

16. **You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

    Response: I agree that the role of a judge is different than that of an advocate. Should I be confirmed, I understand that I would be required to handle every matter that comes before me with neutrality and impartiality and with respect for controlling legal precedent. In reaching a decision, I would carefully evaluate all of the legally permissible factual evidence and look to the governing law of the Supreme Court and the Ninth Circuit Court of Appeals for guidance. I also recognize that there would be a learning curve for me in this new role with respect to, among other things, familiarizing myself with a broad spectrum of federal laws and regulations associated with matters before the court, some of which I have never handled before. I would approach this position like every other job I have had throughout my legal career - with hard work and diligent study of the relevant law and procedure. In addition, I would also consult with my colleagues on the federal bench 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.**

       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 from the Office of Legal Policy at the Department of Justice on May 27, 2014 and I immediately reviewed the questions and began preparing my responses. Upon completion of my answers, I submitted the responses to the Office of Legal Policy. After that, I finalized all of my responses for submission to this Committee.

19. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

André Birotte, Jr.
Nominee: United States District Judge for the Central District of California

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 had the opportunity to preside as a trial judge other than in limited jurisdiction small claims matters; as such I do not have a specific judicial philosophy per se. However if I am fortunate enough to be confirmed as a judge, I would strive to know and follow the relevant law and precedent of the Supreme Court and the Ninth Circuit Court of Appeals. I would seek to be impartial and fair in all cases and to all litigants, I would judge each case on its individual merit and I would work hard and seek to be as prepared as possible for every hearing. Finally, I would seek to provide a forum where litigants feel that their matter was given a full and fair hearing with a reasoned and timely ruling. With respect to analogous philosophies, I simply do not have enough personal knowledge of the opinions of the Justices of the Warren, Burger and Rehnquist Courts to be able to determine which of the Justices' philosophies would be most analogous to mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: Yes. The Supreme Court has used originalism to interpret the Constitution in certain instances. For example, the Supreme Court looked to the original public meaning of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I will faithfully apply the *Heller* decision and all other binding precedent of the United States Supreme Court and the Ninth Circuit Court of Appeals.

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, there are no circumstances under which I would overrule binding 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 apply *Garcia* and all other binding precedents of the United States Supreme Court, 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: In *United States v. Lopez*, 514 U.S. 549, 558 (1995), the United States Supreme Court "identified three broad categories of activity that Congress may regulate under its commerce power." 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. If confirmed, I would follow the binding precedent of the United States Supreme Court and the Ninth Circuit Court of Appeals when addressing questions concerning Congress' Commerce Clause power.

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. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) the United States Supreme Court held that the President's authority to issue an executive order or take executive action "must stem from either an act of Congress or from the Constitution itself." If confirmed, I would follow United States Supreme Court and Ninth Circuit Court of Appeals precedent with regard to the scope of executive orders and actions.

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 the purposes of the substantive due process doctrine where it 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) (internal citations and quotations omitted). If confirmed, I would follow United States Supreme Court and Ninth Circuit Court of Appeals precedent 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 United States Supreme Court precedent, a classification should be subjected to heightened scrutiny when it differentiates based on factors such as race, alienage, national origin, gender, or illegitimacy. *See, e.g., City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). If confirmed, I would follow United States Supreme Court and Ninth Circuit Court of Appeals precedent in deciding issues under the Equal Protection Clause.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I do not have a personal expectation regarding the future use of racial preferences in public higher education. If confirmed, I would apply *Grutter v. Bollinger*, 539 U.S. 306 (2003), *Fisher v. University of Texas* 113 S. Ct. 2411 (2013) and any other United States Supreme Court and Ninth Circuit precedent regarding the consideration of racial preferences in public higher education.

Responses of John W. deGravelles,
Nominee, United States District Court for the Middle District of Louisiana
To the Written Questions for the Record of Senator Chuck Grassley

1. **You have been critical of some court decisions in maritime law cases. For example, you said that the Supreme Court's decision in *Lozman* created uncertainty and injected complexity into a settled question. You have also said that courts that do not allow punitive damages under the Jones Act are "wrong".**

   a. **The role of advocate is of course very different than that of judge. How are you preparing to make this transition?**

   Response: Although I was only a Baton Rouge City Court judge for several months, that brief experience helped me appreciate the differences between the role of an advocate and that of a judge. The advocate must advance his client's position within the bounds of law and ethics. The judge's role, however, is to listen objectively to all sides and apply the applicable law to the facts without bias or prejudice, and without regard to personal opinions. If confirmed, I would strictly apply the law as written and as interpreted by the Supreme Court and the Fifth Circuit without consideration of my personal views, opinions or beliefs. I am preparing to make this transition by reading the materials provided by the Federal Judicial Center including the *Bench Book for United States District Judges*, Sixth Edition. I also intend to attend seminars offered by the Administrative Office of the United States Courts.

   b. **What do you anticipate will be the hardest part of this transition?**

   Response: Although I have prior criminal law experience, I believe that the hardest part of the transition will be to become more proficient regarding criminal law and procedure. I have been getting up to speed and, if fortunate enough to be confirmed, I will accomplish this goal through continued hard work and dedication.

   c. **All the nominees who come before the committee assure me that they will follow precedent. But given your scholarly work that calls many cases "unfortunate," I would like to hear a bit more explanation from you. What is your commitment to following precedent, even when you disagree with it?**

   Response: I understand and fully accept the fundamental difference between the roles of scholar and judge. The scholar's role is to analyze the law critically with a view towards identifying weaknesses and advancing possible solutions. The role of a federal district judge, however, is to apply binding precedent and applicable law to the facts without bias or prejudice and without regard to his personal opinions. If confirmed, I would strictly apply the law as written and as interpreted

by the Supreme Court and the Fifth Circuit without consideration of any personal views, opinions or beliefs I may have.

2. **Throughout your career, you have been supportive of punitive damages and, as a general matter, plaintiffs being awarded as much in damages as they are able to obtain. After one case, you were interviewed about the amount of damages your client was awarded. You characterized the amount your client received to be within the "range of what's fair." I recognize that as a lawyer representing a plaintiff, your job is to get the best result that you could for your client. But as a judge, how will you determine what is within the range of fairness?**

   Response: If confirmed, I will determine whether a punitive damages award is excessive by applying the factors set out in Supreme Court precedent such as *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) and *State Farm Mut. Automobile Ins. Co. v. Campbell,* 538 U.S. 408 (2003).

3. **In your questionnaire, you indicated that you spent the last five years of your practice doing both civil and criminal work. Yet, you also wrote that 0% of your practice has been in criminal law. Will you please clarify your answers to these questions?**

   Response: I apologize to the Committee for this error. The first five years of my practice was general civil and criminal law and since then I have practiced almost exclusively in civil litigation. Therefore, over the course of my career, I would estimate that 97% of my practice was in civil law and 3% was in criminal law.

4. **In criminal matters, what do you view as the purpose of sentencing?**

   Response: I believe that sentencing serves multiple purposes. It punishes the wrongdoer, protects the public, provides the victim with access to justice, deters wrongdoing, and effectuates the criminal laws within the framework of the Constitution.

5. **You've written about cases where a court rules in a particular way "in spite of the plain language of the rule", like the Louisiana case of *Edwins.***

   a. **Do you believe this case was decided correctly?**

      Response: Although, as a scholar, I wrote that the Louisiana Supreme Court in *Edwins* reached the right result despite the plain language of the rule, my role as judge would be to strictly follow the plain language of any relevant statute. Further, I believe that the Court was justified in ruling that Edwins violated disciplinary rules against solicitation, improperly advanced funds to a client and negligently failed to account to his client for the disbursement of settlement proceeds and was therefore justified in issuing sanctions for these violations.

   b. **How will you approach plain language of the statute?**

Response: If confirmed and presented with a statutory question, I would start with the text of the statute. If the language of the statute is clear and unambiguous, the statute must be applied as written and no additional interpretation is required. If not, I would apply Supreme Court and Fifth Circuit precedent as to the meaning of a statute and, if necessary, apply the rules of statutory construction as approved by the Supreme Court and Fifth Circuit.

6. **You spoke once about the Republican platform during the Bush/Quayle campaign as one that was against trial lawyers. Will you please explain what you meant by that comment?**

Response: I cannot recall what I was referring to in that statement I made in 1992 as President of the Louisiana Trial Lawyers Association although it may have been referring to President Bush's comments made during his acceptance speech at the Republican National Convention in which he said: "After all, my opponent's campaign is being backed by practically every trial lawyer that ever wore a tasseled loafer. He's not in the ring with them. He's in the tank."

7. **In your questionnaire, you indicated that you testified before the Louisiana Legislature on the appointment of judges. Will you please elaborate on this statement? Did you testify on any particular judges? Or the judiciary in Louisiana generally?**

Response: In answer to question 12(c), I stated that during my year as President of the Louisiana Trial Lawyers Association (1992-1993), "I also may have testified on...the appointment of judges." I cannot recall if I testified on this issue, but if I did, my testimony would have been with respect to proposed legislation regarding the process by which judges would be selected. The testimony would not have had anything to do with a particular judge or the Louisiana judiciary.

8. **What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?**

Response: The two main negative characteristics that I have seen in judges before whom I have practiced that I would hope to avoid are arrogance and lack of adequate preparation. Thankfully, there have been only a few instances in which I have seen these characteristics displayed.

9. **What is the most important attribute of a judge and do you possess it?**

Response: I believe that the most important attributes of a judge are the ability and determination to be open-minded, fair and absolutely impartial in his decision making, without any pre-conceived agenda, and to thoroughly research and apply the law to the facts. I possess these attributes.

10. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be decisive but should act with humility and patience and should give all persons in his court respect, courtesy and dignity. I meet this standard.

11. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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 I am confirmed, I would faithfully and rigorously follow Supreme Court and Fifth Circuit precedents regardless of any personal view I might have of these precedents.

12. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in United States v. Windsor. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."** [1]

i. **Do you understand this statement to be part of the holding in Windsor? If not, please explain.**

Response: Yes.

ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

Response: It is my understanding that the Court is referring to same-sex marriages which a state has recognized as lawful.

iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: I believe that the Court's ruling applies to the prohibition against federal recognition of same-sex marriages that a State has recognized as lawful as found in Section 3 of the Defense of Marriage Act.

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

iv. **Are you committed to upholding this precedent?**

Response: Yes. I am committed to upholding this and all other precedents of the Fifth Circuit and Supreme Court.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."**[2]

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I consider this and all portions of the *Windsor* decision to be binding and entitled to full force and effect by lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If I am confirmed, I will follow this and all portions of *Windsor* all other Supreme Court and Fifth Circuit precedents.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."**[3]

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I consider this and all portions of the *Windsor* decision to be binding and entitled to full force and effect by lower courts

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If I am confirmed, I will follow this and all portions of *Windsor* and all other Supreme Court and Fifth Circuit precedents.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with**

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.

respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I consider this and all portions of the *Windsor* decision to be binding and entitled to full force and effect by lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If I am confirmed, I will follow this and all portions of *Windsor* and all other Supreme Court and Fifth Circuit precedents.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"**[5]

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I consider this and all portions of the *Windsor* decision to be binding and entitled to full force and effect by lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect? If not, please explain.**

Response: Yes. If I am confirmed, I will follow this and all portions of *Windsor* and all other Supreme Court and Fifth Circuit precedents.

13. **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 would guide you, or what methods would you employ, in deciding cases of first impression?**

Response: In deciding cases of first impression I would look first to the language of the constitutional provision, statute or regulation which is at issue. If the language is clear and unambiguous, I would go no further and simply apply the provision as written. If the language was unclear, I would look to Supreme Court and Fifth Circuit precedent

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

interpreting similar or analogous provisions and, if necessary, would look to decisions from other circuits and district courts as persuasive authority.

14. What would you do if you believed the Supreme Court or 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 strictly apply the precedents of the Supreme Court and Fifth Circuit regardless of any personal beliefs I might have.

15. Under what circumstances do you believe that it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Statutes enacted by Congress are presumed constitutional. Further, rules of statutory interpretation require that, if a reasonable interpretation can be given a statute so as to avoid declaring it unconstitutional, this is the interpretation which should be utilized. Thus, a district court should approach any constitutional challenge to an act of Congress with great care. If after applying these rules, the statute clearly exceeds congressional authority or violates a provision of the Constitution, then it would be appropriate to declare it unconstitutional.

16. 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.

17. 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 requires that judges apply the law as written by Congress and interpreted by the higher courts, regardless of how the judge feels personally about it. Although I was only a Baton Rouge City Court judge for several months, that brief experience helped me appreciate the importance of that fundamental tenet of our system of justice. I am firmly committed to this essential tenet and can assure the Committee that I would decide all cases before me based on the application of binding precedent to the facts without regard to personal beliefs, political ideology or any other motivation.

18. What assurances 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 you are confirmed?

Response: A judge's personal opinions and beliefs should play no role in his decision making process. For the reasons stated in my answer to number 17 above, I can assure the members of the Committee and future litigants that, if confirmed, I will put aside any and

all personal views I may have and fairly decide each case only on the facts and applicable law.

19. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would manage my caseload to accomplish the goal set by Federal Rule of Civil Procedure 1: a speedy, just and inexpensive resolution of the cases before me. I would utilize case management schedules which would allow the parties to develop their cases in a fair but efficient way. These schedules would set reasonable but firm deadlines for all aspects of the case including motions, discovery and trial. I would utilize magistrate judges to encourage and facilitate settlement discussions. I, along with my staff and magistrate judges would monitor the progress of the case and facilitate prompt resolution of pretrial matters. Where appropriate, I would dispose of matters in Rule 12(b)(6) motions and motions for summary judgment. I would create an internal calendar alert system for purposes of compliance with the Speedy Trial Act.

20. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I do believe that judges have an important role in controlling the pace and conduct of litigation. I would take the steps described in my response to question number 19 above to accomplish this goal.

21. You have spent your entire career (minus a few months as a temporary judge) 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 will you look for guidance? What do you expect to be the most difficult part of the transition before you?

Response: I understand, appreciate and fully accept the fundamentally different roles of advocate and judge. A judge's role is not to advocate for any litigant or approach a case with any preconceived ideas or opinions. Rather, it is to listen to all the evidence fairly and impartially and apply the applicable statute and precedents of the higher courts to those facts. Although I have prior criminal law experience, I believe that the hardest part of the transition will be to become more proficient regarding criminal law and procedure. I have been getting up to speed and, if fortunate enough to be confirmed, I will accomplish this goal through continued hard work and dedication.

22. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated 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". You have indicated that you are a member of AAJ.

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: Yes. After I sent a letter to Senator Mary Landrieu on September 30, 2013 expressing my interest in the position, I spoke to AAJ staff members John Bowman and my daughter Kate deGravelles about the process involved in being nominated and confirmed. At some point between in the fall of 2013, I also spoke to AAJ President and friend Burton LeBlanc about my decision to apply for this position. I cannot recall the exact dates of those contacts. After I was recommended by Senator Landrieu and again after my nomination on March 13, 2014, various members and staff of AAJ contacted me to congratulate me. I cannot recall the dates of those 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.**

Response: No.

23. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on May 27, 2014 and prepared my responses on May 27 and May 28, 2014. I submitted these responses to the Department of Justice Office of Legal Policy, for review. I then finalized the responses and authorized their transmittal to the Committee.

24. **Do these answers reflect your true and personal views?**

Response: Yes.

Response of John W. deGravelles
Nominee, United States District Court for the Middle District of Louisiana
To the Written Questions for the Record by Senator Ted Cruz

1. **Describe how you would characterize your judicial philosophy, and identify which Supreme Court Justice's philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

   Response: If I am confirmed, my judicial philosophy would be to work hard, listen carefully to all of the evidence, research the law thoroughly, and decide the case fairly and impartially based on the binding precedent of the Supreme Court and Fifth Circuit. I have not researched or studied the judicial philosophies of the justices of the Supreme Court but am confident that many share these characteristics.

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: If confirmed, I would faithfully adhere to precedent and the appropriate methodologies for interpreting the Constitution as set forth by the Supreme Court and the Fifth Circuit, including originalism. For instance, in *District of Columbia v. Heller*, 554 U.S. 570 (2008) the Supreme Court interpreted the Second Amendment based on the normal and ordinary meaning of the words of the Second Amendment as they were understood at the time of ratification.

3. **If a decision were precedent today while you're going through the confirmation process, under what circumstances would you overrule that precedent as a judge?**

   Response: If confirmed, I would always apply and never overrule Supreme Court or Fifth 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 confirmed, I would be bound by and apply the Court's *Garcia* decision as well as all other Supreme Court and Fifth Circuit decisions placing constitutional limitations on Congressional power.

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 rendered a number of decisions defining the breadth and limitations of the Commerce Clause and, particularly, its scope and limitations as it pertains to non-economic activity. *See, e.g., Gonzales v. Raich,* 545 U.S. 1 (2005); *United*

States v. Morrison, 529 U.S. 598 (2000); and *United States v. Lopez*, 514 U.S. 549 (1995). If I am confirmed, I will apply these and all other Supreme Court and Fifth Circuit precedents regarding the extent of Congress' power under the Commerce Clause.

6. **What are the judicially enforceable limits on the President's ability to issue executive orders of executive actions?**

Response: The President's authority to act must stem from either the Constitution or an act of Congress. *Medellin v. Texas*, 552 U.S. 491, 525 (2008). The Supreme Court has set out the proper judicial analysis which must be conducted in order to determine whether the President's executive order or executive action is authorized by the Constitution or an act of Congress. *See, e.g.*, *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If I am confirmed, I will follow Supreme Court and Fifth Circuit precedent in deciding whether a challenged executive order is within that authority.

7. **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 due process purposes when it is "objectively, deeply rooted in this Nation's history and tradition" and is "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it was] sacrificed," *Washington v. Gluckberg*, 521 U.S. 702, 720-721 (1997) (internal citations and quotations omitted). If confirmed, I would follow the precedent of the Supreme Court and Fifth Circuit in deciding whether a right is fundamental under the due process doctrine.

8. **When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: When a law creates a "suspect classification" (*e.g.* one that is based upon race, religion, or national origin) or burdens a fundamental right, then the Equal Protection Clause requires that the classification be subjected to strict scrutiny. *See, e.g., Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 339-441 (1985). If I am confirmed, I will follow Supreme Court and Fifth Circuit precedent to decide issues under the Equal Protection Clause.

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: I do not have any expectations, one way or the other, in this regard. If confirmed, I will follow all Supreme Court and Fifth Circuit precedent on the use of racial preferences in public higher education, including *Grutter* and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).

Senator Grassley
Questions for the Record

Randolph D. Moss
Nominee, U.S. District Judge for the District of Columbia

1. **At a recent event on campaign finance law, you stated that an individual's First Amendment rights were "incredibly important" but that the public also had a right "to participate in meaningful ways in the democratic process." You described that public participation as a "core constitutional principle" that had "equal stature" with an individual's First Amendment rights. Justice Breyer's dissenting opinion in *McCutcheon* made similar claims. Justice Breyer wrote: "the First Amendment advances not only the individual's right to engage in political speech, but also the public's interest in preserving a democratic order in which collective speech matters."**

   a. **Do you believe that the First Amendment creates a right to "collective speech" in addition to the free-speech rights that an individual enjoys?**

      Response: I am unaware of any constitutional rule or precedent that recognizes a right to "collective speech" that is distinct or different from the individual liberties protected by the First Amendment. In various contexts, however, the Supreme Court and other courts have sustained First Amendment challenges brought by associations, corporations, or other groups of individuals. The First Amendment, moreover, protects the right of free association, including the right of individuals to engage as a group in expressive activity.

   b. **Please explain the nature of collective speech rights and explain their origin in the constitution? Do you still think they are of "equal stature" with individual rights?**

      Response: I am unaware of any constitutional rule or precedent that recognizes "collective speech rights" that are distinct or different from the individual liberties protected by the First Amendment. The First Amendment does, however, protect the right of free association, including the right of individuals to join together to engage in speech. As the Supreme Court recognized in *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984), "[a]n individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not guaranteed."

   c. **Please explain what you meant when you said that the public's right to participate in the political process was a "core constitutional principle" of "equal stature" with individual First Amendment rights?**

      Response: I made these remarks at an event at the Robert J. Dole Institute of Politics on October 8, 2013. At that event, I observed that cases addressing the constitutionality

of the campaign finance laws raise extremely important First Amendment issues. I also argued that the right of the public to participate in a meaningful way in the democratic process also implicates First Amendment or other core constitutional principles. What I intended to convey was that, when the Supreme Court considers, for example, whether the governmental interest in preventing actual or apparent corruption of the democratic process is sufficient to support a law that limits campaign contributions, it is assessing deeply important interests on both sides of the equation. Indeed, in *McCutcheon v. Federal Election Commission*, 134 S. Ct. 1434, 1462 (2014), the Supreme Court held that "[t]he Government has a strong interest, no less critical to our democratic system, in combatting corruption and its appearance." The Court further held, however, that the aggregate limits on contributions at issue in that case could only be upheld if they adequately furthered a governmental interest in combatting actual or apparent "quid pro quo" corruption and that they failed to do so. If confirmed to serve as a district court judge, I would fully and faithfully apply that decision and all other relevant Supreme Court and D.C. Circuit precedents.

d. How do you think courts should decide what types of speech should be protected as "collective speech"? What legal principles would guide this inquiry?

Response: I am unaware of any constitutional rule or precedent that recognizes "collective speech" rights that are distinct or different from the individual liberties protected by the First Amendment. If confirmed to serve as a district court judge, I would be guided by the Constitution and the precedents of the Supreme Court and Court of Appeals for the D.C. Circuit. To the extent applicable, I would look to precedents involving expressive free association and the rights of associations, corporations, and other groups to engage in protected expression.

2. At a Brookings Institution event in 2008, you were skeptical that the Second Amendment conferred an individual right to keep and bear arms and said that "there is a substantial argument that the amendment is not about protecting individuals versus the state." You were also skeptical that the Fourteenth Amendment incorporated the protections of the Second Amendment. In the meantime, the Supreme Court has held that the Second Amendment confers an individual right – not a collective right – to keep and bear arms. The Court has also held that the Second Amendment is fully incorporated through the Fourteenth Amendment.

a. In light of your comments on the Second Amendment, please describe which constitutional rights are individual rights as opposed to what Justice Breyer calls collective rights.

Response: I am unaware of any constitutional rights that I would characterize as "collective," as opposed to "individual." In particular, as the Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Second Amendment right to keep and bear arms is an individual right, and not a collective right. In my remarks at the Brookings Institution, I did not intend to suggest otherwise, but rather simply meant to flag the question, which the Supreme Court had not yet addressed at that time,

whether that individual right was incorporated under the Fourteenth Amendment and thus binding on the States. In briefly discussing with the other panelists the arguments that might be raised in litigation, I also did not intend to suggest that I had reached any personal conclusions on that question or that I was an expert on the relevant history, and I offered no prediction of the likely outcome in the courts. Subsequently, the Supreme Court definitively resolved the question in *McDonald v. Chicago*, 561 U.S. 742 (2010), and held that the Second Amendment right to keep and bear arms is a fundamental right that is also binding on the States. If confirmed to serve as district court judge, I would fully and faithfully apply both the *Heller* and *McDonald* decisions.

b. Please explain whether you believe there are other constitutional provisions that confer collective, as opposed to individual, rights.

Response: I am unaware of any constitutional rights that I would characterize as "collective" as opposed to "individual."

3. As an undergraduate at Hamilton College, you wrote an article entitled "Why the United States Has Failed to Evolve: An Analysis of Current Western Interest Intermediation Systems." The article compares political and economic centralization – what you refer to generally as "corporatism" – in Europe and the United States. You wrote:

> **The United States' political system is based on the principle of participation. Hence, there has always been a cultural hostility express towards organized groups which attempt to dominate policy formation. It is felt that such groups jeopardize the fundamental principles of the United States....I believe that the public of the United States would respond hostilely to any politician endorsing a shift in policy-making emphasis from the legislative branch to a collaborative tripartite system (i.e., a system in which employers, labor, and the government frequently interact through more or less institutionalized channels)**

a. I recognize that you wrote this article during your undergraduate years. Nonetheless, please explain whether these comments still reflect your views.

Response: As the question notes, I wrote this article as an undergraduate, over thirty years ago. Although I do not have a clear recollection of my thinking at the time, as I now read the article, I believe I was describing why the United States has not adopted a system in which particular organizations are granted a "representational monopoly" in policy formation. As I read the article, I noted that a system in which the government designates particular representatives—such as representatives of employers, labor and the government—to develop policy would be at odds with the strong tradition of pluralism and democracy in the United States. It is currently my view that efforts to adopt such a "representational monopoly" would be at odds with those traditions.

4. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

   a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

      i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

         Response: Yes. The Court expressly states that its holding applies only "to those lawful marriages."

      ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

         Response: My understanding is that the Court was referring to "same-sex marriages made lawful by the State."

      iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

         Response: Yes.

      iv. **Are you committed to upholding this precedent?**

         Response: Yes. If confirmed to serve as a district court judge, I would fully and faithfully apply this and all other Supreme Court and D.C. Circuit precedents.

   b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

      i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.

Response: Yes.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed to serve as a district court judge, I would fully and faithfully apply the *Windsor* decision and all other Supreme Court and D.C. Circuit precedents.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed to serve as a district judge, I would fully and faithfully apply the *Windsor* decision and all other Supreme Court and D.C. Circuit precedents.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed to serve as a district court judge, I would fully and faithfully apply the *Windsor* decision and all other Supreme Court and D.C. Circuit precedents.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic**

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[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).

relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed to serve as a district court judge, I would fully and faithfully apply the *Windsor* decision and all other Supreme Court and D.C. Circuit precedents.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of judge is the ability impartially to decide cases based on the law and facts—and the law and facts alone. I believe I possess this ability and, if confirmed, would be committed to doing so every day of my tenure as a judge.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be open-minded, fair, decisive, and hardworking. It is particularly important, moreover, that a judge understand his or her role as a public servant, who only has that authority provided by the law. I believe that I have the appropriate temperament, and, if confirmed to serve as a district court judge, I would constantly strive to live up to 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: I am absolutely committed to following Supreme Court and D.C. Circuit precedents and, as a district court judge, would not depart from any Supreme Court of D.C. Circuit precedent, even if I personally disagreed with that decision. The obligation of a lower court judge to follow the precedents of higher courts is a bedrock principle in the law, which I would faithfully follow.

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**

[5] *Id.* (internal citations omitted).

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 confronted with a case of first impression, I would start with the relevant constitutional, statutory, or regulatory text. If the text did not resolve the question, I would look to Supreme Court and D.C. Circuit precedents involving analogous or related questions and, in the absence of a relevant Supreme Court or D.C. Circuit precedent, I would look to precedents from other circuits and from district courts. In addition, I would look to the relevant precedents regarding the appropriate "tools of interpretation" to apply in particular circumstances. For example, in appropriate cases, I would apply the framework established in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), or would consider the purpose and history of the provision at issue.

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 to serve as a district court judge, I would fully and faithfully apply all relevant Supreme Court and D.C. Circuit decisions, regardless of whether I agreed with those decisions on the merits.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: All statutes enacted by Congress are presumed constitutional and courts should approach constitutional challenges to legislation cautiously. Where a statute violates the Constitution, however, it is the duty of a federal court with jurisdiction over a live case or controversy to enforce the Constitution and, if necessary, to declare the statute 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.**

Response: In my view, the Constitution is purely domestic law and neither foreign law nor the views of the "world community" can change the meaning of the Constitution. The Supreme Court has, on very rare occasion, considered foreign law in deciding constitutional cases, and, if confirmed to serve as a district court judge, I would be bound by that precedent. Moreover, in appropriate circumstances, courts may consider 18th century British common law in applying particular constitutional provisions. *See, e.g., Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989) (". . . the Seventh Amendment also applies to actions brought to enforce statutory rights that are analogous to common-law causes of action ordinarily decided in English courts in the late 18th century . . . .")

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: In every job I have held since graduating from law school, I have endeavored to do my very best to perform the unique role demanded in each particular position—whether as a law clerk, an advocate, or a lawyer for the government at the Office of Legal Counsel—and I believe that I have succeeded in doing so. In particular, I think that the opinions that I authored while at the Office of Legal Counsel reflect a fealty to the law and a commitment to getting it right. If confirmed to serve as a district court judge, I would commit myself to meet this new challenge and to strive to do my very best to perform the unique role of a judge: that is, to be open-minded and to decide cases fairly based solely on the law and fact.

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: Nothing is more central to the role of a judge than putting aside personal views and being fair to everyone who appears before the court. I understand that a judge only has that authority he or she is given by the law, and that any decision that is not based solely on the law and facts is illegitimate. If confirmed to serve as a district court judge, I would strive to be the very best judge possible—that is, to decide cases fairly, without personal bias, and based exclusively on the governing law and facts.

14. If confirmed, how do you intend to manage your caseload?

Response: Based on my experience as a litigator, I understand the importance of deciding motions and cases promptly and ensuring that the parties are held to a reasonable schedule. If confirmed to serve as a district court judge, I would promptly meet with counsel to set a schedule for motions, discovery, and trial. I would then actively manage my docket to ensure that the parties move forward with reasonable dispatch and, in criminal cases, I would enforce the Speedy Trial Act. I would also work hard to expeditiously decide matters pending before the court.

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 play a significant role in controlling the pace and conduct of litigation and that they have a duty to ensure that cases are resolved in an efficient and timely manner. If confirmed to serve as a district court judge, I would promptly meet with counsel to set a schedule for motions, discovery, and trial. I would then actively manage my docket to ensure that the parties move forward with reasonable dispatch and, in criminal cases, I would enforce the Speedy Trial Act. I would also work hard to expeditiously decide matters pending before the court.

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: Although I have spent much of my legal career as an advocate, I served for approximately five years in the Office of Legal Counsel at the U.S. Department of Justice. In that capacity, I endeavored to provide legal advice based on the best view of the law, and not simply arguable positions. If confirmed to serve as a district court judge, I would approach each and every case with an open mind and would decide cases fairly, based on the governing law and facts. I would thoroughly consider the briefs and arguments submitted by the parties and, where appropriate, the relevant evidence presented. I would also look to Supreme Court and D.C. Circuit precedents as binding authority, would review all of the relevant textual provisions, would look to the decisions of other courts, and would consider any other material that the parties rely upon. If confirmed to serve as a district court judge, I anticipate that the most difficult part of the transition for me would involve gaining additional experience and expertise regarding criminal law and trial practice. If confirmed, I will commit substantial time and effort to reviewing the relevant statutes and rules, will take advantage of judicial training and education opportunities, and will, as appropriate, seek guidance and advice from other judges on the court.

17. **Your questionnaire indicates you are a member of the American Constitution Society for Law and Policy. There is nothing wrong with membership in such groups, but I do have a question about how the goals of that organization might affect your judgments, if confirmed. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, stated he would help to engage a younger audience about how the law can improve the lives of everyday citizens. "What we want to do is promote a conversation — the idea of what a progressive perspective of the constitution is and what it means for the country." He also indicated that a goal of the organization is "countering right-wing distortions of our Constitution." Also, some of the stated goals and missions of the organization are "countering right-wing distortions of our Constitution" and "debunking conservative buzzwords such as 'originalism' and 'strict construction' that use neutral-sounding language but all too often lead to conservative policy outcomes."**

    a. **What is your view of the role of the courts on improving the lives of everyday citizens?**

    Response: I am not familiar with Mr. Edelman's comments and do not know what he had in mind. The role of the courts, in my view, is to treat everyone who appears before them fairly and to decide cases based on the governing law and facts. To the extent courts operate fairly and efficiently, they benefit the public.

    b. **Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered or why concepts such as originalism and strict construction need to be "debunked?"**

Response: I am not familiar with Mr. Edelman's comments and do not know what he had in mind. If confirmed to serve as a district court judge, I would not regard it as my role to counter any purported "right-wing distortions of the Constitution" or to "debunk" concepts such as originalism and strict construction. Rather, I would fully and faithfully apply the decisions of the Supreme Court and the D.C. Circuit and would decide cases based solely on the governing law and facts.

c. **What does the idea of a progressive perspective of the constitution mean for the country, in your view?**

Response: I am not familiar with Mr. Edelman's comments and do not know what he had in mind. In my view, the meaning of the Constitution should not be informed by anyone's views of politics or public policy. If confirmed to serve as a district court judge, I would fully and faithfully adhere to Supreme Court and D.C. Circuit precedents in interpreting the Constitution.

d. **Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered?**

Response: I am not familiar with Mr. Edelman's comments and do not know what he had in mind. If confirmed to serve as a district court judge, I would not seek to counter any purported "right-wing distortions of the Constitution," but rather would fully and faithfully adhere to the governing law in interpreting the Constitution.

e. **If you are confirmed as a federal judge how would you seek to promote a "progressive perspective of the Constitution; or counter "right-wing distortions of the Constitution?"**

Response: I would not do either.

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 written questions on the evening of May 27, 2014, and personally researched and drafted my responses to the questions. On May 29, I provided a draft of my responses to the Justice Department's Office of Legal Policy and reviewed them with a representative of that office. I continued to research and edit my responses and authorized the Office of Legal Policy to submit them to the Committee on my behalf on June 2.

20. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Randolph D. Moss
Nominee, U.S. District Judge for the District of Columbia

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: If confirmed to serve as a district court judge, I would not approach cases with a particular judicial philosophy other than to take each case on its own merits and to decide the case impartially, based on the governing law and relevant facts. I would faithfully apply Supreme Court and D.C. Circuit precedents and would only decide cases falling within the court's jurisdiction. Given the very different role of the Supreme Court, and the numerous attributes of those who have or who currently serve on that Court, there is no single Justice I would identify as reflecting the approach I would, if confirmed, bring to deciding cases as a district court judge. I was very fortunate and honored to have served as a law clerk for Justice John Paul Stevens, as well as for Judge Pierre N. Leval (who at that time was a district court judge). I have enormous respect for both Justice Stevens and Judge Leval and learned a great deal from both of them.

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 often looks to founding-era documents and understandings in interpreting the Constitution. *See, e.g.*, *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *U.S. Term Limits, Inc. v. Thornton*, 514 US. 779 (1995); *New York v. United States*, 505 U.S. 144 (1992); *I.N.S. v. Chadha*, 462 U.S. 919 (1983). If confirmed as a district court judge, I would apply the relevant Supreme Court and D.C. Circuit precedents regarding whether and how originalism should be used in the interpretation of constitutional provisions.

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 have no authority as a district court judge to overrule any precedent and would not seek to 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: Although the Supreme Court has not overruled its decision in *Garcia v. San Antonio Metro Transit Authority*, and thus the Court's holding remains binding on lower courts, subsequent Supreme Court decisions such as *New York v. United States*, 505 U.S. 144 (1992); *United States v. Lopez*, 514 U.S. 549 (1995); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996); *Printz v. United States*, 52 U.S. 898 (1997); and *United States v. Morrison*, 529 U.S. 598 (2000), have made clear that the Constitution imposes substantive restraints on federal power and provides substantive protection for State sovereign interests. If confirmed to serve as district court judge, I would fully and faithfully apply these decisions and all other relevant Supreme Court and D.C. Circuit precedents.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court struck down statutes enacted pursuant to the Commerce Clause on the ground that they sought to regulate non-economic activity and improperly intruded on the police power of the States. As the Court explained in *Lopez*, exercise of the Commerce Clause power cannot be justified by "pil[ing] inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States." *Id.* at 567; *see also Morrison*, 529 U.S. at 615-17. Subsequently, in *Gonzales v. Raich*, 545 U.S. 1, 22 (2005), the Court held that Congress has the power to regulate certain purely intrastate activities in the course of comprehensive regulation of "the interstate market in a fungible commodity." In a concurring opinion, Justice Scalia explained that Congress may regulate non-economic activity "in conjunction with congressional regulation of an interstate market," but only to the extent "necessary to make the interstate regulation effective." *Id.* at 38 (Scalia, J., concurring). If confirmed to serve as a district judge, I would fully and faithfully apply these and all other Supreme Court and D.C. Circuit precedents.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: Like all government officials, the President's authority to act must derive from some constitutional or statutory delegation of power. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). In evaluating whether the President has acted within the scope of this authority, the Supreme Court has applied "Justice Jackson's familiar tripartite scheme." *See Medellin v. Texas*, 552 U.S. 491, 524 (2008). Under that framework, the President's authority is at its zenith when he acts with congressional authorization; it falls within "a zone of twilight" where he acts in an area of concurrent congressional and presidential authority in the absence of a statutory authorization or prohibition; and it is "at its lowest ebb" "[w]hen the President takes measures incompatible with the expressed or implied will of Congress." *Youngstown*, 343 U.S. at 635-38 (Jackson, J., concurring). If confirmed to serve as a district court judge, I would fully and faithfully apply the relevant statutes and governing precedents in considering any challenge to an executive order or executive action.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: As the Supreme Court held in *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted), substantive due process extends to "those rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' . . . and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed." The Court also observed that it has "required in substantive-due-process cases a 'careful description' of the asserted fundamental liberty interest." *Id.* at 721 (citation omitted). More recently, in *Chavez v. Martinez*, 538 U.S. 760, 775 (2003) (citations omitted), the Court reaffirmed its "reluctance to expand the doctrine of substantive due process ... in large part 'because guideposts for responsible decisionmaking in this uncharted area are scarce and open-ended.'" If confirmed to serve as a district judge, I would fully and faithfully apply these precedents, and all other relevant Supreme Court and D.C. Circuit precedents.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has recognized two types of heightened scrutiny under the Equal Protection Clause. First, statutes or rules that apply differentially based on race, alienage, or national origin are subject to "strict scrutiny" because "[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 ...." *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985). Second, statutes or rules that apply differentially based on gender or illegitimacy are subject to "intermediate scrutiny" because gender classifications "frequently bear[ ] no relation to ability to perform or contribute to society" and "very likely reflect outmoded notions of the relative capabilities of men and women," and because illegitimacy is unrelated to ability and is beyond the "individual's control." *Id.* at 441. If confirmed to serve as a district court judge, I would fully and faithfully apply the relevant Supreme Court and D.C. Circuit precedents in considering the proper level of scrutiny to apply 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: If confirmed to serve as a district court judge, I would fully and faithfully apply the Supreme Court's decisions in *Grutter v. Bollinger*, 539 U.S. 306 (2003), and *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013), along with all other relevant Supreme Court and D.C. Circuit precedents, and I would do so without regard to any personal expectation I might have.

Responses of Robin L. Rosenberg
Nominee, United States District Judge for the Southern District of Florida
to the Written Questions of Senator Grassley

1. **You indicated in your questionnaire that you have limited experience in criminal law, either as an attorney or a judge. What steps have you taken or do you plan to take to address to get up to speed in criminal law matters?**

   Response: As a state circuit court judge, I have been assigned to the criminal division since September 2013 and have presided over approximately 23 criminal trials, 10 motion to suppress hearings and at least 1,900 plea bargains, as well as other routine matters that arise in the criminal division of our circuit court. In addition, in preparation for my rotation into the criminal division, I attended judicial education courses in order to ensure that I am well versed in criminal law matters. I will continue to preside over criminal law matters as a state circuit court judge and will continue to avail myself of all educational opportunities on criminal law matters.

2. **You have been involved in the campaign of several Democratic candidates over the years. What assurances can you give any future potential litigants who may not share your political beliefs that you will be fair and impartial as a judge?**

   Response: My political beliefs have never and will never come into play in the judicial decision making process. Every litigant who appears before me as a state circuit court judge, regardless of his/her political beliefs, is treated fairly and impartially. If confirmed as a United States District Court Judge, I will treat all litigants fairly and impartially, regardless of his/her political beliefs.

3. **What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?**

   Response: If confirmed as a United States District Court Judge, I would avoid such qualities or characteristics as: lack of preparation, impatience, inefficiency in the management of my docket, arrogance, disrespect of litigants and attorneys, and partiality and the appearance of partiality in my rulings and demeanor.

4. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is impartiality. As a state circuit court judge for the past eight years, I have been impartial in every case over which I have presided and would maintain this attribute if I am confirmed as a United States District Court Judge.

5. **Please explain your view of the appropriate temperament of a judge? What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge must be patient, respectful, attentive and even-tempered with all people who appear in the courtroom. For many, a judge is the face of the judicial system and a judge's actions, words and temperament are what leave people with a sense of trust and confidence in the system - their system. I consider each of these elements of judicial temperament to be important and I believe that I have exhibited these traits as a state circuit court judge for the past eight years.

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: If I am confirmed as a United States District Court Judge, I will follow the precedents of the Supreme Court and the Eleventh Circuit and faithfully give them full force and effect. My personal views have never and will never come into play in the judicial decision making process.

7. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment of the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

   a. **In the penultimate sentence of he Court's opinion, Justice Kennedy wrote. "This opinion and its holding are confined to those lawful marriages."[1]**

      i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

         Response: I do understand this statement to be part of the holding of *Windsor* and to be binding legal authority.

      ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

         Response: The term "lawful marriages" refers to same-sex marriages deemed lawful by the State.

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[1] *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

iii. **Is it your understanding that this holding and precedent is limited to circumstances in which states have legalized or permitted same-sex marriages?**

Response: Yes, it is my understanding that this holding is limited to circumstances in which states have legalized or permitted same-sex marriages.

iv. **Are you committed to upholding this precedent?**

Response: Yes, I am committed to upholding this precedent.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes, I understand that this portion and all portions of the court's opinion are binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes, I commit to giving this portion and all portions of the Court's opinion full force and effect.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes, I understand this portion and all portions of the court's opinion are binding Supreme Court precedent entitled to full force and effect by the lower courts.

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes, I commit to give this portion and all portions of the Court's opinion full force and effect.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities."[4]**

i. **Do you understand this portion of the court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes, I understand this portion and all portions of the court's opinion are binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes, I commit to give this portion and all portions of the Court's opinion full force and effect.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

i. **Do you understand this portion of the court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes, I understand this portion and all portions of the court's opinion are binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

Response: Yes, I commit to give this portion and all portions of the Court's opinion full force and effect.

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 employ, in deciding cases of first impression?**

   Response: If there were no controlling precedent from the Supreme Court or the Eleventh Circuit, I would look to the plain meaning of the statute or constitutional provision at issue. If the language were clear and unambiguous, I would apply the plain meaning of the provision to the facts of the case. If the language were not clear or unambiguous, I would look to Supreme Court and Eleventh Circuit precedent in cases with analogous facts and issues. If there is no Supreme Court of Eleventh Circuit precedent with analogous facts and issues, I would look to other federal appellate cases with analogous facts and issues for guidance as persuasive authority.

9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

   Response: I would apply the decision. My personal views have never and will never come into play in the judicial decision making process.

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. The only instances in which it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional is if, when necessary to resolve a question properly before the court, the statute clearly violates a provision of the Constitution or Congress exceeded its authority.

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 never proper for judges to rely on foreign law, or the views or 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: As a state circuit court judge, my decisions always have been grounded in precedent and the text of the law. If confirmed as a United States District Court Judge, my decisions will remain grounded in precedent and the text of the law. Political ideology or motivation has never and will never come into play in the judicial decision making process.

13. **What assurances or evidence can you give this Committee and future litigants that you will put aside personal views and be fair to all who appear before you, if confirmed?**

Response: As a state circuit court judge, my personal views have never come into play in the judicial making process and I am fair to all who appear before me in court. If confirmed as a United States District Court Judge, my personal views will never come into play and I will be fair to all who appear before me.

14. **If confirmed, how do you intend to manage your caseload?**

Response: As a state circuit court judge having served in the civil, foreclosure and criminal divisions, I always have made case management a priority. One technique I initiated and use is the use of technology for litigants and attorneys to schedule hearings before the court through an on-line scheduling system. If confirmed as a United States District Court Judge, I will continue to place a high priority on the active management of my caseload in order to ensure that cases move through the system in a timely and efficient manner. I will employ all tools available to help manage my caseload, including the innovative use of technology. I proactively will monitor cases through such measures as case management orders and conferences, which are intended to set realistic but enforceable deadlines for discovery, motions, mediation and trial. I will ensure that motions are ruled on promptly.

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 a role in controlling the pace and conduct of litigation and, if confirmed as a United States District Court Judge, I will control my docket in the following ways: I will remain apprised of all cases on my docket and the status of the cases; I will set status conferences if cases have shown little or no activity for long periods of time; I will rule on motions in a timely manner; I will set realistic and enforceable deadlines for completion of the different stages of litigation and provide the necessary oversight to ensure that deadlines are met; and I will be accessible to litigants and attorneys so that they understand the functioning of the court's docket and can meet the court's expectations of the pace and conduct of the litigation.

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: Before I reach a decision in cases that come before me, I review all of the written submissions of the parties, the case law cited in the written submissions and any additional case law and/or statutes based on my own research. If there is oral argument on a motion, I will be prepared to ask questions and listen to the arguments made by the litigants and/or attorneys. I will either make an oral ruling from the bench or take the matter under advisement following the hearing and issue a written order. My rulings, whether oral or written, set forth the applicable law, the facts of the case and the basis for the court's ruling.

17. **According to the website of the 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 judicail 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 associate 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 make the endorsements, when the endorsements were made, and to whom the endorsements were made.**

    Response: No.

18. **Please describe with particularity the process by which these questions were answered.**

    Response: On May 27, 2014, I recceived these questions from the Office of Legal Policy at the Department of Justice. I thoroughly reviewed the questions and prepared my answers. Thereafter, I submitted my answers to the Office of Legal Policy and made some revisions before submitting my answers to the Committee.

19. **Do these answers reflect your ture and personal views?**

    Response: Yes, these answers reflect my true and personal views.

Responses of Robin L. Rosenberg
Nominee, United States District Judge for the Southern District of Florida
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: My judicial philosophy as a state court judge for the past eight years has been to be fair, impartial, unbiased, open-minded and respectful of all persons who appear in the courtroom. I employ case management techniques to ensure that cases move efficiently through the system so that every litigant receives justice and finality in a fair and timely fashion. I do not possess sufficient knowledge of the judicial philosophy of the Justices who served on the Warren, Burger, or Rehnquist Courts to comment as to whether their philosophies are 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 Supreme Court has utilized originalism to interpret the Constitution. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court has looked to original public meaning to interpret the Constitution. If confirmed, I would follow *Heller* and all other binding Supreme Court and Eleventh Circuit 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: There are no circumstances in which I would overrule binding precedent as a United States District Court Judge.

Explain whether you agree that "State sovereign interests ... are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed as a United States District Court Judge, I would follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) and all other binding precedent. My personal views never come into play in the judicial decision making process.

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 as a United States District Court Judge, I would apply the controlling precedent. My personal views never come into play in the judicial decision making process. The United States Supreme Court in *United State v. Lopez,* 514 U.S. 549, 558 (1995) identified three

general categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of the channels of interstate commerce; (2) instrumentalities of interstate commerce and persons or things in interstate commerce; and (3) activities that substantially affect interstate commerce. In *United States v. Lopez, supra*, and *United States v. Morrison*, 529 U.S. 598 (2000), the United States Supreme Court has also articulated limitations to the reach of the Commerce Clause to certain non-economic activity. In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia's concurring opinion cited the Necessary and Proper Clause in connection with the Commerce Clause to opine that "Congress may regulate even non-economic local activity if that regulation is a necessary part of a more general regulation of interstate commerce."

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The United States Supreme Court held in *Medellin v. Texas,* 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)) that the "President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'"

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: A right is fundamental for purposes of the substantive due process doctrine when the right is "objectively, deeply rooted in this Nation's history and tradition, ... and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Legislative classification based on race, alienage, national origin and gender or when "laws impinge on personal rights protected by the Constitution" require a heightened scrutiny analysis under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (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 expectations as to whether the use of racial preferences in public higher education will no longer be necessary in the future. If confirmed as a United States District Court Judge, I will follow *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) and all other controlling precedent.

Senator Grassley
Questions for the Record

Ronnie Lee White,
Nominee, U.S. District Judge for the Eastern District of Missouri

1. **In 2003, you joined the majority opinion in *Simmons v. Roper*, a case in which the Missouri Supreme Court held that the 8th Amendment prohibited the execution of individuals who committed a capital crime when they were under 18 years of age. At the time you joined the majority, there was directly controlling US Supreme Court precedent on that issue, the *Stanford v. Kentucky* case. *Stanford* held that there was no national consensus regarding the execution of 17 and 18 year olds and was still good law when your court decided *Roper* in 2003. Since deciding *Stanford* in 1989, the US Supreme Court had repeatedly reaffirmed its holding – twice in 2002 and again in 2003, the same year you joined the majority in *Roper*.**

   a. **Can you explain your rationale for joining the Missouri Supreme Court majority in *Roper* even though *Stanford* was binding precedent and contradicted the holding of the Missouri court at that time?**

      Response: In *Stanford v. Kentucky,* 492 U.S. 361 (1989), the Supreme Court held that there was not then a national consensus against the execution of those who were 16 or 17 years old at the time of their crimes and declined to bar such executions. On that same day, the Supreme Court held that there was not then a national consensus to bar the execution of those who were mentally retarded. *Penry v. Lynaugh,* 492 U.S. 302 (1989).

      In 2002, the year before we heard Simmons' petition for writ of habeas corpus, the Supreme Court decided *Atkins v. Virginia,* 536 U.S. 304 (2002). The Supreme Court held that a national consensus had emerged against the execution of mentally retarded offenders since *Penry*. I joined the majority opinion in *Roper* because based on a careful application of the Supreme Court reasoning in *Atkins* where it found that the national consensus regarding the execution of the mentally retarded had changed since *Penry,* we concluded that similar changes had occurred regarding the execution of 16 and 17 year olds since *Stanford.*

   b. **When you joined the majority in *Roper*, were you aware that the US Supreme Court had denied habeas petitions in several cases in 2002 and 2003 that raised the same arguments that you and majority of the state court supported?**

      Response: Yes. I was aware that the Supreme Court had denied habeas petitions in several cases in 2002 and 2003 that raised the same arguments that our court supported. However, I joined the majority opinion because I believed it faithfully applied the reasoning that the Supreme Court had employed in *Atkins.* Additionally, I was aware that the U.S. Supreme Court has "rigorously insisted that such a denial [of a petition for

certiorari] carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review." *Maryland v. Baltimore Radio Show,* 338 U.S. 912, 919 (1950). The Supreme Court affirmed our court's decision in *Roper v. Simmons,* 543 U.S. 551 (2005).

2. **Shortly before you concluded your term as Chief Justice of the Missouri Supreme Court in 2005, you told the press that that judges must follow the law but that "their opinions can be shaped by their own life experiences."**

   a. **Your comment indicates that you would consider not just fact and law but that you would also bring your personal experiences to the table when deciding cases. Please explain under what circumstances you would consider your personal experiences in rendering a judicial decision.**

   Response: If confirmed as a district court judge, under no circumstances would I consider my personal experiences in deciding a case. I would apply the law to the facts of each case and would not be affected by my personal experiences or the experiences of the litigants who appear before me.

   b. **Please explain when you consider it appropriate for a judge to decide cases based on the judge's personal preferences.**

   Response: It would never be appropriate for a judge to decide cases based on a judge's personal preferences. A judge must be fair and impartial to all litigants without any consideration of the judge's personal preferences.

3. **In *State v. Kinder*, the majority of the Missouri Supreme Court found no ruling, statement, or conduct during trial that contained "any hint of bias." You dissented, arguing that the judge's change in party affiliation contributed to an appearance of bias, and said that the majority's "reliance" on the fact that the trial judge "made no obviously unfair ruling during trial is misplaced." Please explain the basis for that contention.**

Response: The Missouri Rules of Court, Code of Judicial Conduct, Rule 2, Canons 2, 3(c) provide that a judge should avoid the appearance of impropriety and shall perform judicial duties without bias or prejudice. I contended in my dissenting opinion that the appearance of impropriety and bias is the standard of review, not whether an actual violation is demonstrated. The Code of Judicial Conduct, Rule 2, Comment (5) states "the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and appropriate temperament is impaired."

The trial judge made comments six days prior to trial that I believed a reasonable person after hearing the comments would find an appearance of impropriety and doubt the impartiality of the court. *See State v. Smulls,* 935 S.W.2d 9, 16-17 (Mo.banc 1996); *State v. Nunley*, 923 S.W.2d 911, 918 (Mo.banc 1996).

4. **In *State v. McFadden*, you reversed a death sentence based on *Batson* challenges. Two of the jurors whose removal from the venire you criticized had never been the subject of a defense objection at trial. Please explain the basis for your review of the legality of striking those two jurors.**

   Response: In *Batson v. Kentucky*, 476 U.S. 79, 96-99 (1986), the Supreme Court held that a defendant could make out a prima facie case of discriminatory jury selection by "the totality of the relevant facts" of the prosecutor's behavior during the defendant's trial. My basis for review of the legality of striking two jurors that were not objected to by defense counsel was to show by "the totality of the relevant facts" that the prosecutor had engaged in discriminatory jury selection while making his jury strikes. Thus, I discussed other jurors who were similarly situated as those jurors when a proper *Batson* objection had been made.

5. **You were the sole dissenter in *State v. Johnson*, a case in which the defendant confessed to murdering four people, including a sheriff, two deputy sheriffs, and a sheriff's wife. You argued that the majority's standard of review was too stringent. Please explain the basis for your dissent and explain the legal basis for your reference to the "proper standard" of review.**

   Response: The basis for my reference to the "proper standard" of review is found in *Strickland v. Washington,* 466 U.S. 668 (1984). The Supreme Court has held that in order to establish a successful claim of ineffective assistance of counsel, a defendant must show a reasonable probability that but for his counsel's allegedly unprofessional errors, the result of the trial would have been different. The majority opinion required Mr. Johnson to show that his lawyer's conduct was outcome-determinative, obviously a much higher difficult standard to meet. I dissented because I believed that the reasonable probability standard had been met. Based on my reading of U.S. Supreme Court precedent "Mr. Johnson [was] not required to show that his counsel's unprofessional errors are the 'most likely' reason why his defense failed, as the principal opinion holds." *State v. Johnson,* 968 S.W.2d, 123, 137 (White, J., dissenting). However, I also acknowledged that this was "a very hard case" and stated that "if Mr. Johnson was in control of his faculties when he went on this murderous rampage, then he assuredly deserves the death sentence he was given." *Id.* at 138. (White, J. dissenting).

6. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]**

   i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

      Response: Yes.

   ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

      Response: I understand that Justice Kennedy is referring to same-sex marriages that a State has recognized as lawful.

   iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

      Response: Yes. I understand that the holding applies to Section 3 of the Defense of Marriage Act's prohibition against federal recognition of same-sex marriages that a State has recognized as lawful.

   iv. **Are you committed to upholding this precedent?**

      Response: I would follow *Windsor* and any other relevant precedent from the Supreme Court and Eighth Circuit.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

      Response: Yes, I believe the entirety of all majority opinions of the Supreme Court are binding precedent. Unless they are specifically overruled by later Supreme Court decisions, the binding precedent is entitled to full force and effect by lower court judges.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

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[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.

Response: Yes. If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Eighth Circuit.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

   Response: Yes, I believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

   Response: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Eighth Circuit.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

   i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

   Response: Yes. I believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

   ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

   Response: Yes. If confirmed, I will follow *Windsor* and any other relevant precedent from the Supreme Court and Eighth Circuit.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

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[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. I believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I will follow *Windsor* and any other relevant precedent from the Supreme Court and Eighth Circuit.

7. **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 the ability to ensure fairness and impartiality in the court's proceedings, and I believe my record as a state court judge shows that I possess this attribute.

8. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe that a judge should be patient, diligent and open-minded in resolving matters that come before the court. A judge must also be able to consider every case fairly and objectively based on the facts and applicable law. I believe my record as a state court judge shows that I possess this attribute. I believe I meet this standard.

9. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: If confirmed, I would faithfully apply controlling precedents of the Supreme Court and the Eighth Circuit and give them full force and effect whether or not I personally agree with such precedents.

10. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In a matter of first impression, I would first consider the plain language of the statute. If the language was clear, my inquiry would end and I would apply the law to the facts of the case. If the language was unclear, I would apply the canons of statutory construction to determine its meaning. I would also review and consider precedent

interpreting analogous provisions from the Supreme Court and Eighth Circuit as well as persuasive authority from other circuits addressing the same issue. If these sources did not resolve the issue, I would also consider legislative history.

11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: If confirmed as a district judge, I would apply binding precedent of the Supreme Court and Eighth Circuit even if I believed that the higher court's ruling was incorrect.

12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: The Supreme Court has held that federal statutes enacted by Congress are presumed constitutional. It is only appropriate for a federal court to declare a statute enacted by Congress unconstitutional if the statute clearly exceeds congressional authority or violates a constitutional provision.

13. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: No. If confirmed as a district court judge, I would not apply foreign law or the views of the "world community" in determining the meaning of the Constitution.

14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I am fully committed, if confirmed, that I would decide cases solely based on the facts and the relevant legal text and precedent, without considering any underlying political ideology or motivation, as I have done during my tenure as a state court judge.

15. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: If confirmed, I would set aside any personal views and treat all parties fairly regardless of their background or circumstances. I would decide cases solely based on the facts and relevant law, as I have done during my tenure as a state court judge.

16. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would play an active role in case management. I believe that a judge should use all of the tools available to control the pace of litigation. I would use the

court's case management system, status conferences, scheduling and discovery orders to advance the efficiency of the litigation process.

17. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: I believe judges play an important role in controlling the pace and conduct of litigation. If confirmed, I would take the steps listed in my response to Question 16 to control my docket.

18. **As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: When I served as a state court judge, I would reach a decision in cases that came before me by seeking to learn the facts of the case from witness testimony, exhibits and legal submissions by the parties. I would then apply the relevant law to those facts. If confirmed, I would approach cases in the same manner. In determining what law to apply I would conduct independent legal research as necessary and not rely solely on the research conducted by the parties in the case. I would also rely upon binding precedent from the Supreme Court and the Eighth Circuit.

19. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

    Response: 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.

20. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on May 27, 2014. I drafted my responses to the questions and provided them to the U.S. Department of Justice. After speaking to a Justice Department official, I finalized my responses and authorized the Justice Department to submit my answers to the Committee.

21. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Ronnie L. White
Nominee, U.S. District Judge for the Eastern District of Missouri

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: During my previous service as a judge, my judicial philosophy was to treat all members of the public, lawyers, and court personnel with respect. If confirmed, this would continue to be my judicial philosophy. I am confident that many Supreme Court Justices have had a similar 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: Yes. If confirmed, I would follow binding Supreme Court and Eighth Circuit precedents interpreting the United States Constitution, including that provided in *District of Columbia v. Heller,* 554 U.S. 570 (2008), where the Court explained that the public understanding of the text of the Constitution when it was enacted plays an important role in 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: If confirmed, I would not overrule any precedent. I would adhere to my oath of office in following the precedent of the Supreme Court and Eighth 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: The Supreme Court's decision in *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U.S. 528 (1985), is binding precedent. If confirmed, I would follow and apply the holding 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 held that Congress' Commerce Clause power extends to regulating: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *See*

United States v. Morrison, 529 U.S. 598, 608-09 (2000); *United States v. Lopez,* 514 U.S. 549, 558-59 (1995). If confirmed, I would follow Supreme Court and Eighth Circuit precedent regarding the extent of Congress' power 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 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). The applicable judicial analysis that must be conducted in order for a court to determine whether a particular executive order or action is authorized by an act of Congress or the Constitution is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would follow Supreme Court and Eighth Circuit precedent in deciding challenges to 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 a right is fundamental for purposes of substantive due process when it is "objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted). If confirmed, I would follow all applicable Supreme Court and Eighth Circuit precedent in addressing issues involving fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that strict scrutiny under the Equal Protection Clause is appropriate when a classification burdens a fundamental right or when it operates to the disadvantage of a suspect class. *See, e.g., City of Cleburne, Texas v. Cleburne Living Center,* 473 U.S. 432, 440-41 (1985). If confirmed, I would follow the precedent of the Supreme Court and Eighth Circuit in deciding issues under the Equal Protection Clause.

Do you "expect that 15 years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have not formed an expectation concerning the use of racial preferences 15 years from now in public higher education. If confirmed, I would apply and follow the holding in *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), *Fisher v. University of Texas,* 133 S. Ct. 2411 (2013) and all other precedent of the Supreme Court and Eighth Circuit.

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RECEIVED APR 15 2014

VIA EMAIL AND FIRST-CLASS MAIL

April 4, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: ***Nomination of André Birotte, Jr. to the United States District Court for the Central District of California***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of André Birotte, Jr. who has been nominated for a position on the United States District Court for the Central District of California. The Committee is of the opinion that Mr. Birotte is Unanimously Well Qualified for this position; recording one recusal.

A copy of this letter has been provided to Mr. Birotte.

Sincerely,

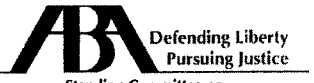
Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: André Birotte, Jr., 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 April 4, 2014.



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VIA EMAIL AND FIRST-CLASS MAIL

March 14, 2014

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 Wheadon deGravelles to the United States District Court for the Middle District of Louisiana***

Dear Mr. Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of John Wheadon deGravelles who has been nominated for a position on the United States District Court for the Middle District of Louisiana. The Committee is of the opinion that Mr. deGravelles is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Mr. deGravelles.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: John Wheadon deGravelles, 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 March 14, 2014.

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VIA EMAIL AND FIRST-CLASS MAIL

April 4, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: ***Nomination of Randolph D. Moss 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 Randolph D. Moss who has been nominated for a position on the United States District Court for the District of Columbia. The Committee is of the opinion that Mr. Moss is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Mr. Moss.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: Randolph D. Moss, 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 April 4, 2014.

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VIA EMAIL AND FIRST-CLASS MAIL

February 26, 2014

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 Lee Rosenberg to the United States District Court for the Southern District of Florida***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Robin Lee Rosenberg who has been nominated for a position on the United States District Court for the Southern District of Florida. The Committee is of the opinion that Judge Rosenberg is Unanimously Qualified for this position.

A copy of this letter has been provided to Judge Rosenberg.

Sincerely,

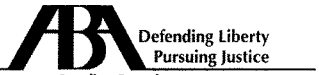
Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Robin Lee Rosenberg (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 February 6, 2014.



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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 Ronnie Lee White, Esq. to the United States District Court for the Eastern District of Missouri***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Ronnie Lee White, Esq. who has been nominated for a position on the United States District Court for the Eastern District of Missouri. As a result of our investigation, the Committee is of the opinion that Mr. White is Unanimously Qualified for this position.

A copy of this letter has been provided to Mr. White.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: Ronnie Lee White, 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.

FRATERNAL ORDER OF POLICE
MISSOURI STATE LODGE

U.S. Senator Patrick Leahy, Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050

May 13, 2014

Dear Senator Leahy,

As the elected representative of over 5,400 law enforcement officers across the State of Missouri, I am urging your committee to vote out the nomination of Ronnie White for the open judicial seat in the U.S. District Court for the Eastern District of Missouri.

We would then be hopeful that the Senate confirms his nomination.

We do not take such stances lightly. As front line law enforcement officers, we recognize the important need to have jurists such as Ronnie White, who have shown themselves to be tough on crime, yet fair and impartial.

As a former justice on the Missouri Court of Appeals and as the Chief Justice of the Missouri Supreme Court, Ronnie White has proven that he has the experience and requisite attributes to be a quality addition to the U.S. District Court.

We can think of no finer or more worthy nominee.

Sincerely,

Kevin Ahlbrand
President, Missouri Fraternal Order of Police

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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

May 19, 2014

Support Ronnie L. White's nomination to be U.S. District Court Judge for the Eastern District of Missouri

Dear Senate Judiciary Committee Member:

On behalf of The Leadership Conference on Civil and Human Rights, we write to express our strong support for the nomination of Ronnie L. White to be a U.S. District Court Judge for the Eastern District of Missouri. As one of Missouri's leading legal minds, Mr. White has devoted his life to serving the citizens of Missouri. Throughout his career, he has demonstrated a steadfast commitment to enforcing the rule of law with objectivity, thoughtfulness and impartiality, and he would be an outstanding addition to the federal bench. We urge you to vote in favor of his nomination.

Mr. White is eminently qualified, as evidenced by the "Unanimously Qualified" rating he received from the American Bar Association and by his long career in service to the public. After graduating from the University of Missouri-Kansas City Law School in 1983, Mr. White worked as a public defender in St. Louis and served three terms in the Missouri House of Representatives. In 1993, he was appointed as City Counselor for the City of St. Louis; the following year, Governor Mel Carnahan appointed him as a judge for the Eastern District of the Missouri Court of Appeals. In 1995, Mr. White became the first African American to sit on the Supreme Court of Missouri, and he served as chief justice from July 2003 to June 2005. He retired from the bench in 2007.

As a judge, Mr. White served with distinction on the Missouri Court of Appeals and the state Supreme Court, gaining a reputation as a fair, intelligent jurist who commanded the respect of his fellow judges. When President Clinton nominated him in 1997 to a seat on the U.S. District Court for Missouri, Mr. White received support from his colleagues on the Supreme Court and many in law enforcement. However, his nomination was defeated in October 1999 in a disappointing party-line vote engineered by then-Senator John Ashcroft.

Mr. Ashcroft led a vigorous smear campaign against Mr. White based on spurious claims about his record as a judge on death penalty cases. For instance, the senator claimed that White voted against the death penalty more than any other judge on the Missouri Supreme Court. But the facts proved otherwise. Of Mr. Ashcroft's seven appointees to the court, four voted to reverse death penalty decisions more often than Mr. White.[1] In fact, Mr. White upheld the majority of death penalty convictions that came before him as a judge, and in the rare case in which he did vote to reverse, the majority were unanimous decisions.

Further, Mr. Ashcroft used false data and misleading interpretations to solicit opposition from law enforcement and to bolster his assertion that Mr. White was "soft on crime." Even so, two major law enforcement groups – the Missouri State Fraternal Order of Police and the Missouri Police Chiefs Association – endorsed White wholeheartedly and refuted the "soft on crime" allegation. Carl Wolf, then president of the Missouri Police Chiefs Association, revealed that Mr. Ashcroft had actively solicited opposition from law enforcement groups

and that any such opposition was not spontaneous. It is worth pointing out that Mr. White's current nomination has again garnered the endorsement of the Missouri State Fraternal Order of Police.[ii]

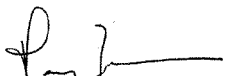
In the aftermath of the 1999 vote against Mr. White's confirmation, many saw the vilification of him as unfair and the charges against him unfounded. In "The Smearing of a Moderate Judge," Stuart Taylor of The Legal Times wrote: "In short, the record shows that Judge White takes seriously his duty both to enforce the death penalty and to ensure that defendants get fair trials. It suggests neither that he's 'pro-criminal' nor that he's a liberal activist. What it does suggest is courage. And while White may be more sensitive to civil liberties than his Ashcroft-appointed colleagues are, his opinions also exude a spirit of moderation, care, and candor."[iii] Ultimately, many in the media viewed the fight as one of political expediency rather than of judging a candidate on the merits. As the *Washington Post* wrote, "This vote was politics of the rawest sort. It was the politics of an upcoming Missouri Senate race, in which Sen. Ashcroft apparently intends to use the death penalty as a campaign issue."[iv]

It is apparent that the opposition to Mr. White's previous nomination was baseless and that he fell victim to political posturing. The Leadership Conference believes Mr. White's record makes him an exceptionally qualified nominee with the ability to make objective decisions on the multifaceted and prominent cases that will surely come before the court. His impeccable credentials and the support he has garnered from people across the political spectrum make him an excellent choice for a federal judgeship on the U.S. District Court in the Eastern District of Missouri. This malicious and unwarranted attack on a unanimously qualified nominee must not happen again.

For these reasons, we urge you to vote in favor of his nomination. Thank you for your consideration. If you have any questions, please feel free to contact Nancy Zirkin, Executive Vice President, at Zirkin@civilrights.org or (202) 466-2880, or Sakira Cook, Senior Policy Associate, at cook@civilrights.org or (202) 263-2894.

Sincerely,

Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President

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[i] White voted to reverse the death penalty 17 times. Ashcroft appointees voted to reverse: 18 times (Judge Price); 19 times (Judge Benton); 24 times (Judges Holstein and Covington). Comparison of Justice Ronnie White vs. Senator Ashcroft's Missouri Supreme Court Nominees." Provided by the White House.

[ii] http://www.judgingtheenvironment.org/library/letters/Ronnie-White-MO-FOP-Letter-of-Support-5-13-2014.pdf

[iii] "The Smearing of a Moderate Judge," Taylor, Stuart Jr. *Legal Times*, 10/18/99..

[iv] "The Ronnie White Vote," *Washington Post* Editorial, 10/08/99, p.A28.

May 19, 2014

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of the hundreds of thousands of members of People For the American Way, we write to express our support for the confirmation of Ronnie White to the U.S. District Court for the Eastern District of Missouri.

The first African American to sit on the Missouri Supreme Court, Ronnie White is a supremely qualified judge with years of experience in both private practice and public service. He began his long and successful career as a public defender. He was elected three times to the state legislature. He was appointed to a state judgeship, and then served for twelve years on the Missouri Supreme Court, including as its Chief Justice. He has spent the past seven years as a partner in the respected law firm of Holleran White Schwartz & Gaertner. His career encapsulates in one person the broad professional diversity that so strengthens our federal courts.

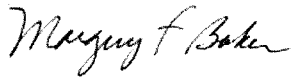
In each facet of his career, he has earned accolades. Throughout his career, his professional excellence has been honored through distinguished awards including:

- Inclusion in the "Super Lawyers" list (2013)
- Missouri Association of Social Welfare Special Public Service Award (2007)
- Mound City Bar Association Legal Legend Award (2006, 2007)
- MOKAN Legacy Award in Recognition of Distinguished Career Achievements (2007)

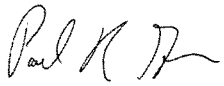
Among the many supporters of his nomination are Sen. Claire McCaskill and the Missouri Fraternal Order of Police. The Missouri FOP has underscored the need for "jurists such as Ronnie White, who have shown themselves to be tough on crime, yet fair and impartial." They noted that they could not think of a "finer or more worthy nominee."

Indeed, a nominee with such broad support and strong credentials is exactly the kind of jurist we need serving our country on the U.S. District Court. White has demonstrated that he has the drive, experience, and fair-mindedness to serve the American people on the federal bench.

We look forward to his hearing before the Judiciary Committee and his timely confirmation by the Senate.



Marge Baker
Executive Vice President for Policy and Program
People For the American Way



Paul R. Gordon
Senior Legislative Counsel
People For the American Way

PRESIDENT
NAN ARON
CHAIR
KEN GROSSINGER

May 19, 2014

Dear Senate Judiciary Committee Member:

I write in support of the nomination of Ronnie L. White to the U.S. District Court for the Eastern District of Missouri. White, a former chief justice of the Missouri Supreme Court, has an impeccable record of public service that demonstrates his integrity, intelligence, commitment to the rule of law, and judicial temperament. If confirmed, Justice White would serve the people of Missouri and our federal justice system with great distinction.

Confirming Justice White would also rectify a profound injustice, and reverse one of the Senate's most shameful exhibitions of partisan obstruction. President Clinton first nominated Justice White to the Eastern District in 1997. But after then-Senator John Ashcroft mounted a politicized opposition that distorted Justice White's record and smeared him with baseless accusations of being "pro-crime," Justice White's nomination was defeated by a party-line vote in 1999. This time, with a renewed opportunity to do right by an extraordinary public servant—and, more importantly, the people of Missouri—the Senate should swiftly confirm Justice White.

Justice White's legal career is defined by more than two decades of distinguished public service as a lawyer, legislator, and judge. After earning his J.D. at the University of Missouri's Kansas City School of Law, Justice White spent six years as a trial attorney at the public defender's office in St. Louis. In 1989, Justice White successfully ran for State Representative in the Missouri General Assembly, where he served three terms and chaired both the House Judiciary and Ethics Committees. While serving in the legislature, Justice White also practiced at the Law Offices of Cahill, White & Hemphill, where he represented individual criminal defendants and plaintiffs in civil litigation. He also accepted assignments from the Office of the Special Public Defender to represent indigent defendants charged with serious felonies. In 1993, Justice White left the state house to become the first African American City Counselor for the City of St. Louis. Missouri Governor Mel Carnahan then appointed Justice White to the Missouri Court of Appeals in 1994, and to the Missouri Supreme Court in 1995, where he became the state's first African American Supreme Court Justice. The *St. Louis Post-Dispatch* described Justice White's elevation to the state's highest court as "one of those moments when justice has come to pass."

Justice White's first nomination to the Eastern District was met with long delays, and President Clinton had to renominate him in 1999. Justice White was favorably reported out of the Judiciary Committee on two separate occasions, but his nomination was ultimately defeated on the Senate floor. It was the first district court nomination the full Senate voted down in nearly 50 years, and it was the result of a strict party line vote. What's more, seven Republicans switched their affirmative Committee votes to vote "no" on confirmation.

The disgraceful 1999 campaign against Justice White—which was orchestrated almost entirely by Senator Ashcroft—has been thoroughly discredited. Facing a contested reelection in 2000, Ashcroft used Justice White as a political pawn in a misguided attempt to appear "tough on crime," and attacked White with outlandish claims that he was "pro criminal" and had "a tremendous bent toward criminal activity."[1] In support, Ashcroft cited two cases in which Justice White was the lone dissenter from a decision affirming a death sentence. Even these two cases fail to advance Ashcroft's position. In one, Justice White said that a judge who explicitly contrasted "minorities" with "hard-working taxpayers" should have recused himself before presiding over a trial

[1] Benjamin Wittes, *Judge White's Judges*, THE WASHINGTON POST, A25 (Oct. 13, 1999).

in which an African American defendant could be sentenced to death.[2] In the second, Justice White thought the incompetence of defense counsel warranted reversal, but added that if the defendant "was in control of his faculties when he went on this murderous rampage, then he assuredly deserves the death sentence he was given."[3] But more importantly, when considered as a whole, Justice White's full judicial record reflects an unwavering commitment both to faithfully applying Missouri state law on capital punishment, and to upholding the constitutional rights of criminal defendants, particularly those charged with capital crimes. As of October 1999, Justice White had reviewed 59 capital cases. He voted with the majority in 51 of those cases, or nearly 90 percent of the time. Of those 51, he voted 41 times to uphold a death sentence and 10 times to reverse for serious legal error. Eight of his votes to reverse were unanimous, and in only three instances did he author a solo dissent when the majority affirmed.

In light of this record, the "soft on crime" campaign was preposterous and transparently partisan, a conclusion shared by major law enforcement groups that backed Justice White's nomination. Both the Missouri State Fraternal Order of Police and the Missouri Police Chiefs Association endorsed White wholeheartedly. Upon White's defeat in the Senate, the President of the Fraternal Order of Police, Thomas Mayer, wrote solemnly that "nothing can undo the needless injury which has been inflicted on the reputation of Justice White, and our nation has been deprived of an indivudal who surely would have proven to be an asset to the Federal Judiciary."[4] Perhaps even more damning, a prominent St. Louis businessman and one of Ashcroft's Senate campaign fundraisers, Gentry Trotter, resigned his post in protest of what he called Ashcroft's "marathon public crucifixion of White," and dismissed Ashcroft as an "extremist."[5]

Justice White went on to serve for another seven years on the Missouri Supreme Court, leaving in 2007 to enter private practice. Unsurprisingly, Justice White's more recent judicial record reaffirms his commitment to the rule of law. From 2000 through 2007, Justice White wrote more than half a dozen opinions affirming a death sentence. In one, *State v. Deck*, the United States Supreme Court reversed and set aside the death sentence when it held, for the first time, that "the Constitution forbids the use of visible shackles [on the defendant] during the penalty phase" of trial.[6] And once again, with seven more years of decisions to consider, the State Fraternal Order of Police has formally endorsed Justice White's nomination. Writing in support, the FOP said that, "as front line law enforcement officers, we recognize the important need to have jurists such as Ronnie White, who have shown themselves to be tough on crime, yet fair and impartial."[7]

We often say that justice delayed is justice denied, but if the Senate does its job and swiftly confirms Ronnie White, that will be only partly true. It is true that Justice White's reputation was recklessly tarnished, and that our federal justice system has thus far been deprived of White's service on the bench. But now the Senate has the opportunity to correct a grievous error, and to confirm a stellar nominee with vast experience, restoring in some measure the justice withheld 14 years ago. I urge you to vote in favor of his nomination.

Sincerely,

Nan Aron
President
Alliance for Justice

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[2] *State v. Kinder*, 942 S.W.2d 313, 340 (Mo. 1996) (White, J., dissenting).
[3] *State v. Johnson*, 968 S.W.2d 123, 138 (Mo. 1998) (White, J., dissenting).
[4] Letter from the Missouri State Fraternal Order of Police to Sheriff Philip H. McKelvey (Oct. 21, 1999).
[5] Benjamin Soskis, *White Out*, ON THE HILL, 15 (Oct. 1, 1999).
[6] *Deck v. Missouri*, 544 U.S. 622 (2005).
[7] Letter from Fraternal Order of Police to Senator Patrick Leahy (May 13, 2014), *available at* http://www.judgingtheenvironment.org/library/letters/Ronnie-White-MO-FOP-Letter-of-Support-5-13-2014.pdf.