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S. HRG. 114–699, Part 1

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

JANUARY 21, MARCH 11, and MAY 6, 2015

Serial No. J–114–1

PART 1

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NOMINATIONS OF MICHELLE K. LEE, NOMINEE TO BE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE; DANIEL HENRY MARTI, NOMINEE TO BE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR, EXECUTIVE OFFICE OF THE PRESIDENT; HON. ALFRED H. BENNETT, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; HON. GEORGE C. HANKS, JR., NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; HON. JOSE ROLANDO OLVERA, JR., NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; AND HON. JILL N. PARRISH, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH

WEDNESDAY, JANUARY 21, 2015

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

The Committee met, pursuant to notice, at 2:37 p.m., in Room SD–226, Dirksen Senate Office Building, Hon. John Cornyn presiding.

Present: Senators Cornyn, Hatch, Lee, Cruz, Perdue, Tillis, Franken, and Coons.

OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. The Senate Judiciary Committee will be convened. I apologize for the short delay. We've got a lot going on, believe it or not, in other parts of the buildings here. This is the first hearing of the Senate Judicial Committee in the 114th Congress and I want to express my gratitude to Chairman Grassley for allowing me to preside today.

We'll hear from six nominees today, two to the executive branch and four to the Federal judiciary. Three of the judicial nominees are to fill vacancies in Texas, which may bear some coincidental relationship to the fact that I'm presiding today.

Congratulations to all of the nominees and to your families and friends. I know you've traveled a long way to be here today.

I first want to introduce two highly qualified executive branch nominees: Michelle Lee, nominated to be the Under Secretary of Commerce and Director of the Patent and Trademark Office position, and Daniel Marti, nominated to be the Intellectual Property Enforcement Coordinator, or IPEC. Intellectual property, of course, is a critical part of our national economy, helping to encourage innovation that improves lives and helps create jobs.

My State is proud of its role as a national hub of creativity and innovation, from NASA in Houston, to the thriving, creative hub in Austin, Texas. Innovation is driving wages, jobs and quality of life, not just in my State but all across this country.

According to Forbes, in 2014, Texas added tech jobs faster than any other State in the Nation. From start-ups in Austin, to universities in Dallas, to hospitals in Houston, Texans are leading the way, we'd like to think, in intellectual property.

The Government has a critical role to play, of course, in fostering innovation and protecting intellectual property rights, including granting patents and enforcing our laws here and abroad.

The President, as I said, has nominated two outstanding candidates, and I look forward to hearing them discuss how they plan to fulfill their missions. Ms. Lee, the nominee to run the PTO, is currently its Deputy Director. Prior to that service she was the first director of the Silicon Valley Office. She also served on PTO's Patent Public Advisory Committee.

During her time in private practice, Ms. Lee was the deputy general counsel and head of Patents and Patent Strategy at Google. Before that, she was a partner at Fenwick & West, a Silicon Valley law firm. She holds advanced degrees in electrical engineering and computer science from MIT, and a JD from Stanford Law School.

Thomas Jefferson served as one of the Government officials first charged with granting patents. As PTO Director, Ms. Lee has large shoes to fill and a long and storied history for that position.

Not only will she run a large and expanding agency with thousands of employees and offices opening around the country, she will continue to implement the 2011 America Invents Act.

She has told me she will also help tackle some of the threats facing our current patent system, in particular abuses that have become all too common in patent litigation. Abusive patent litigation hampers innovation and harms the economy. I've worked for the better part of 2 years, as have many Members of this panel, on this critical issue. I look forward to moving legislation early this year under the leadership of our new Chairman, Chairman Grassley.

Mr. Marti is nominated to be the Intellectual Property Enforcement Coordinator, a position created by Congress in 2008. The IPEC coordinates intellectual property enforcement across the U.S. Government, also working with other countries and the private sector. They address complex problems such as online IP theft. Well over a year ago, both Democrats and Republicans urged President

Obama to fill this position, which has been vacant for more than a year.

Mr. Marti is the managing partner at the DC office of Kilpatrick, Townsend & Stockton, where he focuses on intellectual property matters. Among his many honors, Mr. Marti was recognized as a super lawyer for intellectual property in Washington, DC in 2013 and 2014. He earned his bachelor's degree at Georgetown University and his JD at Emory University School of Law.

Let me congratulate both Ms. Lee and Mr. Marti on your nominations. You both have, as I said, very strong qualifications and years of impressive experience.

In December, Chairman Grassley put the nominees, the Members of this Committee, and the public on notice that there would be a second hearing so it would allow new Members a meaningful opportunity to hear both of these nominees.

I see we are joined by at least two of those new Members, Senator Perdue and Senator Tillis. I think it's important, and agree with Senator Grassley, that it was important to give these new Members a chance to participate in this important nomination process.

Let me ask both of the witnesses, please, to stand and be sworn at this time. If you'll raise your right hand.

[Witnesses are sworn in.]

Senator CORNYN. Thank you. Please have a seat.

I would invite both of you, perhaps starting with Ms. Lee, to introduce your family and any guests that you'd like to introduce to the Committee, and then to make an opening statement. So first, Ms. Lee, and then Mr. Marti.

Ms. LEE. Thank you, Mr. Chairman. I have the honor to introduce to the Committee my husband, Christopher Shen, and our 4-year-old daughter, Amanda Mavis.

Mr. MARTI. Thank you, Senator Cornyn. I also have the honor to introduce my wife, Lauren, who's sitting behind me. When we were here on December 10th, I had a large group of family members, including a six- and nine-year-old join us. They asked to go to school today instead.

[Laughter.]

Senator CORNYN. I'm sure it's second only to going to the dentist to have a root canal, coming to the Judiciary Committee for another hearing. Forgive me. I wanted to turn to Senator Coons, the Ranking Member on the Committee for purposes of this hearing, before we'll turn it to both of you for your opening statements.

OPENING STATEMENT OF HON. CHRISTOPHER A. COONS, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator COONS. Thank you, Senator Cornyn. Thank you for chairing this hearing, and thank you to both of our highly qualified nominees for coming again before this Committee so that new Members of the Committee can also engage in a robust discussion with you about the roles to which you've been nominated and the importance of intellectual property.

The right of inventors to profit from their inventions has been a bedrock principle of this country and has succeeded, perhaps beyond the wildest dreams of our Founding Fathers.

What innovators are doing today with their inventions and ideas in this Nation, backed by a strong core of IP protections, is unmatched in the world. From lifesaving cures, to new materials, to solutions to problems, to creative works, it is unmatched.

We also cannot take it for granted. In 2010, IP-intensive industries generated 27 million jobs, with another 13 million indirectly related. Combined, we're talking about 40 percent of the American economy. On average, IP-intensive companies pay 30 percent more than other private-sector companies. IP is important to our economy.

As important as they are, though, they are vitally important to the small inventor. Whether they're a garage inventor, an aspiring new creator or entrepreneur who's found a secret sauce, these are the people, the men and women of small business across America, who will create the next generation of products, of foods, of services that we will love or the medicines we need to live.

There's a popular show that I watch with my kids called "Shark Tank"—it might be known to some of you—where hopeful entrepreneurs pitch their products and services to these so-called sharks, the investors, who ask great and focused questions.

More often than not, they ask a decisive question: How are you going to make it in a market with so many other big competitors who can crush you like a bug or steal your idea? And when the inventor proudly boasts, I have a patent, it tends to make all the difference. According to a Department of Commerce 2010 report, three-fourths of start-up managers who are venture capitalists consider patents when making investment and funding decisions.

My point is simply this: If we fail to uphold and strengthen our strong tradition of IP protection in this country, the benefits of American ingenuity will flow out of this country and to our competitors. So to those who say that we have too many abuses and we need to make fundamental changes to our patent system, I agree, we need to find a way, working together, to clamp down on abuses.

But I also urge a little caution as we consider any changes. There is always a momentary benefit to opening up and making free to the world things previously protected, but there can be long-term costs as well. Proposals to dramatically constrain the rights of patentees to enforce their patents also ignore the fact that the patent system these two nominees will be entrusted to administer and coordinator enforcement for has already greatly changed from the system just 4 years ago.

In the past year, the district courts, the Federal circuit, and the Supreme Court have all responded to the call for more efficient resolution of patent cases. I am greatly appreciative of hours dedicated to a patent study group created by two esteemed members of the Delaware bench, Judge Stark and Judge Robinson, who hear a tremendous number of patent cases. Following meetings with representatives across the patent community, they've issued new case management guidelines, reducing costs and improving speed.

The Supreme Court's decisions in *Alice* and *Octane Fitness* have already had a dramatic impact, a 40 percent reduction in patent filings in the year from September 2013 to 2014. At the same time, the impact of the Leahy-Smith America Invents Act is just begin-

ning to register. Inter partes review has been granted in over 70 percent of cases, resulting in expedited decisions.

Last, we will soon learn the impact of the covered business method program, which may also provide some helpful insight in a path forward.

I would like at this time, if I might, to ask consent to introduce into the record Senator Leahy's opening statement and a letter from a broad coalition of American innovators and companies making just this point.

Senator CORNYN. Without objection.

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

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

Senator COONS. I'd like to close by applauding the Federal Trade Commission for their great work and saying that I think we can find ways to work together to fully fund the PTO, to protect trade secrets, and to move forward on patent reform in ways that do not harm or undermine the system.

Thank you, Senator Cornyn.

Senator CORNYN. Thank you, Senator Coons.

Without objection, the statement of Senator Grassley, the Chairman, will be made part of the record as well.

Senator CORNYN. Ms. Lee, we'll turn to you for any opening remarks you'd care to make.

STATEMENT OF MICHELLE K. LEE, NOMINEE TO BE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

Ms. LEE. Thank you, Mr. Chairman.

Mr. Chairman and Members of the Committee, it is an honor to be before you today. I'm grateful to President Obama for nominating me for this important position and to Secretary Pritzker for her ongoing support, past and present.

With me here today are my husband, Christopher Shen, and Amanda Mavis, our 4-year-old daughter. I was born and raised in the Silicon Valley, the daughter of an immigrant family that settled in a place that turned out to be one of the most innovative regions in the country, if not the world.

My father was an electrical engineer. We spent our weekends tinkering and working together to build or fix things like the Heath kit hand-held radio. In fact, all the dads on the street that I grew up on were engineers, innovators in the truest sense of the word.

It was not uncommon for them to work for companies founded by a person with a clever idea who patented the invention, who then obtained venture capital funding to build a company to bring that technology to the marketplace.

Some of the companies succeeded and some did not, but for those that did they created high-paying jobs for families like mine, and in some cases new products and services that revolutionized the world and the way in which we live.

Seeing this process up close and personal left a lasting impression on me while I was growing up. I wanted to contribute and to enable others to contribute to innovation. It is why I studied elec-

trical engineering and computer science, and later intellectual property law, with the goal of representing innovative companies.

While working at MIT's Artificial Intelligence Laboratory and HP's research laboratory as a computer programmer, I witnessed innovation at its inception. It was an exciting experience I'll never forget and one that still informs my work to this day.

Later as an attorney, I worked on patents and patent strategy for a then-small company that grew into a Fortune 500 corporation in the span of eight short years. Along the way, we built the company's patent portfolio from a few handfuls of U.S. patents to over 10,500 patents worldwide, and in the process I became acquainted with the many important services provided by the U.S. Patent and Trademark Office.

Through my experiences as in-house corporate counsel, and before that as a partner at a Silicon Valley law firm, I represented a wide range of innovators, from independent inventors to Fortune 500 companies. I came to understand and practiced many areas of intellectual property law and almost every aspect of patent law, including writing patents, asserting patents, defending against patent infringement, and licensing, buying, and selling patents.

I understand and appreciate from a business perspective the important value and uses of intellectual property for innovators and for our economy. During the past 3 years through my service on the U.S. PTO's Patent Public Advisory Committee, then as the agency's first Silicon Valley satellite office director, and now as Deputy Director, I have worked with a wide range of industries while gaining a first-hand understanding of the U.S. PTO, its strengths, challenges, potential and opportunities.

I have seen and worked with an impressive talent of the dedicated U.S. PTO team. It is clear to me how the U.S. PTO's work benefits our Nation's innovators. I believe that the U.S. PTO must remain focused on reducing the backlog and pendency of its patent applications while maintaining the highest level of quality of patents and trademark examination.

Given the increasingly global economy it is also imperative that American companies have efficient, cost-effective, and strong intellectual property protections overseas. In my current role, I have the privilege of working on many of these initiatives and, if confirmed, would continue to work on these important goals.

Finally, as with any large organization, I appreciate the need to both effectively manage and motivate the U.S. PTO work force. This is especially true of an organization that has more than doubled in size in the last 10 years in order to keep up with our Nation's innovation.

I believe that the intellectual property laws and the U.S. PTO play a critical role in advancing American technological competitiveness which is so necessary for our Nation's continued economic success. If confirmed by the Senate, I commit to bring to bear all my creativity, energy, and intellect to protect and strengthen the intellectual property system that has served our country so well. Thank you.

Senator CORNYN. Thank you, Ms. Lee.

Mr. Marti, your statement, please.

STATEMENT OF DANIEL HENRY MARTI, NOMINEE TO BE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR, EXECUTIVE OFFICE OF THE PRESIDENT

Mr. MARTI. Thank you, Chairman, and distinguished Members of this Committee. I am honored to have the opportunity to be considered by this Committee as the President's nominee to serve as the administration's Intellectual Property Enforcement Coordinator, or IPEC. I would like to thank the President for his confidence in my ability to serve in this important post, and I thank Victoria Spinell for her remarkable leadership and service during her time as the first IP Enforcement Coordinator.

This opportunity to serve my country is truly humbling. As many of you may recall from my last hearing a few weeks ago, I am a first generation American, born in Washington, DC, of Spanish and Chilean parents who came to this country speaking little English. My father, Enrique, chose to leave the seminary in Germany where he was studying to be a Jesuit priest so he could teach philosophy at a university in Washington, DC.

My mother, Patricia, has dedicated her life to making sure that my two sisters and I had the chance to follow our educational and professional pursuits wherever they would lead. Their sacrifices have allowed me to be here before this distinguished Committee today, and for that I am immensely grateful.

I would also like to thank my family, including my daughter, Elissa, and my son, Miles, and my wife, Lauren, who is here today, for her love and support.

I currently serve as a managing partner of the Washington, DC, office of Kilpatrick, Townsend & Stockton, which has one of the largest IP practices of any law firm in the United States. I have devoted the entirety of my professional practice to matters concerning intellectual property enforcement.

My clients included companies in the fields of technology, banking, consumer products, entertainment, media and sports, fashion and luxury goods, hospitality, food, beverage, and agriculture, to name a few. Through these, and other client representation, I have developed a deep and broad view of IP rights and IP policy.

If confirmed, I will work to achieve a thoughtful and strong intellectual property system that encourages innovation, creativity, and fair competition based on the rule of law. An effective intellectual property enforcement strategy must consist of a comprehensive and multi-faceted approach to this dynamic issue. An IP strategy should, for example, involve: sustained coordination among Federal agencies and enhanced sharing of information; focused diplomatic efforts, including engagement with trading partners; the use of trade policy tools and IP-related training and capacity building; private sector voluntary best practices to reduce infringement online and in conventional marketplaces; the adoption of technological solutions; consideration of new laws and regulations to the extent necessary to protect IP; and public awareness, education, and outreach.

I will work to promote our ongoing efforts to protect IP from unlawful infringement, both at home and abroad. These efforts will involve a broad range of stakeholders, including Congress, Federal agencies, the private sector, and public interest groups. Each of

these stakeholders and the views and positions they represent will be key resources for me in pursuing the goals of my office.

America's great spirit of innovation and creativity has been a primary driver of our economic growth and national competitiveness. IP intensive industries represent a substantial portion of our Gross Domestic Product and support millions of jobs.

IP is also critical to our balance of trade. Goods from IP intensive industries account for approximately 60 percent of all U.S. merchandise exports and about 20 percent of service exports. These figures are a point of national pride and we must continue to build and invest in an IP system that will continue to promote the growth of the American economy.

Congress, and Members of this Committee in particular, had the vision to create the IPEC position in order to elevate the coordination of IP enforcement issues across the United States, and indeed, internationally.

If confirmed, I look forward to building on the success and the momentum of the office. Thank you again for the opportunity to appear before you, and I look forward to answering your questions.

Senator CORNYN. Thank you, Mr. Marti.

We will proceed now with 5-minute rounds, alternating between the Republicans—the Majority and Minority, and we will observe the early bird rule.

Ms. Lee, in 2013, the House passed the Innovation Act, which the administration, as you know, supported. This past December, you testified about the continuing need to strengthen the patent system, including legislation aimed at patent abuses. Is that still your position? Here's the context for that. Of course, Senator Coons alluded to the fact that there's been ongoing decisions by Federal courts in this area. The basic question is, does that obviate, in your view, the need for Congress to act in this area?

Ms. LEE. Thank you, Mr. Chairman, for that very important question. Yes, I believe that there can, and should, be additional improvements to our legislation—to our patent system through legislation. Much has already occurred in recent years to strengthen our patent system, but certainly more can be done legislatively, judicially, and administratively.

The Patent Office is already working on many of these issues, including enhancing the quality of patents and working on a number of White House administrative actions. But the President has stated a need to pass additional legislative reform, and I support that. I look forward to seeing further reforms and working together with Congress and all of our stakeholders to strike meaningful and balanced improvements to our patent system that promote innovation.

Senator CORNYN. Well, at a time when there's a lot of differences between the political parties here in Washington, this seems to me to be one area, certainly among others, where the White House, where Republicans and Democrats, all agree we need to pass legislation, and I look forward to working to that end with my colleagues here first at the Judiciary Committee, then on the floor.

You testified in December about the popularity of post-grant proceedings and called for Congress—well, you called them a cost-effective, faster method of resolving the issue of patent validity. I

know you, as I'm sure you know, my office has heard concerns from a number of stakeholders about these proceedings.

Can you tell us about what you're hearing and your view of the criticisms, and are there reforms to post-grant proceedings you think that need to be made?

Ms. LEE. So thank you very much, Mr. Chairman. I've given a lot of thought to this topic, and in fact after I was sworn in as Deputy Director one of the first initiatives that I undertook at the PTO was to ask my team to embark upon a nationwide listening tour to evaluate these patent trial and appeal board proceedings. Those proceedings had been in effect for about a year and a half, and we had some experience under our belt. The public was very eager to hear about best practices when they appear before us and some of the rules and procedures, and the agency, and I personally, was very eager to hear what the public's reaction and feedback was on these proceedings and how we could improve them. So in April and May we conducted an eight-city nationwide listening tour and we've heard a lot of feedback. Those were very, very well-attended programs.

We also, at the end of the eight-city road show, put forth a request for comments. We put forth 17 different questions on all ranges of procedures and aspects of these patent trial and appeal board proceedings, and we also had a catch-all provision, which is, tell us anything and everything else you'd like to know on how we can improve these proceedings. We got a lot of input.

The deadline was extended to October and we got 37 written comments from bar associations, companies, and individuals. Some of the comments were very positive, some of them suggested room for improvement. The PTO is in the process of evaluating those comments very carefully.

Senator, if confirmed, I very much look forward to reviewing those comments and making the proceedings of the patent trial and appeal board even more effective, as Members of Congress intended when they passed that legislation in the America Invents Act.

Senator CORNYN. Thank you.

Mr. Marti, what do you see as the biggest IP enforcement challenges that confront us?

Mr. MARTI. Thank you, Senator. The threats to U.S. IP interests are immense and growing in both size and scope. The global nature of IP infringement is certainly an issue that has proven difficult to tackle. Certainly what we have been seeing in the news lately with cyber attacks that are sponsored by foreign governments also adds a level of complexity to our efforts to enforce U.S. intellectual property, the example I mentioned, trade secrets in particular.

Senator CORNYN. And indeed, the President alluded to that last night in his State of the Union and has spoken often, in light of the hacking of Sony recently in the news and the concerns about cyber security and intellectual property theft. This is a role that IPEC will play front and center, is it not?

Mr. MARTI. Yes. If confirmed, I intend to tackle this issue directly and I look forward to the opportunity to work with Congress, the administration, and other relevant stakeholders to address this issue.

Senator CORNYN. Thank you.

Senator Coons.

Senator COONS. Thank you, Senator Cornyn.

If I might just first, Mr. Marti, to follow up briefly on that point. To combat trade secret theft and misappropriation, do you think either civil remedies or criminal remedies are alone sufficient or could we benefit from having a broader tool kit of remedies?

Mr. MARTI. The effective—an effective IP strategy has to be a multi-faceted approach. So yes, generally I would support a larger tool kit. I think having U.S. law to address the issue of trade secret misappropriation at the Federal level would be important, important here domestically but also to show as a model or to use as a model, for example, in trade agreements, in bilateral and multilateral treaties, or to press individual countries to adopt similar laws so that the domestic and foreign IP will have a place to be protected overseas.

Senator COONS. I agree, and I hope we can make some great progress on that this year.

Ms. Lee, if I might, you talked about the patent trial and appeal boards and concerns about the process and outcomes in the broader community. In your view, why is the board finding that there is a reasonable likelihood so many patents granted by the PTO initially contained unpatentable claims?

Ms. LEE. So, Senator, I think the—I mean, the board takes a look at these matters on a case-by-case basis. I think probably what you're seeing is these are new proceedings and Congress very much intended for these proceedings to eliminate patents that should not have issued out of the U.S. Patent and Trademark Office.

So I think probably what you're seeing is some of the initial reaction to that. We are aware of the statistics but it does not guide the work of the Patent and Trademark Office. I mean, we call the judges on those panels, a three-judge panel, look at the facts of the case, look at the record before them, apply the facts and the case law and come to their conclusions.

And you've hired more than 200 administrative law judges in the last year alone. You have ramped up this process really very quickly. What I am pointing toward is the possible concern either that some of the ALJs need more relevant training and experience, the rules of the road need to be fleshed out a little bit further since this is largely new ground, or that there may have been an improvident grant in the first place.

So let me just turn to a last question, if I might, about stakeholder confidence in the system and the importance of patents when initially granted being as high-quality as possible to reduce litigation cost and risk and the challenges of post-grant review.

What are your plans, if confirmed, to ensure that patent quality is strengthened significantly in the first place upon initial issuance?

Ms. LEE. Thank you very much, Senator Coons, for that question. One of the top priorities, if confirmed, would be to really enhance the quality of the patents at issue out of the U.S. Patent and Trademark Office. We are at a very fortunate time.

I mean, thanks to the good work of Congress and the America Invents Act, you gave us fee-setting authorities, that we could set

our fees. Now, working with the appropriators, for the most part we have been able to keep most of the fees that we collect, provided they fall within our estimated amount.

So really for the first time in a very, very long time we are in a much more secure financial situation to take a very, very deep look at patent quality, and that is so very important.

I mean, we are hearing it from our stakeholders, we hear it from Members of Congress, and it is really the PTO's obligation to issue the very best quality patents that they can at time of examination. But, of course, we all know we have a certain period of time these patents need to issue, and over time, you know, oftentimes the marketplace determines which patents are the most important.

In those instances, if it is warranted to have a second look at the patent to determine if it was properly granted, that's why we have some of the post-grant review proceedings and that is also important to make sure that we ensure that those proceedings are fair to all parties.

Senator COONS. Thank you. As you know, I share your passion for ending fee diversion and ensuring the sustainability of PTO funding.

My last question. In your December confirmation you acknowledged that the legal landscape around patents is quite dynamic. There's been a lot of changes, Supreme Court decisions, judicially directed changes, the ongoing implementation of the AIA. Do you still agree that Congress should act carefully and cautiously before enacting additional legislative changes to our patent system?

Ms. LEE. I do believe that we still need legislative reform. As I, in response to Senator Cornyn's question—I mean, there are certain things that are absolutely appropriate and best handled by this body. There are other matters that can be handled by the PTO. Enhancing the quality of patents before they issue out of the office, that is clearly within our domain and that's something that I intend to focus on very concertedly, but there is a role and there is a need for additional legislation.

Senator COONS. Thank you, Ms. Lee. Thank you, Mr. Marti.

Senator CORNYN. Senator Hatch.

Senator HATCH. As Chairman of the Senate Republican High-Tech Task Force, I've been working with colleagues and stakeholders to develop an innovation agenda for the 114th Congress. Among my top legislative intellectual property priorities are patent control and trade secrets legislation, which as you know are critical to the continued success of the high tech industry.

My time is limited, so I would like to ask both of you to answer as quickly and shortly as you can. Mr. Marti, we must remain vigilant in protecting our Nation's critical infrastructure from cyber attacks. Equally important is preventing trade secret theft, which costs U.S. companies, and some in Utah, hundreds of millions of dollars each year in lost profits and sales. What are your plans to address trade secret theft?

Mr. MARTI. Thank you, Senator Hatch. Throughout my private sector experience I've worked with U.S. businesses to protect their trade secrets and I fully appreciate what is at stake. I am concerned that the pace of economic espionage and trade secret theft through cyber hacking, for example, appears to be accelerating.

It is essential that the IPEC office has a confirmed head at this important time, and if confirmed to run this office, I can assure you that I look forward to tackling this serious issue of trade secret misappropriation with you, and other Members of this Committee, to ensure that U.S. businesses' trade secrets remain safe and that the U.S. economy can continue to prosper.

Senator HATCH. How should Congress actually proceed in tackling trade secret theft by overseeing the whole valley of all these things and by foreign actors who are intentionally outside the jurisdiction of U.S. courts? How do we proceed in tackling those trade secret thefts?

Mr. MARTI. Senator, where the bad actor is outside U.S. jurisdiction, an issue that I've had to deal with repeatedly throughout my career, I believe the U.S. industry could strongly benefit from having Federal trade secret law in place that, as I mentioned to Senator Coons, can serve as a model in our trading, in our trade agreements, and pressing foreign governments to pass similar legislation that would protect not only their own domestic trade secrets, but U.S. trade secrets overseas.

Senator HATCH. Okay. Ms. Lee, Section 285 of the Patent Act was Congress' attempt to deter bad behavior in patent litigation. "Yes" or "no," do you agree that Section 285 has failed to achieve its objective?

Ms. LEE. Section 285, Senator, as I understand, pertains to the fee shifting and the payment of attorneys' fees. I think the statute alone is probably not enough. As we can see, there are judicial changes that are under way and being considered. And I know in the 113th Congress it was a topic of very important discussion, and I think going forward it would be beneficial and helpful to consider those issues, along with all others, and weigh all factors as we determine what is appropriate for impactful and balanced patent improvements.

Senator HATCH. "Yes" or "no," do you believe that Section 285 needs to be amended in order to deter abusive and meritless litigation?

Ms. LEE. I think considering the amendment of 285 is a topic that needs to be discussed and needs to be considered with our stakeholders in light of all the changes that are occurring to make sure we get it just right and we incentivize our innovative companies to invent, yet we also allow patent rights holders to have the ability to enforce their rights when they need to, when they have legitimate patent rights.

Senator HATCH. Can you give me a "yes" or "no" answer whether you agree the Supreme Court's cases in *Highmark* and *Octane Fitness* do nothing to ensure the recovery of fee awards from insolvent shell corporations?

Ms. LEE. So I think we're still evaluating the impact.

Senator HATCH. Do you think they do anything?

Ms. LEE. It increases the discretion for district courts to award attorneys' fees and we'll have to evaluate. I would very much welcome working with Members of Congress and listening to our stakeholders if that's enough.

Senator HATCH. Well, what are your plans to ensure that employees who are working at home are skillfully examining patent

applications? For me, this shouldn't be a numbers game. The focus should be on properly issued, high-quality patents.

Ms. LEE. Yes. So thank you very much, Senator, for the question. I take it you're referring to some of the time and attendance issues that the U.S. Patent and Trademark Office has been dealing with and addressing in the past.

Let me just say that my senior management team and I take any kind of time and attendance abuse very seriously, but we have taken a whole bunch of initiatives since some of those matters came to our attention to make sure that all of you and the members of the public have complete confidence in our operations.

We've done things like train our examiners on the time and attendance rules, we've brought in the National Academy for Public Administration to review all of our procedures and policies and controls. I look forward to receiving a copy of that report on recommendations and best practice and I look forward to sharing that with Members of Congress. I believe you will also get a copy.

We have also established cross-bureau business unit programs where we're looking at preventing abuse and intervening early and reviewing the entire employee discipline process so that we can make sure that we're applying the processes and the rules consistently. So we've done a lot and I look forward to doing much more, if confirmed.

Senator HATCH. Thank you, Mr. Chairman. Thank you.

Senator CORNYN. Thank you, Senator Hatch. I would advise my colleagues, we have been informed that we will shortly have a series of seven votes on the floor of the Senate, which obviously is an interruption of what we're trying to do here.

My goal would be to see if we could move through this first panel and then save the second—adjourn, or recess, I should say, and then come back to the second panel of nominees. Certainly any Senator is free to stay as long as they want without missing votes, but consider possibly submitting questions in writing that would be then responded to later.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Ms. Lee, congratulations on your nomination. Last year, the Supreme Court issued a number of patent-related rulings. Those decisions, including the Court's decision of *Alice Corporation v. CLS Bank*, seemed to tighten the requirements for obtaining certain patents and made it somewhat easier for people to challenge the validity of patents.

At the same time, we have seen reports of a drop in the number of new lawsuits being filed by patent holders for infringement. Some commentators have suggested that this drop in filings is, at least, in part, responsive to the Courts' decisions.

Based on your experience at PTO, do you think that's true? What other factors may be contributing, and to what extent, if any, do you see these developments helping Main Street retailers affected by abusive litigation practices?

Ms. LEE. So, thank you very much, Senator, for your question. *Alice v. CLS Bank* came down fairly recently, so we are all—I think all of us, the courts included, are in the process of evaluating that. The U.S. PTO—I mean, our job is to apply the laws as enacted by

a Congress and as interpreted by the courts. And I think, as you know, we issued guidance recently on patent-eligible subject matter. As we speak now we are having a stakeholder outreach session to get input on the guidance that we've provided.

You know, as far as what effects the filings at the Patent and Trademark Office, there are so many variables. I mean, many of them are macroeconomic; it depends upon the economy, it depends upon business incentives. In the business world—I know, I was on the other side—it depends upon business strategies, and part of it depends upon the laws and the PTO guidance that we issue.

I guess I would say that, if confirmed as director, it would be my job to make sure we issue as clear of guidance as we can on issues like patent-eligible subject matter so that our examiners know exactly how to examine these applications to the best that we can, faithfully applying the law, and the public also has some concrete guidance as well so that they can make really smart business decisions and allocate their precious R&D dollars and precious legal budgets, as appropriate.

Senator FRANKEN. So you do not have an opinion one way or the other on the effects of court decisions, recent court decisions, on the slow-down of these filings?

Ms. LEE. We've seen slight slow-downs but it's hard to—I mean, there's so many factors involved. Part of it could be *Alice Corp. v. CLS Bank*, but that was relatively recently enacted—or, you know, handed down from the courts. A lot of it can also be macroeconomic issues.

Senator FRANKEN. Okay.

Ms. LEE. But it's something that I know our folks at the CFO's office at the PTO are monitoring closely and our patents team are monitoring very carefully.

Senator FRANKEN. Okay. I'll go from a very specific question to something more general. One of the reasons that has been cited for supporting your nomination is the work that you have done as Deputy Director of the U.S. PTO to address problems of patent trolls. Would you explain how you define a patent troll as distinct from a legitimate patent holder needing to enforce his or her rights?

Ms. LEE. I think many people have many different definitions of what a patent troll is. What I find most productive is to focus on the behavior and curtailing abusive patent litigation. If the abusive patent litigation occurs from an operating company, that is unacceptable behavior and that should be curtailed. If it occurs from a non-practicing entity of any sort and it is abusive, that sort of behavior should be curtailed.

Senator CORNYN. Colleagues, the votes have begun.

Senator FRANKEN. Well, thank you very much. I will go vote.

Senator CORNYN. Senator Perdue.

We are going to try to give Senator Perdue and Senator Tillis a chance to ask their questions before they have to leave to vote.

Senator PERDUE. I'll be very brief then. Thank you, Mr. Chairman.

Congratulations to both of you on your nominations. You know, our economic miracle is fundamentally founded on three capabilities that we have in the United States: our ability to innovate; our

ability to form capital; and our rule of law. The rule of law really helps us protect individual property rights.

Ms. Lee, I'd love for you to talk a little bit more about finding the balance. You have spoken often about these two competing issues, abusive litigation practices and the rights of legitimate patent holders. What do you plan to do as a Director of PTO, and what can we do as a legislative body to help you find that balance?

Ms. LEE. So that's a topic that I give a lot of thought to, Senator Perdue. Coming from the business world, I understand the very fragile and delicate balance. It is absolutely right to strike that right balance. It is not a single point, but it is probably a range.

I think we just all need to work together and we need to put the interests of the overall patent system ahead of personal interests, you know, companies and individuals, what is right for the patent system not just for me now and today, but what is right for our patent system, what is right for this country now and in the long run so that we continue to maintain the strongest economy of innovation incentivized by intellectual property.

I gave a speech on this and it is something that I feel very, very deeply about. I am a beneficiary of our economic innovation economy and it is something that I hope my daughter has the benefit of having in her generation and subsequent generations. So I would ask that all of our stakeholders, and all of us, to work together to strike that right balance.

Senator PERDUE. Thank you.

Mr. Marti, you've spoken often, I think even in your December 10 testimony, about how volunteer initiatives are really critical in finding the balance of combatting piracy and fraudulent practices. You have also talked about coordination of all the stakeholders.

Can you tell us, briefly, a little bit about the steps that the IPEC is taking, and can take, in this area and what additional work you think is required?

Mr. MARTI. Thank you, Senator Perdue. The office had previously worked on five very important voluntary initiatives. They largely tackled following the money—advertising, revenue, payment processing—to these rogue websites. If confirmed, I look forward to assessing how these existing voluntary initiatives are working and where they can be improved.

I also look forward, if confirmed, to thinking of some enhanced enforcement strategies for this digital age. As we've been talking about today, this is a global issue and we need to make sure that we can combat piracy and counterfeiting domestically and overseas, and voluntary initiatives is a good place to start where we can bring in the private sector to think about some of these issues and use the IPEC office as a convener to bring some new solutions and thoughts to the table.

Senator PERDUE. Thank you very much.

Thank you, Mr. Chairman.

Senator CORNYN. Thank you, Senator Perdue.

Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman.

Ms. Lee and Mr. Marti, congratulations on your nomination, your impressive academic credentials, and your professional careers.

I will just be very brief. I will just ask maybe the questions and let you each respond, in the interest of time.

Ms. Lee, one question that I have. We obviously cooperate with other countries with respect to protecting patents and intellectual property, but what kind of assurances can you give us that we can step up our efforts, particularly to some of the jurisdictions that seem to be the most problematic now that do not fall under any trade agreements or other intervening frameworks that may be able to stop what we think is a dangerous through to our intellectual property and patent rights?

And then, Mr. Lee, I was kind of curious to what extent—Mr. Lee? Mr. Marti. Mr. Lee, you can answer the question, too.

[Laughter.]

Senator TILLIS. You seem to be busy with your daughter right now, who is very good with a Smartphone.

[Laughter.]

Senator TILLIS. But no. Mr. Marti, I was curious, to what extent would IPEC get engaged in advising the administration with respect to these sorts of issues in trade agreements, the pending trade agreement with Europe, the TPP, and potentially other countries that we have not yet gotten there with? Ms. Lee, you can go first.

Ms. LEE. So, Senator Tillis, thank you very much for the question to address the issue of international priorities. Having come from the business world I recognize that there are precious few American companies who make a product or offer a service and intend to offer that product and service only within the United States.

I mean, in this age of Internet where you can just as easily sell your product to a town in Texas or to some country overseas in Asia, I mean, the world in which you just file a U.S. patent and that is all you need is long gone. So one of the top priorities of mine, if confirmed, would be to make sure that we have an international IP system that is conducive to the export of American products and services. That is what we need to thrive in this global economy.

In the past year, I have spent, and the team at the PTO has spent, a lot of time and energy working on issues such as international harmonization. If our American companies who are looking to get intellectual property protections overseas, right, more countries than just the United States, they need to be able to do so efficiently, cost-effectively, and without a lot of duplication.

Each of our patent systems grew up in its own country and they all have their own filing requirements and they all have their own rules. That is a tremendous opportunity. It's the low-hanging fruit. By working on those harmonizations, procedural and substantive, I mean, we save our companies money and they get protections that they need more quickly. So that would be an emphasis and a priority going forward, if confirmed.

Mr. MARTI. Thank you, Senator Tillis. The enforcement of IP rights, as you alluded to, is certainly critical to the U.S. economy. When the IPEC position was created in 2008, it was done so to coordinate IP enforcement and IP policy throughout the Federal Government.

If confirmed, I look forward to working with the USTR and other relevant stakeholders within the Federal Government to push for the inclusion of strong intellectual property rights in our trade agreements and otherwise press foreign governments for the respective U.S. intellectual property.

Senator TILLIS. Thank you both.

Senator CORNYN. The Committee thanks both of the nominees for their appearance today before this hearing, and thank you to your families for supporting you.

We are now going to let you go and we will stand in recess until the votes on the floor conclude, and then we'll return and go forward with the second panel of nominees.

[Whereupon, at 3:26 p.m., the Committee was recessed.]

[Whereupon, at 5:14 p.m., the Committee reconvened.]

Senator CORNYN. We will at long last reconvene this nominations hearing. As I told each of the nominees, our apologies to you and your families. Unfortunately, when the Senate starts voting, if you are going to be doing your job, you have to go down there and vote and you don't have as much control over your life as you do on the bench. So, that is one great benefit to your line of work as opposed to ours.

I will introduce three of the nominees and then turn it to Senator Lee to introduce the nominee from Utah, and then we'll proceed.

STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS, INTRODUCING HON. ALFRED H. BENNETT, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; HON. GEORGE C. HANKS, JR., NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; AND HON. JOSE ROLANDO OLVERA, JR., NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

We have, of course, four nominees for the Federal bench: three for the Southern District of Texas, and one from Utah.

Judge Alfred Bennett is a presiding judge of the 61st Civil District Court in Harris County, Texas. He worked for many years in private practice at Fulbright, Jaworski, Solar & Fernandez, and as a sole practitioner. He has also taught law.

Judge Bennett graduated from the University of Houston and earned his JD from the University of Texas School of Law.

Judge George Hanks, Jr., serves as U.S. Magistrate Judge for the Southern District of Texas. He graduated first in his class from Louisiana State University and earned a JD from Harvard Law School and an LLM from Duke University School of Law.

Judge Hanks began his legal career as a law clerk in the Southern District of Texas and spent a number of years in private practice. He served as judge for the 157th District Court and as justice for the Court of Appeals for the First District of Texas.

Judge Jose Rolando Olvera, Jr., serves as a State district judge in the 445th State District Court of Texas, and as presiding judge of the Fifth Administrative Judicial Region in Cameron County, Texas, a job actually I used to have as the presiding judge of the Fifth Administrative Judicial Region. He graduated from Harvard

University and earned his JD from the University of Texas School of Law.

Judge Olvera worked for years in private practice as a State district judge in Cameron County and as a part-time municipal judge in Brownsville. I was told that Congressman Filemon Vela would be here; maybe because of the erratic schedule he is not here right now, but I understand he is a childhood friend of Judge Olvera. Of course, we will enter a statement from Congressman Vela into the record in support of his nomination.

Senator CORNYN. Each of these three Texas nominees are lawyers of the highest caliber and the kind of individuals who should serve on the Federal bench. I'm sure the Utah nominee is, as well. But I happen to know, by virtue of our Federal Judicial Evaluation Committee, that Senator Cruz and I appoint, our bipartisan committee, that each of these nominees have been through that process and I have confidence in each of them and support each of their nominations.

I am proud of the good work that the Federal Judicial Evaluation Committee has done. I want to express my gratitude to the White House counsel for their constructive engagement with us on each of these nominations.

At this point let me turn it to Senator Hatch and Senator Lee for any comments they would care to make about Judge Parrish.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, INTRODUCING HON. JILL N. PARRISH, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman. I share your opinion of these three judges from Texas. I am pleased today to introduce to the Committee an outstanding nominee to fill the vacancy on the U.S. District Court in Utah.

Justice Jill Parrish currently serves on the Utah Supreme Court. During her 12 years on our State's highest court she has participated in approximately 900 cases that resulted in a written opinion. She is well-known, widely respected in the Utah legal community and elsewhere, and I am certain that she will be a great asset to the Federal bench.

Mr. Chairman, I have participated in the appointment of three-quarters of the judges who have ever served on the U.S. District Court in Utah. That experience has given me a sense, both personally and professionally, of the kind of individual who will serve well on the Federal bench.

That experience gives me every reason to strongly recommend Justice Jill Parrish for this appointment. I know her personally, I know her family, I know what a great human being she is. The United States has the most respected, most independent judiciary in the world.

We expect our nominees to the Federal bench to have a record of accomplishment in their chosen areas of legal expertise. I am struck, however, at how Justice Parrish has done this in so many areas to bring such a broad range of experience to this appointment.

She has established a record of excellence both before and behind the bench in both State and Federal court, in private and public sectors, and in both trial and appellate courts. The American Bar Association unanimously gave Justice Parrish its highest "well qualified" rating.

Here is how the ABA describes what it takes to get this rating: "The prospective nominee must be at the top of the legal profession in his or her legal community, have outstanding legal ability, breadth of experience, and the highest reputation for integrity, and demonstrate the capacity for judicial temperament." I think that basically says it all—and it certainly applies to Jill Parrish.

I want to thank Senator Lee, who is not only my colleague on this Committee but also my partner in representing our great State and in recommending the best candidates for judicial appointment. We both agree that Justice Jill Parrish is a great nominee to the U.S. District Court. I strongly recommend her swift and unanimous confirmation and I just want her to know that we are extremely proud of her, extremely proud of the life she's lived, the family she is raising and has raised, and her exceptional ability in the law and as a judge. I could not be more pleased with the nominee than I am with this really, really good woman jurist who has made such a name for herself not only in Utah, but around the country as well.

Thank you, Mr. Chairman.

Senator CORNYN. Senator Lee.

OPENING STATEMENT OF HON. MICHAEL S. LEE, A U.S. SENATOR FROM THE STATE OF UTAH, INTRODUCING HON. JILL N. PARRISH, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH

Senator LEE. Thank you, Mr. Chairman. Thanks to all of you for joining us today. I just want to echo the words of my friend and colleague from Utah, Senator Hatch. This is a good day for Utah, a good day for the Federal judiciary. This seat and the filling of it are really important to me, for a couple of reasons. First, the seat to which Justice Parrish has been nominated is one that has been occupied by Judge Benson.

Judge Dee Benson has served in this seat since the early 1990s and I clerked for him right after I finished law school. He is a judge of extraordinary character and talent. He is someone who served in various capacities here in the Senate and served as a Deputy Assistant Attorney General, also as U.S. Attorney in Utah. He was an outstanding employer and has been a mentor and a friend to me throughout my career.

Second, because of that, because of who held that seat, we wanted to make sure that whoever filled this seat was someone of extraordinary talent, someone up to the task, up to filling the shoes of Judge Benson. I could not be more thrilled that the person to fill that slot, the person nominated to fill that slot, is Justice Parrish.

Justice Parrish and I had adjacent offices to each other while we were both at the U.S. Attorney's Office. She served at the U.S. Attorney's Office from 1995 to 2003 and finished that job as head of

the Financial Litigation Section within the Civil Division of that office.

She had distinguished herself by that time as an extraordinary litigator. Between that and her private practice at one of our State's premier law firms, the firm formerly known as Kibble Parr that has had many name changes since then, largely because its named partners keep being named to high judicial positions within our State.

Justice Parrish has served alongside my brother Tom, who serves on the Utah Supreme Court. The two of them work well together. I figure anyone who can work well with my brother and get along well with him is well prepared for the Federal judiciary.

Jill Parrish is a friend to all who know her and is a credit to her profession, to the legal profession and to jurists everywhere. I am honored to support your nomination. Thank you.

Senator CORNYN. Thank you, Senator Lee.

Let me ask the nominees to please stand and raise your right hand to be sworn.

[Nominees are sworn in.]

Senator CORNYN. Thank you. Please have a seat.

I have a few, very general and relatively brief questions, although I had to think, Justice Parrish, about the definition I heard one time of an appellate judge, of which I used to be one: It is a person who hides in the hills while the battle rages below, and then when it's over, swoops down to kill the wounded. That was a judge joke.

[Laughter.]

Senator CORNYN. That was a little judge humor, I guess.

Senator HATCH. It could only come from Texas, is all I can say.

Senator CORNYN. But obviously you're getting down into the fight from the appellate bench, back down into the trial court, which I always found was a lot more fun and entertaining anyway.

But what I might do first, starting with Judge Bennett, would you mind introducing your family and friends who you brought here with you and we'll go down the line and give you that opportunity? This is a big day for them, too.

STATEMENT OF HON. ALFRED H. BENNETT, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

Judge BENNETT. Thank you, Senator. Thank you to Chairman Grassley and to Ranking Member Leahy for scheduling this Committee hearing, and thank you to the Members of the Senate who are appearing here today. And thank you especially to Senators Cornyn and Cruz for their recommendation to the President of the United States on my nomination to the Federal bench. And, of course, thank you to the President of the United States for this great honor, the greatest honor of my professional career.

Today I have the privilege of having my wife of 20 years, Tanyel here with me today, along with our sons, Charles and Shane. Charles is a Life Scout, one from Eagle. Shane is a Tenderfoot and active in their Boy Scout troop. My mom, Cora Whitlock, is here, as well as my sister Yolanda Babels, and brother Darryl Bennett, all from Texas.

Mr. and Mrs. Matthew Washington, friends, and their son and daughter are joining us as well. I am also very honored to have my two best friends from law school here, Jeff Sands, who is an attorney with the Department of Justice, and Theodore Marcus, with the Federal Communications Commission.

I'd like to also thank the Harris County district judges with whom I serve. Their leadership, their counsel to me during my career on the bench has been very important in me reaching this point.

Of course, I could not go far without thanking the staff of the 61st District Court, the best court staff in the State of Texas. Their support has been instrumental in my success on the bench and I want them to know how much I appreciate it.

I would like to thank my father, who could not be here today, as well as my brother Brent who is not here, and to all of my family and friends in Houston and in Ennis who are watching this via the webcast. With that, I'm prepared to answer any questions that the Committee may have.

Senator CORNYN. Thank you, Judge.

Judge Hanks.

STATEMENT OF HON. GEORGE C. HANKS, JR., NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

Judge HANKS. Mr. Chairman, Members of the Committee, thank you so much for the opportunity to appear before you this afternoon. Thank you to Senator Grassley for scheduling this hearing, and to President Obama for nominating me to serve my fellow citizens as a district judge. It is truly an honor and a privilege, and very humbling, to be here in this place before you where many years ago I started my journey into public service, working for this institution as a young Senate page.

Thank you, Senator Cornyn and Senator Cruz, for your kind words of support. The confidence that you have placed in me to serve the citizens of our great State of Texas, and this country, and for recommending me as a district judge to the President.

I would like to introduce you to the very special people in my life who are here with me this afternoon whose constant love and support has brought me here today.

To my right is the love of my life, my wife of 20 years, Stacy Hanks. Stacy is a social worker back in Texas. Directly behind me is the man who is, and always will be, my hero, my dad, George C. Hanks. My dad is retired and he is a U.S. Air Force veteran.

My mother was a school teacher. She passed away a few years back, but her hopes and dreams live on through me here this afternoon. I know that she is here in spirit, looking down on these proceedings with inexpressible pride.

Also watching the webcast of this proceeding are my brother, Kendrick Hanks, and my sister-in-law, Lily Hanks, and their son, Kendrick, Jr., who is watching these proceedings with his classmates still at Abbott Elementary School in Garland, Texas. Also, my niece Elise Ann, who is also watching these proceedings with her classmates at Coral Middle School in Garland.

Also here with me is a dear friend of mine, Gabarro Smith, with the U.S. Attorney's Office. Watching on the webcam are my law clerks and my colleagues in the Southern District of Texas, who all represent the very finest in public service. Thank you, sirs, for your patience. I look forward to answering your questions.

Senator CORNYN. Judge Olvera.

STATEMENT OF HON. JOSE ROLANDO OLVERA, JR., NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

Judge OLVERA. Thank you, Senator Cornyn. It is a distinct honor for me to be here today, especially among such distinguished colleagues. I congratulate them on their nomination. I do want to take this opportunity to thank you, Senator Grassley, Senator Leahy, and every Member of this Committee for their support and their agreement to have this vote today.

I would like to thank Senator Cruz and Senator Cornyn, yourself, for recommendation to the President. I'd like to thank the President for his nomination. I, additionally, would like to thank the Federal Judicial Evaluation Committee formed by Senator Cruz and Senator Cornyn for their recommendations to the Senators. It was my privilege to meet with the Senators last year and I thank them for every step of the process.

I would note that I would like to thank Congressman Vela for his introduction in the record. I would like to acknowledge my wife and friend that I have here today, the love of my life for approximately 16 years, is Rita. She's behind me today. And my dear friend from South Texas, Bobby Garcia, is here today.

I would also like to acknowledge my family down home watching via webcast. My foundation and reason for being here are my parents, Rolando and Venilia Olvera. I am also very fortunate to have loving in-laws, Rita's parents, Bruno and Rita Salvaletta. Our pride and joy for both grandparents and parents are our children, Rolly, III, and Catarina. I would also like to acknowledge my brother and his family, Renee and Dr. Michelle Olvera in San Antonio, and their two children, my sister Claudia and Garrett Cobbs of Houston and their two children. Their family support has been invaluable.

My working family is in many ways just as important. I must mention my thanks to the 445th State District Court staff. Thank you for all your hard work in making me look good. Likewise the Fifth Region Administrative staff of Texas, thank you for all your hard work, in addition to the staff at OCA.

I would be remiss if I did not mention my judicial colleagues in South Texas and all of the presiding judges in South Texas. It is a distinct honor to work with every one of you.

Last, I would like to thank all of my friends and supporters in South Texas and I thank them for their support. Once again, I look forward to answering your questions, and it is an honor to be here today.

Senator CORNYN. Thank you, Judge Olvera.

Justice Parrish.

STATEMENT OF HON. JILL N. PARRISH, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH

Justice PARRISH. Thank you, Senator Cornyn and Members of the Senate Judiciary Committee. It is a real pleasure to be here with you today. I particularly want to thank Senator Hatch and Senator Lee not only for those kind words of introduction, but for your support and the confidence that you have placed in me in recommending my name to the White House for consideration. You have championed my nomination and I know that I would not be here today without your support.

I also want to thank my judicial colleagues on the Utah Supreme Court. I have learned much from them and, frankly, that will be the hardest part of this process for me, is to say goodbye to wonderful colleagues from whom I have learned so much.

Finally, I want to thank my family for their love and support and introduce them to you. I have my husband and three of my five children here. My husband, Blake, is right here. He has been stuck with me for the last 26 years. I also have my oldest daughter Brooke, who is back there on the second row. My babies—and they're not babies anymore—are my twins, Jacqueline and Adrienne, who are both 15 years old and sophomores at Woods Cross High School.

Then, my second daughter, Lindsay, is a sophomore at Utah State University and was unable to attend because of academic responsibilities. My only son, Zachary, is a senior at Woods Cross High School and he was unable to attend because he has a varsity basketball game that he has to play in tonight. So we made a deal. He is watching this via webcast and I hope to be able to tune in to his basketball game tonight via a similar kind of technological innovation that they now have going on the high school basketball circuit in Utah.

My one regret is that my parents are not here to share this occasion with me. They were members of the greatest generation. In fact, had they been alive they would have been 100 years old and 101 years old, respectively. They were my biggest fans. They launched me and I know that they are with me here today in spirit. Thank you again very much. I, too, look forward to answering your questions.

Senator CORNYN. Thank you very much, Justice Parrish.

We will have 5-minute rounds. But given the lateness of the day and our familiarity with the nominees, I think it will be somewhat informal and sort of general. But I would just ask each of the nominees to talk to us a little bit about your judicial philosophy and the role that judges play in our Government. Do you view yourself as somebody who is sort of by-the-book or do you feel like you are a roving doer of justice and have some flexibility in terms of what your role is to achieve the results that perhaps you think are most just in any circumstance? Talk to us a little bit about that. Judge Bennett, please start.

Judge BENNETT. Thank you, Senator, for the question. I believe that my judicial philosophy has been reflected in my past 6 years on the bench, and that has been a fair and impartial administrator of justice, to follow the rule of law, to follow binding precedent of

the Texas Supreme Court, and of the applicable appellate courts that I report to.

If I am confirmed by the Senate, I believe that that would switch to the U.S. Supreme Court in the Fifth Circuit. So for my judicial philosophy, it's been an impartial administrator of the rule of law and to follow binding precedent.

Senator CORNYN. Judge Hanks?

Judge HANKS. Thank you, Senator. My judicial philosophy is philosophy that I followed as a State district judge, an appellate judge, and now as a magistrate judge, which is to honor the oath that I have taken as a judge to treat every party that comes before me fairly and justly under the law, and with dignity and respect, to always follow the precedent that's binding in front of me, and in everything I do, both my personal life and on the bench, to maintain the integrity of the legal justice system and the confidence that people in this country have placed in the judiciary.

Senator CORNYN. Judge Olvera?

Judge OLVERA. Thank you, Senator Cornyn. My judicial philosophy for the approximately past 12 years as a State district judge has been consistent. It is a combination of four crucial elements: (1) to adhere to a duty to administer and enforce the rule of law; (2) to maintain an unwavering demeanor of courtesy and respect to any and all before my court; (3) to adhere to a work ethic of moving the docket quickly and efficiently; and last, a goal of rendering a fair, consistent, and sagacious ruling in every single case.

Thank you, Senator Cornyn.

Senator CORNYN. Justice Parrish?

Justice PARRISH. Thank you, Senator.

I believe that my judicial philosophy has also been reflected in my last 12 years on the bench, and I would say that it encompasses 5 main principles.

First, treat all parties and attorneys who appear in front of me with courtesy, dignity and respect.

Second, afford all parties procedural fairness.

Third, maintain an open mind until the issues are fully presented.

Fourth, work hard and always be prepared. And I can assure you that in the 12 years that I've been on the Utah Supreme Court, I have never taken the bench without being 100 percent prepared and having read everything that the parties have submitted.

And five, uphold the rule of law by following the statutory text and applying precedent. There is no room for a judge to come to the bench with a personal agenda.

Senator CORNYN. I have one last question during this round and then I'll defer to my colleagues. I worry that our civil justice system is so expensive and so time consuming that it precludes access for many citizens who have legitimate grievances they need to get resolved but they cannot afford a lawyer to represent them, or only in some cases, for example, where there is a serious injury or a wrongful death where a contingency fee agreement might be appropriate can they gain access to court.

The time it takes to resolve those differences not only runs up the cost but may be as effective a bar to justice as a locked front door to the courthouse. I would just be interested in your thoughts

and maybe reflections on some of those challenges in our civil justice system, starting with Judge Bennett.

Judge BENNETT. Senator Cornyn, as a former district court judge and supreme court justice, you know that the most important thing that you can give litigants before you are timely rulings. I believe that if you move cases efficiently you cut down on the costs associated with litigation. I have always striven to make sure that my cases were being moved efficiently, that rulings were prompt to allow litigants to move the cases through the system.

In addition, I think it is very important that you meet with the litigants and the attorneys as soon as possible to get an estimate of the potential for a trial setting such that you can give a realistic time for a docket control order or when the case may come to trial. With those rules in place, I think you lowered the cost of litigation and you make the system a lot more efficient.

Senator CORNYN. Judge Hanks?

Judge HANKS. Senator, I also share the concerns about, with the growing caseloads, making sure that the courts are accessible to all people that desire to have their cases heard. In that regard, I believe that the judges and the courts play a critical role in that and how we manage the cases.

As a judge, as a district judge and then now as a magistrate judge, the way that we handle that is, first, to establish reasonable deadlines, working with the parties to get the case ready for trial as quickly as possible; as Judge Bennett mentioned, having prompt rulings on all motions that are before the judge in the court; also scheduling alternative dispute resolution as necessary, and then, of course, in the Federal courts, utilizing your magistrate judges as effectively as possible.

Senator CORNYN. Judge Olvera?

Judge OLVERA. Thank you, Senator. I concur with my colleagues. I truly believe that a judge must be actively involved in every case in setting very strict deadlines, both procedurally and in terms of timeliness. I have always, over these past 12 years, maintained very strict scheduling orders. My civil pre-trial order is infamous at the courthouse in terms of its strictness and severity.

In summary, I believe the more you require the attorneys to work on a case and work together on a case, both in terms of discovery, exchanging of exhibits, preparing for trial, the more likelihood it is either going to settle and/or, if we need to go to trial, run a very quick and efficient trial without any delay. Once again, it is incumbent of the judge to be actively involved form the commencement to the end in order to promote the trial or settlement, and I believe in that.

Senator CORNYN. Justice Parrish?

Justice PARRISH. Thank you. I agree with my fellow nominees in terms of the importance of judicial involvement in case management from the outset of a case. I also would like to add that I think it is important to carefully consider and timely rule on dispositive motions because if those are appropriate and can be granted, that can also help to decrease the time and expense associated with getting a case to a final resolution. And, of course, a timely ruling by the trial judge is equally important.

Senator CORNYN. Senator Hatch.

Senator HATCH. Well, I am impressed with you Texan judges, there's no question about that. I think that you have a great champion here in Judge Cornyn, who is a tremendous asset to this Committee. So, I commend each of you and I feel you are going to make very good judges on the district court bench. As someone who tried a lot of cases in Federal court, among some very interesting judges, by the way, both—in Pittsburgh, we had Judge Wallace Gourley, who was a law unto himself, but brilliant. The same thing in Utah with Judge Willis Ritter, who was a law unto himself, brilliant as could be, and very erratic in some of the things he did. But I always got along with him.

You judges bring things to the court, to your respective courts, that I think are going to be very, very good. I have known Jill Parrish for a long time—Justice Parrish. I have nothing but the best respect for her and her ability and capacity to be a district court judge. I will ask one question of you, Justice Parrish. That is that, you know, the Committee sees nominees all the time who currently serve as trial judges and who are nominated to the appellate level. We see that.

But here we have you, an appellate judge, who is nominated to the district court level to preside over individual trials. I would just appreciate your perspective on two things: (1) What are some of the important characteristics or qualities that both trial and appellate judges must have, and (2) What do you anticipate are some of the differences between your current role as an appellate judge and your upcoming role as a trial judge?

Justice PARRISH. Thank you, Senator. You are correct that my career path is a bit atypical in that I am going from an appellate bench to the trial bench. But the truth is that I spent the first 18 years of my legal career primarily in the district court and I really miss the courtroom. I believe that the skills that I have developed not only during the 18 years that I spent primarily in the trial courtroom, but also during the last 12 years on the Utah Supreme Court, will serve me well on the district bench.

They really both involve the same skill, and that is of applying the law to the facts. While there are some differences in terms of the fact that appellate courts have the facts already determined, trial judges, of course, are involved in overseeing the jury and the jury has the role of finding the facts, but I believe that the skills and the decisionmaking process is very similar.

One of the new challenges, of course, will be in actually moving cases along and in the case management aspect, but I believe that the skills I developed while I was a trial lawyer will serve me well in that regard, and that is an area where I can quickly come up to speed.

Senator HATCH. Well, thank you. I am very proud of you and look forward to your working in this very, very important area because this is where really a lot of things are decided right on the trial level and it takes really good, honest judges to do that. I just want you to know I have every confidence you'll be one of the best judges in the country, as I do with these other gentlemen as well.

But thank you for being willing to do this. I know that being a justice on the Utah Supreme Court is a very high honor in and of itself. But I am grateful that you're willing to get back to the dis-

trict court level where you worked for many years, and I know you'll do a great job.

Justice PARRISH. Thank you.

Senator CORNYN. Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

I'd like to hear your thoughts on an issue that Justice Parrish referred to a minute ago, which is dispositive motion, the role dispositive motions play in a Federal trial court. It has been my view, or, at least, a fear of mine, that there might be a natural tendency in any trial court for a judge to engage in what I sometimes refer to as trial by attrition.

In other words, when you're faced with a dispositive motion, I would think there would be a natural temptation to want to deny the motion in a close case. It is easier to deny. Usually there is a shorter order involved if you deny the dispositive motion. There's not an appeal that will immediately follow if you deny the dispositive motion. Because of all these factors, it's just a lot less work and a lot less risk to the judge and there's a lot greater likelihood that the case will just go away, it'll just settle along the way.

So how do you protect against that? How do you protect yourself against that, against this natural tendency that I think all humans would have in that circumstance? Why don't we start with you, Justice Parrish, and then move down to the others?

Justice PARRISH. Thank you, Senator Lee. And I do agree with you that litigation is very expensive and it is not a good thing when motions that ought to be granted are denied because trial judges are afraid to take a stand and make a decision. But I would see that as part of my duty in applying the law. The rules of civil procedure dictate that a party is entitled to summary judgment when there are no material facts in dispute.

So if a judge is willing to roll up her sleeves and do the work to make that determination, then the judge should not be deterred by the fear of an appeal. I believe that I know what goes on at an appellate level and I believe that I'll have the confidence to look hard at those issues and to grant summary judgment where it is appropriate.

Senator LEE. And I assume, by the way, that an appellate judge who has shown up every day for 12 years, never being unprepared for an appellate argument, is one who would likely approach dispositive motions with the same degree of preparation.

Justice PARRISH. I would.

Senator LEE. Hypothetically, of course. Yes?

Judge OLVERA. Thank you, Senator Lee. Well, I do concur with much of what Justice Parrish just indicated. And as I indicated before, I have a very strict scheduling order and civil pre-trial order that sets deadlines in terms of discovery and dispositive motions. Once again, when and if I hear a dispositive motion vis-a-vis a motion for summary judgment, I am bound by the rule of law.

In the scenario when giving the light most favorable to the respondent, there is no material issue of fact or insufficient evidence. I have no objection to issuing a motion for summary judgment. That is my duty. It is the law. On the same token, if they do not meet that difficult burden, well, we're back to the stages of proceeding to a trial and I follow the law.

Judge HANKS. Senator, I agree with everything my fellow nominees have said. It is—as a judge you have an oath to uphold the law and follow the law and apply it evenly and fairly in every case. Part of that job is to timely and efficiently rule on the motions that's before you. Yes it may take time, and yes it may be difficult, but it's your obligation.

It's the oath that you've sworn to under—undertake. So as a judge, as a trial judge, both a State trial judge and a magistrate judge, although it's very time-consuming in cases going through Motions for Summary Judgment, I've always taken the time to look at those motions carefully.

And as a former appellate judge, I kind of have a feeling and an idea of what the appellate judges are looking for, as well when you grant dispositive motions. So I feel that I've been able to efficiently rule on those motions timely and move the cases along with minimal costs to the parties.

Judge BENNETT. If a dispositive motion has merit, it should be granted. The rules of procedure provide for that and, if you follow the rule of law, dispositive motions will be granted if they have merit.

Senator LEE. Great. Okay. So my time is about to expire so I'm going to save this question just for our Utah nominee.

Justice Parrish, when we're looking at a question of statutory interpretation, these questions will arise constantly in the court to which you've been nominated. When you approach those are you bound by the original meaning of the text, and if so, when there is uncertainty as to the original meaning of the text, how do you resolve the case, how do you decide the case?

Justice PARRISH. I absolutely agree that the text is where you go and in most cases the text will provide the answer. There may be some few cases of first impression where that's not the case. Of course, in the U.S. District Court you would also be bound by any Tenth Circuit precedent or Supreme Court precedent interpreting that same statute. I believe that it is important to look at what the meaning of that text would have been to the framers who adopted the Constitution or to the legislators who adopted a particular statute.

I think if you look at the opinions that I have authored over my 12 years on the supreme court, they begin with a text. There are some rare occasions where the text doesn't provide the answer and in that case, of course, you look at how the text is situated in the document. You see if there are other portions of the statute that shed light on the meaning of that text. And as a last resort, you can turn to well-accepted principles or canons of statutory construction to fill in any gaps.

Senator LEE. Great. Thank you very much. I see my time's expired. Thank you, Mr. Chairman.

Senator CORNYN. Thank you, Senator Lee.

Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman. I want to welcome each of the four of you here, congratulate you on y our nominations to a very important post. Each of the men and women gathered here are very impressive. You have assembled serious professional accomplishments over long and distinguished careers.

I would note the three Texas nominees, you have gone through a long and grueling process that involved going through the Federal Judicial Evaluation Committee that Senator Cornyn and I have established where your backgrounds, your practice, were carefully scrutinized by some of the most experienced and respected attorneys in the State of Texas, in a bipartisan manner.

And each of the three of you with respect to the Texas nominees came through with flying colors and so you have impressed your colleagues with your diligence, and integrity, and practice of law. So I congratulate you with that. Senator Cornyn and I have had the opportunity to visit with each of you as well, and you've impressed us as well which—I'm a pushover, but getting John on board is pretty tough. So, I congratulate you on that.

I'd like to ask each of the four of you at the outset simply a question, which is, briefly, how would you describe your judicial philosophy? Judge Bennett, why don't we start with you?

Judge BENNETT. Thank you, Senator Cruz. When I first started on the bench one of the things that I said I wanted to do was impress my mom if she was sitting in the back of the courtroom. So that means, to me, to be respectful to the litigants who are before me, to listen, to make sure that when they leave that courtroom, that they feel that they have had a fair and impartial hearing before a judge. When a litigant has been treated respectfully, has been heard, and has had an impartial ruling, the ends of justice have been served.

Senator LEE. And I do have to ask you, is your mom sitting here in the hearing room today?

Judge BENNETT. Yes, sir.

[Laughter.]

Senator CRUZ. Well, welcome. And I have every doubt that today you have satisfied that test—or every certainty, rather.

Judge HANKS. Thank you, Senator, for that question. You know, growing up in Louisiana, my dad taught me that if ever you're faced with a difficult decision in life, whatever it is, always treat people the way you'd want to be treated, with dignity and with respect. And if you do that, no matter what the issue is, you'll always come to the right conclusion.

As a judge, my judicial philosophy has been to honor the oath that I've taken as a judge, to always treat the litigants the way I would want to be treated, or my family members would want to be treated, in court, with dignity and respect, and to evaluate and adjudicate all matters that come before me fairly and justly under the law, and in everything I do, both in my personal life and on the bench, to protect and preserve the confidence that people have placed in the Judiciary Committee and the integrity of the legal justice system. And I've done that for the last 14 years on the bench and I would continue to do that as a district judge.

Judge OLVERA. Thank you, Senator Cruz. It's a pleasure to see you here today. My judicial temperament is based on a theory of humility and respect. Humility as a judicial public servant and respect for the legal system. My judicial philosophy is cored in four elements that I adhere to: a duty and commitment to the rule of law; number 2, courtesy and respect to any and all before—that appear before the court; number 3, a work ethic—a hard work ethic

to move the docket quickly and efficiently; and last, to have a constant goal to issue fair, consistent, and sagacious rulings that come before the court.

Justice PARRISH. Thank you, Senator. If I am fortunate enough to be confirmed, I will take this position with no personal agenda whatsoever other than to apply the law and to treat everyone with courtesy and respect and to afford them procedural fairness.

And I think it's always important to keep in mind that while a judge may hear many matters over the course of a day, or a week, or a month, that for the litigants who were involved in those cases, that case is likely the most important or one of the very most important things going on in the life of those individuals at that point in time. And I think if the judge can keep that in mind, then that puts the rest of it into perspective and it makes the judge more inclined to work harder, to keep an open mind, to be completely impartial and to apply the law.

Senator CRUZ. Well, let me thank each of you. And with the Chairman's indulgence, if I may ask one more question, which is, I'd like to ask each of you to define judicial activism and to articulate your views as to a judge's obligation not to engage in judicial activism. Why don't we start with you, Justice Parrish?

Justice PARRISH. Thank you, Senator. I believe that judicial activism is when a judge brings an agenda to the bench, when a judge is willing to substitute his or her own views and to take that into account as opposed to the law. Then that could be judicial activism. It could also manifest itself if a judge decides issues that aren't squarely presented or issues that don't need to be decided.

Judge OLVERA. Thank you, Senator Cruz. I concur with my colleague's opinion. I would define judicial activism as a judge who fails to follow his duty to follow the rule of law and promote personal beliefs in contravention of said duty. I believe my judicial record is a proven asset in that I have consistently applied the rule of law over these past 12 years and, if confirmed, I would commit to you and the citizens of this great country to continue to do the same.

Judge HANKS. I concur with my colleagues, my fellow nominees. A judicial activist is someone who fails to honor the oath that they've taken as a judge to uphold the law and apply it fairly, to leave their personal feelings out of their decisionmaking, and to not honor the needs and desires of the litigants, that is, to put their needs before that of the litigants. In my 14 years on the bench I have honored that oath, and I would continue to honor that oath if I'm privileged to serve as a district judge.

Judge BENNETT. Thank you, Senator Cruz. I agree with my fellow nominees. I believe that if you uphold our oath as a judge you will not have a personal agenda in the courtroom, you will not have your finger on the scales of justice, and that you will fairly and impartially administer the law.

Senator CRUZ. Thank you to each of you, and congratulations again.

Senator CORNYN. That is it for our hearing for today. I would just like to again express my appreciation to each of you and your families for being here before the Committee and answering all of the questions and enduring all of the process that led up to this

point, as well as the hectic schedule of the Senate when votes intervene right in the middle of what you thought was going to be a smooth and efficient hearing.

The record will remain open for a while, to be determined by the Chairman, at which time there may be additional questions submitted to you in writing. And so if there are I hope you will pay attention to those and timely respond. I'm not sure there will be, but there's—that's part of our usual process. With that, let me thank you again for being here with us today and congratulations on making it this far. The next step will be for the Chairman of the Judiciary Committee to schedule a mark-up to actually vote on those nominations, and that will be—I'm sure his staff will be in communication with you about what that likely time table will be.

So with that, the Committee is adjourned.

[Whereupon, at 6:03 p.m. the hearing was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

Additional Material Submitted for the Record

Witness List

Hearing before the
Senate Committee on the Judiciary

On

"Nominations"

Wednesday, January 21, 2015
Dirksen Senate Office Building, Room 226
2:30 p.m.

Panel I

Michelle K. Lee, to be Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

Daniel Henry Marti, to be Intellectual Property Enforcement Coordinator, Executive Office of the President

Panel II

Alfred H. Bennett, to be a United States District Judge for the Southern District of Texas

George C. Hanks, Jr., to be a United States District Judge for the Southern District of Texas

Jose Rolando Olvera, Jr., to be a United States District Judge for the Southern District of Texas

Jill N. Parrish, to be a United States District Judge for the District of Utah

Statement of Michelle K. Lee

Nominee for Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

Before the
Senate Judiciary Committee
January 21, 2015

Chairman Grassley, Ranking Member Leahy and members of the Committee,
Thank you for the opportunity to appear before you today. I am honored and grateful to President Obama for nominating me for this important position and to Secretary Pritzker for her past and ongoing support for me in this role.

With me here today, are my husband, Christopher Shen and our four-year old daughter Amanda Mavis.

I was born and raised in the Silicon Valley, the daughter of an immigrant family that settled in a place that turned into one of the most innovative regions in our country, if not the world. My father was an electrical engineer. We spent many of our weekends and evenings tinkering, working together to fix or build things, like a Heathkit handheld radio.

In fact, all the dads on the street where I grew up were engineers, innovators in the truest sense of the word. It was not uncommon for them to work for companies founded by a person with a clever invention, who patented that invention, and who obtained venture capital funding to start a company to bring the technology to the marketplace.

Some of the companies succeeded. Some did not. But for those that did, they created good jobs for families such as mine and, in some cases, new products and services that revolutionized the world and the way we live.

Seeing that process up close and personal left a lasting impression on me growing up. I wanted to contribute, and enable others to contribute, to innovation. It's why I studied electrical engineering and computer science and later intellectual property law with the goal of representing innovative companies.

While working at M.I.T.'s Artificial Intelligence Laboratory and Hewlett-Packard's Research Labs as a computer programmer, I witnessed innovation at its inception. It was an exciting experience I'll never forget, and one that still informs my work to this day.

Later, as an attorney, I worked on patents and patent strategy for a then-small company that grew into a Fortune 500 corporation in the span of eight short years. Along the way, we built

the company's patent portfolio from a few handfuls of U.S. patents to over 10,500 patents worldwide, and in the process I became acquainted with many of the important services provided by the USPTO.

Through my experiences as an in-house corporate counsel and, before that, as a partner in a Silicon Valley law firm, I represented a wide range of innovators, from independent inventors to Fortune 500 companies. I came to understand and practice many areas of intellectual property law and almost every aspect of patent law—including writing patents, asserting patents, defending against patent infringement, and licensing, buying and selling patents.

I understand and appreciate, from a business perspective, the important value and uses of intellectual property for innovators and to our economy.

During the past three years, through my service on the USPTO's Patent Public Advisory Committee, then as the agency's first Silicon Valley satellite office director and, now, during the last year as Deputy Director – I have worked with a wide range of industries while gaining a first-hand understanding of the USPTO – its strengths, challenges, potential and opportunities.

I have seen and worked with the impressive talent of the dedicated USPTO team. It's clear to me how the USPTO's work benefits our nation's innovators, large and small.

I believe that the USPTO must remain focused on reducing backlog and pendency of its patent applications while maintaining the highest level of quality for both patent and trademark examination. Given the increasingly global economy, it is also imperative that American companies have access to efficient, cost-effective and strong intellectual property protection overseas.

In my current role, I have had the privilege of working on many of these initiatives, and if confirmed, would continue to work toward those important goals. Finally, as with any large organization, I appreciate the need to both effectively manage and motivate the USPTO workforce – this is especially true for an organization that has doubled in size during the last decade to keep up with our nation's innovation.

I believe that our intellectual property laws and the USPTO play a critical role in advancing American technological competitiveness which is so necessary for our nation's continued economic success.

If confirmed by the Senate, I commit to bring to bear all my energy, creativity and intellect to protect and strengthen the intellectual property system that has served our country so well.

Thank you.

* * *

STATEMENT OF DANNY H. MARTI

Nominee to Serve As
Intellectual Property Enforcement Coordinator

UNITED STATES COMMITTEE ON THE JUDICIARY
January 21st, 2015

Thank you Chairman Grassley, Ranking Member Leahy, and distinguished members of the Committee.

I am honored to have the opportunity to be considered by this Committee as the President's nominee to serve as the Administration's Intellectual Property Enforcement Coordinator (IPEC). I would like to thank the President for his confidence in my ability to serve in this important post, and I thank Victoria Espinel for her remarkable leadership and service during her time as the first IP Enforcement Coordinator.

This opportunity to serve my country is truly humbling. I am a first-generation American, born in Washington, D.C., of Spanish and Chilean parents who came to this country speaking little English. My father, Enrique, chose to leave the seminary in Germany, where he was studying to be a Jesuit priest, so he could teach philosophy and theology at a university in Washington, D.C. My mother, Patricia, has dedicated her life to making sure that my two sisters and I had the chance to follow our educational and professional pursuits, wherever they would lead. Their sacrifices have allowed me to be here before this distinguished Committee today, and for that I am immensely grateful. I would also like to thank my entire family including my daughter, Alyssa, son, Miles, and, especially, my wife, Lauren, for her love and support.

I currently serve as the Managing Partner of the Washington, D.C. office of Kilpatrick, Townsend & Stockton LLP, which has one of the largest IP practices of any general service law firm in the country. I have devoted the entirety of my professional practice to matters concerning intellectual property enforcement. My clients have included companies in the fields of technology; banking; consumer products; entertainment, media, and sports; fashion and luxury goods; hospitality and gaming; and food, beverage and agriculture. Through these client representations, I have developed a deep and broad view of IP rights and policy.

If confirmed, I will work to achieve a thoughtful and strong intellectual property system that encourages innovation, creativity, and fair competition based on the rule of law. An effective intellectual property enforcement strategy must consist of a comprehensive and multifaceted approach to this dynamic issue; one that is well-positioned to anticipate, and respond to, the evolving nature of intellectual property issues. An intellectual property enforcement strategy should, for example, involve: sustained coordination among Federal agencies and enhanced sharing of information, both internally at the Government level but also externally with stakeholders; focused diplomatic efforts, including engagement with trading partners, the use of trade policy tools and IP-related training and capacity building; private sector voluntary best practices to reduce infringement online and in conventional marketplaces; the adoption of technological solutions; consideration of new laws and

regulations to the extent necessary to protect intellectual property; and public awareness, education and outreach.

I also will work to promote our ongoing efforts to protect existing intellectual property from unlawful infringement or use, both at home and abroad. These efforts will involve a broad range of stakeholders, including Congress, Federal agencies, the private sector, and public interest groups. All of these stakeholders, and the views and positions they represent, will be key resources for me in pursuing the goals of my office.

America's great spirit of innovation and creativity has been a primary driver of our economic growth and national competitiveness. Intellectual property-intensive industries represent a substantial portion of our gross domestic product and support millions of jobs. Intellectual property is also critical to our balance of trade: goods from IP-intensive industries account for about 60% of all U.S. merchandise exports, and about 20% of service exports. These figures are a point of national pride, and we must continue to build and invest in an IP system that will continue to promote the growth of the American economy.

Congress—and members of this Committee in particular—had the vision to create the IPEC position in order to elevate the coordination of IP enforcement issues across the United States, and indeed, internationally. In establishing this position in 2008, Congress understood that having a strong leader to coordinate the Federal Government's intellectual property enforcement policies and programs was critical to furthering our global economic competiveness and supporting workers and industry-at-large against the misappropriation of their creative and innovative contributions. If confirmed, I look forward to building on the successes and momentum of the Office of the IP Enforcement Coordinator. Critical to this effort will be carrying forward the efforts of the U.S. Government's economic, criminal, and national security agencies engaged in intellectual property policy and enforcement.

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

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Alfred Homer Bennett

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

   United States District Judge for the Southern District of Texas (Houston Division)

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.

   Harris County Civil Courthouse
   201 Caroline, 9th Floor
   Houston, Texas 77002

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

   1965; Ennis, Texas

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.

   2007, A.A. White Dispute Resolution Center, University of Houston School of Law; 40-Hour Mediation Training Certificate

   1988 – 1991, University of Texas School of Law; J.D., 1991

   1983 – 1988, University of Houston; B.S., 1988

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

2009 – Present
61st Civil District Court
201 Caroline, 9th Floor
Houston, Texas 77002
Presiding Judge (2009 – Present)
Administrative Judge (Civil Division) (2010 – 2011)

2003 – 2013
Thurgood Marshall School of Law – Texas Southern University
3100 Cleburne Street
Houston, Texas 77004
Adjunct Professor of Law

1998 – 2008
Law Offices of Alfred H. Bennett
1811 Southmore Boulevard
Houston, Texas 77021
Solo Practitioner

1994 – 1998
Solar & Fernandes L.L.P. (now defunct)
2800 Post Oak Boulevard, Suite 6400
Houston, Texas 77056
Senior Associate

1991 – 1994, Summer 1990
Fulbright & Jaworski L.L.P.
1301 McKinney Street, Suite 5100
Houston, Texas 77010
Associate (1991 – 1994)
Summer Associate (Summer 1990)

Summer 1990
Vinson & Elkins L.L.P.
1001 Fannin Street, Suite 2500
Houston, Texas 77002
Summer Associate

Summer 1990, Summer 1989
Butler & Binion L.L.P. (now defunct)
1000 Louisiana Street
Houston, Texas 77002
Summer Associate

Other affiliations (uncompensated unless otherwise indicated):

2010 – Present
Texas Access to Justice Commission
1414 Colorado
Austin, Texas 78701
Commissioner

2006 – Present
Chane Investment Management, LLC
P.O. Box 88051
Houston, Texas 77288
Member
(Entity manages a family owned nine-unit apartment complex)

2006 – Present
OST/Almeda Corridors Redevelopment Authority & Reinvestment Zone Number Seven
5445 Almeda Road, Suite 545
Houston, Texas 77004
Board of Directors

2005 – Present
Bayou Vista Management Group, LLC
From my private residence
Member
(Entity held a family investment in bio-tech company, which is now defunct)

2004 – 2008
Parkwood Drive Civic Club
P.O. Box 321232
Houston, Texas 77221
President (2006 – 2008)
First Vice-President (2004 – 2006)
Board of Directors (2004 – 2008)

1999 – 2006
East Downtown Management District
1121 Delano Street
Houston, Texas 77003
Vice-Chair (2005 – 2006)
Treasurer (2003 – 2005)
Board of Directors (1999 – 2006)

1996 – 1999
Houston Lawyers Association
P.O. Box 300009

Houston, Texas 77230
Board of Directors (1996 – 1999)
Immediate Past President (1998 – 1999)
President (1997 – 1998)
Chair of the Board of Directors (1997 – 1998)
President-Elect (1996 – 1997)

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

   I have not served in the military. I timely registered for selective service.

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

   Weldon Berry Judicial Service Award, Houston Lawyers Association (2014)

   W.L. Davis District "WEBELOS Leader of the Year 2013", Boy Scouts of America – Sam Houston Area Council (2014)

   2012 Trial Judge of the Year (Nominee), Texas Association of Civil Trial and Appellate Specialists (2012)

   Community Leader Award, Texas Women's Empowerment Foundation (2011)

   2010 Honoree, Houston Black American Democrats (2010)

   Rated AV (very high to preeminent legal ability) in Martindale-Hubbell Legal Directory (2001)

   President's Achievement Award, Houston Lawyers Association (1998)

   Distinguished Service Award, The Thurgood Marshall Legal Society – University of Texas School of Law (1990)

   Dean's List (Spring 1987; Fall 1985; Spring 1985), University of Houston

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.

   Houston Bar Association (1991 – Present)
   Administration of Justice Committee (2012 – 2013)

Bench Bar Pro Bono Awards Committee (2009 – 2011)

Houston Lawyers Association (1991 – Present)
Immediate Past President (1998 – 1999)
President (1997 – 1998)
Board of Directors (1996 – 1999)
Chair (1997 – 1998)
President-Elect (1996 – 1997)
Nominations Committee (2000 – 2002)
Chair (2001 – 2002)
Vice-Chair, HLA Annual Scholarship Golf Classic Committee (1999 – 2000)

Houston Young Lawyers Association (1991 – 2001)

National Bar Association (1988 – Present)
Judicial Council Division (2011 – Present)
Constitution & Bylaws Committee (2000 – 2004)
Vice-Chair, Gertrude E. Rush Mid-Year Planning Committee (1997)

State Bar of Texas (1991 – Present)
College of the State Bar (2009 – Present)
Committee on Lawyer Referral & Information Services (1998 – 2006)
Chair (2005 – 2006)
Vice-Chair (2002 – 2004)
Grievance Committee, District 4A (Houston) (2002 – 2004)
Texas Minority Conference Program Houston Host Committee (1999 & 2003)
President-Elect's Advisory Committee on Strategic Planning (1995 – 1996)

Texas Access to Justice Commission (2010 – Present)
Chair, Strategic Planning Committee (2011 – Present)

Texas Young Lawyers Association (1991 – 2001)
Dropout Prevention & Literacy Committee (1994 – 1995)
Voter Rights & Registration Committee (1992 – 1993)

W. J. Durham Legal Society (1991 – 1994)

10. **Bar and Court Admission**:

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

Texas, 1991

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of

admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the Southern District of Texas (1992)
United States District Court for the Eastern District of Texas (1992)
United States District Court for the Northern District of Texas (1992)

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 Leadership Forum (Houston/Gulf Coast Chapter) (February 2014 – Present)
Fellow

Boy Scouts of America, Troop 242 & Pack 242, Wheeler Avenue Baptist Church (2007 – Present)
Sam Houston Area Council Winter Camp Staff (2012 – 2014)
Merit Badge Counselor (2012 – Present)
Assistant Scoutmaster (2012 – Present)
Cub Scout Den Leader (2009 – 2010, 2012 – 2014)
Cub Scout Assistant Den Leader (2010 – 2012)

East Downtown Management District (1999 – 2006)
Vice-Chair (2005 – 2006)
Treasurer (2003 – 2005)
Chair, Service & Assessment Plan Design Subcommittee (2005 – 2006)
Board of Directors (1999 – 2006)

Golf Club of Houston (2011 – Present)

Houston Center Cub (1991 – 1994)

Just the Beginning Foundation
Co-Chair, Houston's Scholarship Golf Tournament Committee (2001 – 2002)

OST/Almeda Corridors Redevelopment Authority & Reinvestment Zone Number Seven (2006 – Present)
Director

Parkwood Drive Civic Club (2004 – Present)
President (2006 – 2008)
First Vice-President (2004 – 2006)
Director (2004 – 2008)

Sigma Pi Phi Fraternity Incorporated (May 2014 – Present)

University of Houston Alumni Association (1988 – Present)

University of Texas School of Law Alumni Association Executive Committee (2001 – 2010)
Nominating Committee (2002 – 2008)
Co-Chair, Young Houston Steering Committee (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.

Sigma Pi Phi Fraternity Incorporated is a post-collegiate fraternal organization that limits its membership to men. To the best of my knowledge, none of the remaining above listed organizations currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

A Message from Judge Al Bennett, www.AlBennettForJudge.com, December 2011. Copy supplied.

A Profile in Professionalism, The Houston Lawyer, November/December 2010. Copy supplied.

A Message from Judge Al Bennett, reprinted in Houston Style Magazine, April 21, 2010. Copy supplied.

Thank you for Your Support, Now on to November, www.AlBennettForJudge.com, March 10, 2008. Copy supplied.

Letter to the Editor, The Daily Cougar, Spring 1986. I wrote a letter to the editor suggesting that intercollegiate athletics should be eliminated at the University of Houston if operating costs continued to rise and student services fees had to be diverted from other core student support services. I have been unable to obtain a copy.

I maintain a campaign website at www.AlBennettForJudge.com. Much of the content was created by a webmaster, but I have personally created some of the web content. Any content I created has been reprinted elsewhere and is listed separately in 12a. This website was previously www.AlBennettForStateRep.com, which was rebranded as www.AlBennettForJudge.com

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 February 18, 2014, the Texas Access to Justice Commission adopted a proposed Five Year Strategic Plan. I chaired the Strategic Planning Committee, and contributed to the formation of the plan. Copy supplied.

As a board member of the Texas Access to Justice Commission since 2010, my name has appeared on the letterhead of various reports, but I did not sign the reports, and, to the best of my knowledge, I did not participate or consult in any way in their preparation, and the board was never asked to vote on or approve their contents. I have listed them below in an abundance of caution:

Report of the Texas Access to Justice Commission to the Supreme Court of Texas for the period June 1 to November 30, 2013 (November 27, 2013). Copy supplied.

Report of the Texas Access to Justice Commission to the Supreme Court of Texas for the period December 1, 2012 to May 31, 2013 (May 31, 2013). Copy supplied.

Report of the Texas Access to Justice Commission to the Supreme Court of Texas for the period June 1 to November 30, 2012 (November 30, 2012). Copy supplied.

Report of the Texas Access to Justice Commission to the Supreme Court of Texas for the period December 1, 2011 to May 31, 2012 (June 1, 2012). Copy supplied.

Report of the Texas Access to Justice Commission to the Supreme Court of Texas for the period May 1, 2011 to November 30, 2011 (December 1, 2011). Copy supplied.

Report of the Texas Access to Justice Commission to the Supreme Court of Texas for the period May 1 to November 30, 2010 (December 1, 2010). Copy supplied.

In 2005, while I served as chair of the State Bar of Texas' Lawyer Referral and Information Services Committee, professional staff of the state bar prepared an annual report for my signature that was later published in the Texas Bar Journal. 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.

League of Women Voters Guide, Houston, Texas, November 6, 2012. Copy supplied.

As a board member of the Texas Access to Justice Commission since 2010, I attend quarterly meetings of the TAJC. The meetings are open to the public during which committee reports, if any, are delivered, and the chairman and executive director provide status reports. Meeting minutes supplied where available.

In addition, my name has appeared on the letterhead of TAJC correspondence sent out by our chairman, but I did not sign the letters, and, to the best of my knowledge, I did not participate or consult in any way in their preparation, and the Board was never asked to vote on or approve their contents. I have listed them below in an abundance of caution:

Harry Reasoner, *Letter to the Chair of the Family Law Section – State Bar of Texas,* July 30, 2012. Copy supplied.

Harry Reasoner, *Letter to the Chief Justice of the Texas Supreme Court,* January 6, 2012. Copy supplied.

Harry Reasoner, *Letter to State Bar of Texas Board of Directors,* January 3, 2012. Copy supplied.

Charles Kuffner, *Candidate Q&A: Al Bennett,* Off the Kuff Blog, Houston Chronicle, August 26, 2008. Copy supplied.

Endorsement of Borris L. Miles in District 146 Run-off, Houston, Texas, March 16, 2006. Copy supplied.

League of Women Voters Guide, Houston, Texas, March 7, 2006. Copy supplied.

Staff, *Voter's Guide; State Legislature,* Houston Chronicle, February 26, 2006. Copy supplied.

Roy Hill, *Letter to Office of the Secretary,* August 19, 2003. Although, as a board member of the East Downtown Management District, my name appeared on the letterhead, I did not sign the letter, and, to the best of my knowledge, I did not participate or consult in any way in its preparation, and the board was never asked to vote on or approve its contents. 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.

September 21, 2014: Event Speaker, *Teen Meeting*, Jack & Jill of America, Incorporated, Houston, Texas. I commented on character building to a group of teenagers. I have no notes, transcript or recording. The address for Jack & Jill of America, Incorporated (Houston Chapter) is P.O. Box 841, Houston, Texas 77001.

May 6, 2014: Presenter, Elements of Handling a Civil Trial, Houston Lawyers Association CLE Program, Houston, Texas. I commented on general practice tips for the Harris County District Courts. I have no notes, transcript or recording. The address for the Houston Lawyers Association is P.O. Box 300009, Houston, Texas 77230.

May 2, 2014: Judicial Panel Member, Collection & Creditors' Rights, TexasBarCLE Program, Houston, Texas. I commented on general practice tips for the Harris County District Courts. I have no notes, transcript or recording. The

address for TexasBarCLE is Texas Law Center, 1414 Colorado Street, Austin, Texas 78701.

May 2, 2014: Presiding Officer, Oath of Public Service, Barbara Jordan – Mickey Leland School of Public Policy, Houston, Texas. I administered the oath of public service to recent graduates of the BJML School of Public Policy. I have no notes, transcript or recording. The address for the BJML School of Public Policy is 3100 Cleburne Street, Houston, Texas 77004.

February 11, 2014: Judicial Panel Member, Mediation from a Judicial Perspective, Houston Bar Association CLE, ADR Section, Houston, Texas. This was an open forum wherein attorneys posed questions regarding mediation policies in the Harris County District Courts. I have no notes, transcript or recording. The address of the Houston Bar Association is 1111 Bagby, Suite 200, Houston, Texas 77002.

February 7, 2014: Event Speaker, Black History Month Commemoration, Harris County District Courts, Houston, Texas. I commented on the early legal career of Barbara Jordan. I have no notes, transcript or recording. The address of the Administrative Office of the Harris County District Courts is 1201 Franklin, 7th Floor, Houston, Texas 77002.

February 6, 2014: Judicial Panel Member, Damages in Civil Litigation, TexasBarCLE Program, Dallas, Texas. Upon questions from a moderator, I commented on practice tips in the Harris County District Courts. I have no notes, transcript or recording. The address for TexasBarCLE is Texas Law Center, 1414 Colorado Street, Austin, Texas 78701.

January 30, 2014: Panel Member, From the Male Perspective, Downtown Luncheon Group Lunch Program, Houston, Texas. I commented on the events that contributed to success, opportunities, and obstacles encountered during my professional career and mentorship. I have no notes, transcript or recording. The Downtown Luncheon Group has no physical address.

December 13, 2013: Presiding Officer, Oath of Public Service, Barbara Jordan – Mickey Leland School of Public Policy, Houston, Texas. I administered the oath of public service to recent graduates of the BJML School of Public Policy. I have no notes, transcript or recording. The address for the BJML School of Public Policy is 3100 Cleburne Street, Houston, Texas 77004.

November 1, 2013: Judicial Panel Member, Quality Lawyering and Avoiding Sanctions, TexasBarCLE Program, Houston, Texas. Upon questions from a moderator, I commented on practice tips for the Harris County District Courts. I have no notes, transcript or recording. The address for TexasBarCLE is Texas Law Center, 1414 Colorado Street, Austin, Texas 78701.

October 4, 2013: Keynote Speaker, University of Houston Law Center Black Law Students Association Scholarship Dinner, Houston, Texas. Remarks supplied.

September 12, 2013: Guest Lecturer, Business Law Class, Jesse H. Jones School of Business Texas Southern University, Houston, Texas. I commented on how business executives can incorporate legal considerations into their practices. I have no notes, transcript or recording. The address for the Jesse H. Jones School of Business is 3100 Cleburne Street, Houston, Texas 77004.

July 25, 2013: Luncheon Speaker, National Employment Lawyers Association (Houston Chapter) Monthly Luncheon, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding how to best present employment cases in the Harris County District Courts. I have no notes, transcript or recording. NELA (Houston Chapter) has no physical address.

May 4, 2013: Speaker, Law Day Program, Boy Scouts of America – Troop 242, Houston, Texas. I spoke to a group of boy scouts regarding my duties as a judge and answered questions from the scouts. I have no notes, transcript or recording. Boy Scouts of America – Troop 242's address is c/o Wheeler Avenue Baptist Church, 3826 Wheeler Street, Houston, Texas 77004.

May 3, 2013: Judicial Panel Member, State Bar of Texas' Minority Attorney CLE Program, Houston, Texas. This was an open forum wherein attorneys posed questions regarding the best practices for the Harris County District Courts. I have no notes, transcript or recording. The address for the State Bar of Texas is Texas Law Center, 1414 Colorado Street, Austin, Texas 78701.

April 26, 2013: Guest Speaker, African Bar Association Monthly Meeting, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding best practice tips for the Harris County District Courts. I have no notes, transcript or recording. The African Bar Association (Houston) has no physical address.

March 28, 2013: Guest Speaker, A View From the Bench, Texas Insurance and Tort Law Update, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding best practice tips for the Harris County District Courts. I have no notes, transcript or recording. The address for the Texas Insurance and Tort Law Update is c/o Thompson Coe, One Riverway, Suite 1600, Houston, Texas 77056.

February 22, 2013: Judicial Panel Member, Texas Insurance Law Symposium, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding best practice tips for the Harris County District Courts. I have no notes, transcript or recording. The address for the Texas Insurance Law Symposium is 13013 San Jacinto, Houston, Texas 77002.

February 8, 2013: Event Speaker, Black History Month Commemoration, Harris County District Courts, Houston, Texas. I spoke on the history of Olivewood Cemetery, a historic resting place for many freed slaves and some of Houston's earliest black residents. I have no notes, transcript or recording. The address of the Administrative Office of the Harris County District Courts is 1201 Franklin, 7th Floor, Houston, Texas 77002.

June 2011 – February 2013: In the process of campaigning for reelection to the 61st Civil District Court, I gave numerous stump speeches before civic clubs and bar associations. These remarks were brief and extemporaneous. After searching my files and the Internet, I have listed the specific dates (and corresponding sponsoring organization, if any) of particular speaking opportunities below. However, I almost certainly spoke to the following groups as well, even though I am unable to identify the particular dates on which I did so: the Association of Women Attorneys, Braeswood Democrats, Harris County Democratic Lawyers Association, Harris County Tejano Democrats, Harris County Young Democrats, Houston Black American Democrats, Houston Lawyers Association, Meyerland Democrats, Parkwood Drive Civic Club, Pasadena Bar Association, Scott Terrace Civic Club, Sharpstown Democrats, and the West MacGregor Civic Club. I have no notes, transcripts or recordings for these events. After searching my files and the Internet, I have listed below all of the events that I have been able to locate:

> February 7, 2013: Speaker, Campaign Fundraiser, Houston, Texas. I spoke to campaign donors and thanked them for supporting my reelection campaign. The Al Bennett for Judge Campaign sponsored the event at a local restaurant.
>
> November 6, 2012: Speaker, Election Night Watch Party, Harris County Democratic Party, Houston, Texas. I spoke at an election night watch party to thank voters and volunteers. The address of the Harris County Democratic Party is 1445 North Loop West, Houston, Texas 77008.
>
> October 29, 2012: Conference Call Participant, Conference Call with Harris County Voters, Houston, Texas. I participated in a Get-Out-the-Vote conference call with Harris County voters. The call was hosted by Congresswoman Sheila Jackson Lee and State Senator Rodney Ellis. My records do not indicate that there was a sponsoring organization for the conference call.
>
> September 27, 2012: Speaker, Campaign Fundraiser at private residence, Houston, Texas. I spoke to campaign donors and thanked them for supporting my reelection campaign. The event was organized by private sponsors at a private residence.
>
> September 19, 2012: Speaker, Oak Forest Area Democrats Monthly Meeting, Houston, Texas. I spoke to club members and asked them to

support my reelection in the November general election. The Oak Forest Area Democrats address is c/o Harris County Democratic Party is 1445 North Loop West, Houston, Texas 77008.

August 25, 2012: Speaker, Harris County Democratic Party Convention, Houston, Texas. I spoke to members and asked them to support my reelection in the November general election. The address for the Harris County Democratic Party is 1445 North Loop West, Houston, Texas 77008.

July 19, 2012: Speaker, Campaign Fundraiser, Houston, Texas. I spoke to campaign donors and thanked them for supporting my reelection campaign. The Al Bennett for Judge Campaign sponsored the event at a local restaurant.

March 29, 2012: Speaker, Campaign Fundraiser, Houston, Texas. I spoke to campaign donors and thanked them for supporting my reelection campaign. The Al Bennett for Judge Campaign sponsored the event at a local restaurant.

March 6, 2012: Keynote Speaker, Texas Coalition of Black Democrats-Harris County Chapter Meeting, Houston, Texas. I urged members to vote and to get the vote out for the upcoming primary election and the upcoming general election. The address of the Texas Coalition of Black Democrats-Harris County is 2450 Louisiana Street, Suite 525, Houston, Texas 77006.

May 16, 2012: Panel Member, Law Day Event, Fifth Ward Missionary Baptist Church, Houston, Texas. I spoke to church members on the importance of jury service. I have no notes, transcript or recording. The address of Fifth Ward Missionary Baptist Church is 4300 Noble Street, Houston, Texas 77020.

May 10, 2012: Panel Member, Effective Legal Writing, Houston Trial Lawyers Association, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding effective advocacy in brief writing. I have no notes, transcript or recording. The address for the Houston Lawyers Association is 1150 Bissonnet Street, Houston, Texas 77005.

May 10, 2012: Presiding Officer, Oath of Public Service, Barbara Jordan – Mickey Leland School of Public Policy, Houston, Texas. I administered the oath of public service to recent graduates of the BJML School of Public Policy. I have no notes, transcript or recording. The address for the BJML School of Public Policy is 3100 Cleburne Street, Houston, Texas 77004.

February 10, 2012: Event Speaker, Black History Month Commemoration, Harris County District Courts, Houston, Texas. Notes supplied.

January 2012: Moot Court Judge, Andrews Kurth Moot Court National Championship, University of Houston Law Center. I served as a moot court judge. I have no notes, transcript or recording. The address for the University of Houston Law Center is 100 Law Center, Houston, Texas 77204.

December 2, 2011: Presiding Officer, Oath of Public Service, Barbara Jordan – Mickey Leland School of Public Policy, Houston, Texas. I administered the oath of public service to recent graduates of the BJML School of Public Policy. I have no notes, transcript or recording. The address for the BJML School of Public Policy is 3100 Cleburne Street, Houston, Texas 77004.

November 2011: Guest Judge, Houston Bar Association Mock Voir Dire Program, Harris County Civil Courthouse, Houston, Texas. I presided over a mock voir dire program conducted for high school students. I have no notes, transcript or recording. The address of the Houston Bar Association is 1111 Bagby, Suite 200, Houston, Texas 77002.

November 15, 2011: Judicial Panel Member, Texas Lawyer "Going Through the Motions Roundtable," Houston, Texas. Transcripts supplied.

October 28, 2011: Judicial Panel Member, TexasBarCLE Advanced Civil Trial Course, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding best practice tips for the Harris County District Courts. I have no notes, transcript or recording. The address for TexasBarCLE is Texas Law Center, 1414 Colorado Street, Austin, Texas 78701.

October 14, 2011: Judicial Panel Member, TexasBarCLE Business Torts Institute, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding best practice tips for the Harris County District Courts. I have no notes, transcript or recording. The address for TexasBarCLE is Texas Law Center, 1414 Colorado Street, Austin, Texas 78701.

April 29, 2011: Master of Ceremonies, Houston Lawyers Association Annual Gala, Houston, Texas. I served as the master of ceremonies for the annual HLA dinner. I have no notes, transcript or recording. The address of the Houston Lawyers Association is P.O. Box 300009, Houston, Texas 77230.

April 20, 2011: Keynote Speaker, Black Law Students' Association Spring Banquet, South Texas College of Law, Houston, Texas. Remarks supplied.

March 24, 2011: Judicial Panel Member, College of the State Bar Litigation Strategies Course, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding best practice tips for the Harris County District Courts. I have no notes, transcript or recording. The address for the State Bar of Texas is Texas Law Center, 1414 Colorado Street, Austin, Texas 78701.

February 2011: Panel Member, Texas Association of Civil Trial & Appellate Specialists CLE, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding best practice tips for the Harris County District Courts. I have no notes, transcript or recording. The address for TexasBarCLE is Texas Law Center, 1414 Colorado Street, Austin, Texas 78701.

February 11, 2011: Event Speaker, Black History Month Commemoration, Harris County District Courts, Houston, Texas. I spoke on a file involving an African-American litigant from the archives of the Harris County District Clerk. I have no notes, transcript or recording. The address of the Administrative Office of the Harris County District Courts is 1201 Franklin, 7th Floor, Houston, Texas 77002.

February 10, 2011: Event Speaker, Houston Bar Association Importance of Jury Service Program, John W. Peavy, Sr. Senior Center, Houston, Texas. I commented on the importance of jury service and answered questions from senior citizens regarding what to expect when you arrive for jury service. I have no notes, transcript or recording. The address of the Houston Bar Association is 1111 Bagby, Suite 200, Houston, Texas 77002.

December 9, 2010: Keynote Speaker, Fall Commencement, Thurgood Marshall School of Law, Houston, Texas. Remarks supplied.

November 14, 2010: Speaker, Tour of Harris County Civil Courthouse, Houston, Texas. I provided a tour of the Harris County Civil Courthouse to Cub Scout Pack 242. I have no notes, transcript or recording. Cub Scout Pack 242's address is c/o Wheeler Avenue Baptist Church, 3826 Wheeler Street, Houston, Texas 77004.

October 15, 2010: Honoree Remarks, HBAD Annual Dinner, Houston Black American Democrats, Houston, Texas. Remarks supplied.

September 2010: Judicial Panel Member, Duff & Phelps CLE Seminar, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding best practice tips for the Harris County District Courts. I have no notes, transcript or recording. The address for Duff & Phelps' Houston office is 1111 Bagby Street, Suite 1900, Houston, Texas 77002.

July 13, 2010: Keynote Speaker, Anti-Defamation League's Summer Associate Research Program's Breakfast, Houston, Texas. Remarks supplied.

May 5, 2010: Event Speaker, Dialogue on Freedom, Houston Bar Association, Houston, Texas. I spoke to local high school students about their rights and obligations as citizens. I have no notes, transcript or recording. The address of the Houston Bar Association is 1111 Bagby, Suite 200, Houston, Texas 77002.

February 12, 2010: Event Speaker, Black History Month Commemoration, Harris County District Courts, Houston, Texas. I spoke on a file involving an African-American litigant from the archives of the Harris County District Clerk. I have no notes, transcript or recording. The address of the Administrative Office of the Harris County District Courts is 1201 Franklin, 7th Floor, Houston, Texas 77002.

January 22, 2010: Judicial Panel Member, Texas Insurance Law Symposium, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding best practice tips for the Harris County District Courts. I have no notes, transcript or recording. The address for the Texas Insurance Law Symposium is 13013 San Jacinto, Houston, Texas 77002.

December 11, 2009: Keynote Speaker, Fall Commencement, Thurgood Marshall School of Law, Houston, Texas. Remarks supplied.

December 8, 2009: Guest Speaker, Hobby Center for Public Policy, Mickey Leland Congressional Intern Program, University of Houston, Houston, Texas. I shared my personal experiences as a past congressional intern in the University of Houston/Texas Southern University Leland Congressional Internship program. I have no notes, transcripts or recordings. The address for the Hobby Center for Public Policy is 306 McElhinney Hall, Houston, Texas 77204.

September 2009: Guest Speaker, HBA Litigation Section Series Luncheon, Houston, Texas. I addressed general questions pertaining to practicing in the Harris County Civil District Courts, with a particular focus on the 61st Civil District Court. I have no notes, transcript or recording. The address of the Houston Bar Association is 1111 Bagby, Suite 200, Houston, Texas 77002.

September 2009: Panel Member, American Bar Association's Litigation Section's Chemical Product & Toxic Tort Seminar, Houston, Texas. This was an open discussion wherein attorneys posed questions regarding best practice tips for the Harris County District Courts. I have no notes, transcript or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois, 60654.

September 15, 2009: Guest Reader, HBA Real Men Read Program, Houston, Texas. I read "Winnie the Pooh and Some Bees" to toddlers at a bookstore. I have no notes, transcript or recording. The address of the Houston Bar Association is 1111 Bagby, Suite 200, Houston, Texas 77002.

August 2009: Keynote Speaker, Top Teens Awards Banquet, Rice University, Houston, Texas. Remarks supplied.

August 15, 2009: Guest Speaker, Families Under Urban and Social Attack of Houston's (FUSA) 9th Annual Children's Health Day Event, Almeda Mall, Houston, Texas. I urged families to have their school age children eat a healthy

diet before school each day and to have a safe school year. I have no notes, transcript or recording. The address for FUSA is 3402 Dowling Street, Houston, Texas 77004.

February 26, 2009: Presiding Officer, Oath of Office, Houston Citizens Chamber of Commerce, Houston, Texas. I swore in the new officers and board members of the HCCC. I have no notes, transcript or recording. The address of the HCCC is 2808 Wheeler Avenue, Houston, Texas 77004.

February 22, 2009: Theme Speaker, Annual Black History Program, St. Luke Missionary Baptist Church, Houston, Texas. I spoke about the need for African-Americans to pursue higher education and careers in the legal field. I have no notes, transcript or record. The address for St. Luke Missionary Baptist Church is 714 Detering Street, Houston, Texas 77007.

February 20, 2009: Event Speaker, Black History Month Commemoration, Harris County District Courts, Houston, Texas. I spoke on a file involving an African-American from the archives of the Harris County District Clerk. I have no notes, transcript or recording. The address of the Administrative Office of the Harris County District Courts is 1201 Franklin, 7th Floor, Houston, Texas 77002.

January 23, 2009: Presiding Officer, Oath of Office, 59th Annual Awards & Installation Banquet, Houston Black Real Estate Association, Houston, Texas. I swore in the new officers and board members of HBREA. I have no notes, transcript or recording. The address of the Houston Black Real Estate Association is 11303 Chimney Rock Road, Suite 110, Houston, Texas 77045.

January 9, 2009: Investiture Remarks, Harris County Civil Courthouse, Houston, Texas. Remarks supplied.

2009: Guest Speaker, Houston Bar Association Law Day Program, Houston, Texas. I spoke to high school students on their civil duty to vote and participate in jury service. I have no notes, transcript or recording. The address of the Houston Bar Association is 1111 Bagby, Suite 200, Houston, Texas 77002.

August 2007 – December 2008: In the process of campaigning for election to the 61st Civil District Court, I gave numerous stump speeches before civic clubs and bar associations. These remarks were brief and extemporaneous. After searching my files and the Internet, I have listed the specific dates (and corresponding sponsoring organization, if any) of particular speaking opportunities below. However, I almost certainly spoke to the following groups as well, even though I am unable to identify the particular dates on which I did so: the Area 5 Democrats, Association of Women Attorneys, Bay Area Association of Democratic Women, Braeswood Democrats, Foster Place Civic Club, Galleria Area Democrats, Harris County Democratic Lawyers Association, Harris County Tejano Democrats, Harris County Young Democrats, Houston Black American

Democrats, Houston Lawyers Association, Houston Stonewall Young Democrats, Kingwood Area Democrats, Humble Area Democrats, MacGregor Palm Civic Club, Meyerland Democrats, Oak Forest Area Democrats, Parkwood Drive Civic Club, Scott Terrace Civic Club, Sharpstown Democrats, South Union Civic Club, and the West MacGregor Civic Club. I have no notes, transcripts or recordings for these events. After searching my files and the Internet, I have listed below all of the events that I have been able to locate:

> December 4, 2008: Speaker, Campaign Fundraiser, Houston, Texas. I spoke to campaign donors and thanked them for supporting my election campaign. The Al Bennett for Judge Campaign sponsored the event at a local restaurant.
>
> November 4, 2008: Acceptance Speech, 2008 General Election, Houston, Texas. I spoke at election night party to thank my family and supporters. The Al Bennett for Judge Campaign sponsored the event at a local event center.

August 2005 – March 2006: In the process of campaigning to be the State Representative for District 146 (Houston), I gave numerous stump speeches before civic clubs and community groups. These remarks were brief and extemporaneous. After searching my files and the Internet, I have listed the specific dates (and corresponding sponsoring organization, if any) of particular speaking opportunities below. However, I almost certainly spoke to the following groups as well, even though I am unable to identify the particular dates on which I did so: the Braeswood Democrats, Foster Place Civic Club, Harris County Tejano Democrats, Houston Black American Democrats, MacGregor Palm Civic Club, Meyerland Democrats, Parkwood Drive Civic Club, Scott Terrace Civic Club, South Union Civic Club, and the West MacGregor Civic Club. I have no notes, transcripts or recordings for these events. After searching my files and the Internet, I have listed below all of the events that I have been able to locate:

> February 2006: Candidate, Candidate Forum, Southeast Precinct Judges Council, Houston Texas. I participated in a candidate forum. The address for the SPJC is c/o Harris County Democratic Party, 1445 North Loop West, Suite 110, Houston, Texas 77008.
>
> February 2006: Speaker, Campaign Fundraiser, Houston, Texas. I spoke to campaign donors and thanked them for supporting my election campaign. The event was organized by private sponsors at a private residence.

Spring 1999: Guest Speaker, Lawyers in Public Schools, Houston Bar Association, Houston, Texas. I spoke to local high school students about their rights and obligations as citizens. I have no notes, transcript or recording. The address of the Houston Bar Association is 1111 Bagby, Suite 200, Houston, Texas 77002.

Early 1990s: I was the keynote speaker for the Ennis Negro Chamber of Commerce's Annual Dinner in Ennis, Texas. My remarks were on professionalism. I have no notes, transcript or recording. The address for the Ennis Negro Chamber of Commerce is 1100 South Sherman, Ennis, Texas 75119.

May 18, 1991: Student Speaker, Spring Commencement, University of Texas School of Law, Austin, Texas. As Permanent Class President, I congratulated my fellow law school classmates on our graduation. I have no notes, transcripts or recording. The address of the University of Texas School of Law is 727 East Dean Keaton Street, Austin, Texas 78705.

December 15, 1990: Student Speaker, Fall Commencement, University of Texas School of Law, Austin, Texas. As Permanent Class President, I congratulated law school classmates on their graduation. I have no notes, transcripts or recording. The address of the University of Texas School of Law is 727 East Dean Keaton Street, Austin, Texas 78705.

May 26, 1990: Keynote Speaker, Graduation Dinner, Ennis, Texas. At the request of a local church, I gave a speech to the graduating African-American students from Ennis High School. I have no notes, transcript or recording. I cannot recall the name of the church and thus unable to provide an address for the church.

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.

Host Ben Hall, *Legal Hour with Ben Hall,* 1230 AM KCOH, regarding radio listeners' questions on jury service, March 27, 2014. I have no notes, transcript or clip.

Isiah Carey, *The Isiah Factor*, Fox 26, regarding the Harris County swearing-in ceremony for county-wide officials, January 1, 2013. I have no notes, transcript or clip.

Mary Alice Robbins, *Newsmakers: High Court Reappoints Three to Texas Access to Justice Commission;* Tex Parte Blog, The Texas Lawyer, December 28, 2012. Copy supplied.

Hosts Bill Russell & Ralph Cooper, *Car Talk,* 1430 AM KCOH, regarding radio listeners' questions on jury service and voter turnout, October 12, 2012. I have no notes, transcript or recording.

Editorial Page, *Civil Court Endorsements, Part 1,* Houston Chronicle, September 19, 2012. Copy supplied.

Ed Mayberry, *The Jury Wheel Database Reloaded,* Houston Public Media News, March 28, 2011. Copy supplied.

John Council, *Value Proposition: Judges Approach Structured Settlement Payment Transfers in Different Ways,* The Texas Lawyer, March 21, 2011. Copy supplied.

John Council, *A Judge Named "Shane,"* The Texas Lawyer, July 12, 2010. Copy supplied.

Students Head to D.C. for Leland Internship Program, U.S. Fed News, January 14, 2010. Copy supplied.

Host Marisa Ramirez, *UH Moment; "Leland Congressional Interns,"* 88.7 FM KUHF, December 30, 2009. Transcript supplied.

John Council, *Inadmissible,* The Texas Lawyer, December 14, 2009. Copy supplied.

John Council, *Judge Al Bennett Elected Administrative Judge of Harris County, Civil District Courts*, Tex Parte Blog, The Texas Lawyer, December 10, 2009. Copy supplied.

Jennifer Rustay, *Judicial Profile – Judge Al Bennett,* The AWA Brief (Vol. 1, Issue 1), Summer 2009. Copy supplied.

John Council, *The Replacements: New Harris County Judges Get Mostly High Marks in First 100 Days,* The Texas Lawyer, April 6, 2009. Copy supplied.

Bill Murphy & Rosanna Ruiz, *New Judges Take the Bench*, Houston Chronicle, January 2, 2009. Copy supplied.

Staff, *Ennis Graduate New County Judge,* The Ennis Daily News, November 13, 2008. Copy supplied.

Editorial Page, *Civil District Courts: 16 Races for Harris County Civil District Judge,* Houston Chronicle, October 27, 2008. Copy supplied.

Al Bennett Files for the 61st Civil District Court, www.AlBennettForJudge.com, December 7, 2007. Copy supplied.

Kristen Mack, *No Rest on Seventh Day for Candidates/Rivals Seeking Support Before Tuesday Primary,* Houston Chronicle, March 6, 2006. Copy supplied.

Editorial Page, *State Representatives: The Chronicle Recommends Newcomer Al Bennett and Incumbents Kevin Bailey and Garnet Coleman,* Houston Chronicle, March 4, 2006. Copy supplied.

Kristen Mack, *Rivals Contend District 146 Needs Change,* Houston Chronicle, March 2, 2006. Copy supplied.

Charles Kuffner, *Statement from Al Bennett,* Off the Kuff Blog, Houston Chronicle, March 1, 2006. Copy supplied.

Staff, *Get to Know Alfred "Al" Bennett,* Houston Business Connections, January 2006 (reprinted February 2006). Copy available at http://tinyurl.com/kboadhb.

Host Tj Baker-Holm, *The Constitution: The Giant Killer*, Houston Media Source, Houston, Texas, regarding my candidacy for House District 146, February 2006. I have no notes, transcript or clip.

Kristen Mack, *Edwards' Fight Moves Beyond Cheerleading,* Houston Chronicle, December 2, 2005. Copy supplied.

Thayer Evans, *East Downtown Board to Discuss Assessment Plan; Newly-Chosen Volunteers Pick Up Where Old Left Off,* August 25, 2005. Copy supplied.

Deborah Tedford, *Chevron Makes its Case for Removal of Jurist; Kennedy Heights Trial is Put on Hold,* Houston Chronicle, August 7, 1997. Copy supplied.

In 1986, I recall being interviewed as a student senator at the University of Houston by a local television station on the student senate bill regarding the elimination of intercollegiate athletics at University of the Houston. I have no notes, transcript or clip, and I do not recall which local station conducted the interview.

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 elected presiding judge of the 61st Civil District Court, Harris County, Texas in November 2008 and was reelected in November 2012. The 61st Civil District Court has been designated as a court of original jurisdiction only for civil matters, which includes injunctive relief, contract, tort, declaratory judgments, expunctions, and Jones Act cases. In addition in 2011, I sat on a First Court of Appeals panel by assignment, although I did not author the opinions for the cases we heard.

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

I have presided over 8,400 cases that have gone to verdict, judgment, settled (with a later signed judgment), nonsuited, and/or have been dismissed. Since January 1, 2009, I have tried 80 cases to jury verdicts and conducted 562 bench trials (this includes default judgments). Taken together, this would be 642 "tried" cases. I have answered the below portion of the question based upon the number of tried cases.

i. Of these, approximately what percent were:

jury trials:	12%
bench trials:	88%
civil proceedings:	100%
criminal proceedings:	0%

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

Pursuant to Local Rules 3.3.1 and 3.3.2 of the Harris County District Courts (Civil Trial Division), all motions and responses "shall be accompanied by a proposed order" granting the relief sought. Therefore, I have not written any opinions in the traditional sense, but rather issue orders or judgments, granting or denying requested relief, which are supplied by the prevailing party in a case. If I disagree with the prevailing party's draft order, I may require them to correct any errors or make revisions before approving them. Citations to my orders that are reviewed on appeal are available from Westlaw and a list is attached herewith.

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. *Graves v. Continental Alloys & Services Inc.*, Cause No. 2011-55706

Plaintiff Graves, a truck driver for Terald's Delivery Services, was making a pickup of heavy round pipes at defendant Continental Alloys & Services. The flat-bed truck that the plaintiff was driving had been leased by defendant C & D Couriers, which was hauling material for defendant Big Dog Group. As a piece of pipe was being loaded onto the truck, it accidently rolled off and onto plaintiff crushing his right leg. Plaintiff's right leg below his knee was eventually amputated. The defendants denied all liability. I oversaw all pretrial discovery and pretrial motions. A jury was empaneled, and the case was tried over seven days. After deliberations, the jury returned a $6 million verdict for the plaintiff against the defendants. After I disposed of the post-trial motions, I entered an Agreed Judgment in August 2013.

Counsel for Plaintiff

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2. *South Central Cement Ltd. v. CCC Group, Inc. et al.*, Cause No. 2009-50242

Plaintiff alleged that it had contracted with defendant River Consulting to provide engineering and construction management services in connection with the construction of two large warehouses with interior retaining walls to hold bulk cement. defendant CCC Group actually constructed the warehouses. While the first shipment of cement product was being off-loaded into the first warehouse, the retaining walls collapsed in several locations. Plaintiff alleged a host of breaches in the design and construction of the warehouses. I oversaw all pretrial discovery and pretrial motions. A jury was empaneled, and the case was tried over six days. After deliberations, the jury returned a $2.6 million verdict for the plaintiff against defendants CCC Group and River Consulting. However, defendant River Consulting was nonsuited after the verdict and before the judgment was entered. After I disposed of the post-trial motions, I signed judgment for plaintiff in April 2013.

Counsel for Plaintiff

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3. *Munich Re Capital Ltd. v. Southern Union Gas Services, Ltd.*, Cause No. 2010-34902

Plaintiff Munich Re Capital Ltd., as representative of Certain Underwriters at Lloyd's London, insured a Selexol process carbon dioxide plant against fire loss. defendant Southern Union Gas Services (SUGS) operated the plant. In June 2008, there was a fire that caused a major failure at the plant. Plaintiff alleged that the fire was caused by the negligence and gross negligence of defendant SUGS in both the maintenance and operation of the plant. Plaintiff sued for the costs to repair the plant and to clean up and remediate pollution, as well as for exemplary damages. The defendant denied all liability. I oversaw all pretrial discovery and pretrial motions. A jury was empaneled, and the case was tried over eight days. After deliberations, the jury returned a verdict for the defendant. After I disposed of the post-trial motions, I entered a January 2013 judgment for defendant based upon the jury's verdict.

Counsel for Plaintiff

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Counsel for Defendant

Jerry Mitchell
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4. *Ho Ho Ho Express, Inc. v. Cleveland Mack Sales, Inc., et al.*, Cause No. 2008-24797

Plaintiff Ho Ho Ho Express is in the business of transporting perishable produce and food items across the country in refrigerated trucks. Prior to 2004, all of plaintiff's trucks were Peterbilt trucks with Caterpillar engines. In 2004, defendant Cleveland Mack Sales, Inc. (d/b/a Performance Kenworth) began to market to plaintiff Kenworth trucks with a newer Caterpillar engine that were manufactured by defendant Paccar, Inc. Eventually, CitiCapital (a non-party) purchased 12 Kenworth tractor trucks, which it then leased to the plaintiff. Plaintiff alleged the Kenworth trucks immediately began having operational problems. Defendants countered that the issues were caused by plaintiff's maintenance issues. Plaintiff eventually sued for lost profits, loss of value to the trucks, and consequential damages. I oversaw all pretrial discovery and pretrial motions. A jury was empaneled, and the case was tried over ten days. After deliberations, the jury returned a $1.7 million verdict for the plaintiff. After I disposed of the post-trial motions, I entered a December 2012 judgment for plaintiff based upon the jury's verdict. The case was appealed to the First Court of Appeals of Texas. The parties thereafter settled the case and agreed to have the judgment vacated and the case was dismissed.

Counsel for Plaintiff

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Counsel for Co-Defendants Caterpillar Inc. and Cleveland Mack Sales, Inc.

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Counsel for Co-Defendant Paccar Inc.

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5. *Church v. ExxonMobil Co.*, Cause No. 2009-66696

Plaintiff Church visited a gas station owned by defendant ExxonMobil in Houston, Texas. While in the women's restroom the sink fell off of the wall and shattered on the floor, injuring plaintiff. She was required to undergo two surgeries to repair her severed Achilles tendon. Plaintiff alleged the sink was improperly installed and thus unreasonably dangerous. Defendant countered that the plaintiff was engaged in horseplay in the restroom with a friend, thus causing her own injuries. I oversaw all pretrial discovery and pretrial motions. A jury was empaneled, and the case was tried over four days. After deliberations, the jury returned a take-nothing verdict for the defendant. After I disposed of the post-trial motions, I entered a June 2011 judgment for defendant based upon the jury's verdict. The judgment was appealed to the First Court of Appeals of Texas and affirmed November 2012.

Counsel for Plaintiff

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(713) 771-7555

Counsel for Defendant

R. Clive Markland
Wilson Elser Moskowitz Edelman & Dicken LLP
909 Fannin Street, Suite 3300
Houston, TX 77010
(713) 353-2000

6. *Cotright v. C&G Hot Shot Service LLC, et al*, Cause No. 2008-31419

Plaintiff Cotright, a truck driver, was severely burned when the tanker trucker he was driving and its cargo of the highly flammable chemical xylene ignited. He was monitoring the loading of the xylene when the xylene vapors ignited and engulfed him in flames. Plaintiff suffered second degree burns to his lower legs, chest, and arms, and broke both ankles when he jumped from the burning tanker.

Defendant C&G Hot Shot Service countered that the plaintiff's own acts and omissions caused his injuries. I oversaw all pretrial discovery and pretrial motions. A jury was empaneled, and the case was tried over six days. After deliberations, the jury returned a $6.6 million verdict for the plaintiff. After I disposed of the post-trial motions, I entered an October 2010 judgment for plaintiff based in part upon the jury's verdict. I disregarded an award of future medical care expenses for lack of required proof.

Counsel for Plaintiff

Jason Gibson
Gibson Law Firm
440 Louisiana Street, Suite 2400
Houston, TX 77002
(713) 650-1010

Counsel for Defendant

Steven E. Thompson (Deceased)

7. *Sugar Land – Settlers Way/Ponderosa Ltd. v. Stewart Title et al.*, Cause No. 2008-40783

Plaintiff Sugar Land – Settlers Way/Ponderosa Ltd. sought to purchase property in Sugar Land, Texas for the express purpose of leasing the property to a financial institution. Plaintiff alleged that defendant AmeriPoint Title Company, as agent for defendant Stewart Title, issued a commitment for title insurance with knowledge of the property's intended use. The transaction closed, and, while plaintiff was in discussions with its intended end user, Chase Bank, it was discovered that an easement agreement existed that prohibited the use of the property for a financial institution. Chase terminated discussions with the plaintiff. Plaintiff sued the defendants for damages resulting from its loss of lease contract with Chase as well as bad faith and misrepresentations. I oversaw most pretrial discovery and pretrial motions. A jury was empaneled, and the case was tried over seven days. After deliberations, the jury returned a $1.8 million verdict for the plaintiff. After I disposed of the post-trial motions, I entered an August 2010 judgment for plaintiff based upon the jury's verdict. The judgment was appealed to the Fourteenth Court of Appeals of Texas. The parties then reached a post-judgment settlement and agreed to have the judgment reversed and rendered as a take-nothing judgment in January 2012.

Counsel for Plaintiff

Rusty Hardin
Rusty Hardin & Associates, LLP
1401 McKinney, Suite 2250

Houston, TX 77010
(713) 652-9000

Counsel for Co-Defendant Stewart Title

Paul McConnell
DeLange Hudspeth McConnell & Tibbets, LLP
1177 West Loop South, Suite 1700
Houston, TX 77027
(713) 871-2005

Counsel for Co-Defendant AmeriPoint Title Company

Eric Lipper
Hirsch & Westheimer
1414 Louisiana, 36th Floor
Houston, TX 77002
(713) 220-9181

8. *Franco, M.D. et al. v. Memorial Hermann Hospital System, et al.*, Cause No. 2006-79945

Plaintiffs, a group of doctors, alleged that defendant Memorial Hermann blocked them from opening a new hospital that would compete with Memorial Hermann for patients. Plaintiffs asserted various causes of action, including an anti-trust claim for several hundred million dollars. The defendants countered that plaintiffs were bad businessmen who caused their start-up hospital to fail. The case involved contentious pre-trial discovery. I oversaw most of the pretrial discovery and pretrial motions. A jury was empaneled and the trial lasted two-and-a-half months. After deliberations, the jury returned a verdict for the defendants. After I disposed of the post-trial motions, I entered an April 2010 judgment for defendants based upon the jury's verdict.

Over a dozen attorneys appeared of record for various parties at various times throughout the case. I have only listed below those counsels that had significant participation at time of trial:

Counsel for Plaintiffs

Richard Zook
Attorney at Law
(no address provided by State Bar)
(832) 746-1100

Counsel for Co-Defendant Memorial Hermann Hospital System

David Beck
Beck Redden LLP
1221 McKinney Street, Suite 4500
Houston, TX 77010
(713) 951-3700

Counsel for Co-Defendant MPT West Houston MOB, LP

Scott Funk
Gray Reed & McGraw, P.C.
1300 Post Oak Boulevard, Suite 2000
Houston, TX 77056
(713) 986-7000

Counsel for Co-Defendant Leaf on a Tree

Dale Jefferson
Martin, Disiere, Jefferson & Wisdom
808 Travis Street, Suite 1800
Houston, TX 77002
(713) 632-1700

9. *Marinepar v. Commerce Trading Inc., et al.*, Cause No. 2006-18031

Plaintiff Marinepar is a Brazilian company that manufactures and exports hardwood floors which are sold through an American distributor, Commerce Trading, Inc. and its Brazilian counterpart, Imports International, Ltd. In late 2004, the plaintiff was informed that a large shipment of flooring had been rejected due to quality issues. Plaintiff agreed to split the losses with the defendants. Defendant Commerce Trading later sold the allegedly damaged hardwood floors for a significant profit and still charged plaintiff for the losses it did not incur. Plaintiff alleged that Commerce Trading was unjustly enriched because it covered its losses through the sale of the allegedly damaged hardwood floors but required the plaintiff to pay for losses it never incurred. Plaintiff also alleged that defendant Commerce Trading through Imports International breached its contract with them by not paying the balance due on numerous invoices and by refusing to pay for subsequent shipments of hardwood floors from the plaintiff. In addition, the plaintiff alleged that defendant Neelley, individually and as a representative of defendant International Wood, LP, made false representations to plaintiff about the extent of the damage to the hardwood floors and the price at which it was reselling the allegedly rejected shipment of flooring. I oversaw the pretrial discovery and pretrial motions. A jury was empaneled, and the case was tried over nine days. After deliberations, the jury returned a unanimous verdict for the plaintiff against defendants International Wood and Commerce Trading

jointly and severally in the amount of $304,944, as well as individual verdicts against defendant International Wood in the amount of $103,238 and defendant Commerce Trading in the amount of $115,000. After I disposed of the post-trial motions, I entered a judgment based upon the jury's verdict in June 2009.

Counsel for Plaintiff

Greg Lee Goldstein
Attorney at Law
515 San Felipe, Suite 1600
Houston, TX 77056
(713) 625-7137

Counsel for Defendants

J. Grady Randle
Randle Law Office Ltd., LLP
820 Gessner, Suite 1570
Houston, TX 77024
(281) 657-2000

10. *Yarbrough v. Union Pacific Railroad Company*, Cause No. 2006-59721

Plaintiff Yarbrough, a retired employee of Union Pacific Railroad Company, alleged that during his employment he was exposed to various ergonomic risk factors to his hands, wrists, arms, neck, back and legs resulting in disorders of the musculoskeletal and/or nervous system. Defendant claimed that when the plaintiff retired he had no physical ailments. The expert testimony focused on ergonomic risk factors for railroad workers. I oversaw most of the pretrial discovery and all pretrial motions. A jury was empaneled, and the case was tried over four days. After deliberations, the jury returned a verdict of $7,933 for the plaintiff. I signed an unopposed judgment for the plaintiff on the jury's verdict in April 2009.

Counsel for Plaintiff

John Zgourides
Attorney at Law
9595 Six Pines, Suite 8210
The Woodlands, TX 77380
(713) 876-7001

Counsel for Defendant

Mainess Gibson
Connelly Baker Wotring LLP

600 Travis, Suite 700
Houston, TX 77002
(713) 980-1700

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

As noted above, Local Rules 3.3.1 and 3.3.2 of the Harris County District Courts (Civil Trial Division), require that all motions and responses "shall be accompanied by a proposed order" granting the relief sought. Therefore, I have not written any opinions in the traditional sense, but rather issue orders or judgments, granting or denying requested relief, which are supplied by the prevailing party in a case. If I disagree with the prevailing party's draft order, I may require them to correct any errors before approving them.

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

To the best of my knowledge, there are no cases that I have been involved with as a judge in which certiorari was requested or granted.

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

Talisman Energy USA, Inc. v. Enduring Res., LLC, Cause No. 2011-36224, 2012 WL 9494906 (Tex. Dist. Nov. 29, 2012), *rev'd,* 2014 WL 4219514 (Tex. App. – Houston 2014, no pet.)

Talisman Energy USA, Inc. and Statoil Texas Onshore Properties, LLC (collectively "plaintiffs") sued Enduring Resources, LLC ("Enduring") for a declaratory judgment, alleging that after the parties closed a $1.26 billion transaction for the purchase of approximately 1,500 oil and gas leases, Enduring retained an additional $3.9 million payment obligation to a third-party. Enduring counter-claimed and alleged that the $3.9 million payment obligation was one that plaintiffs assumed under their purchase agreement. After a bench trial, I denied the declaratory judgment, found for Enduring on its counter-claim, and awarded Enduring its attorney's fees. The First Court of Appeals reversed the judgment, and remanded the case back to the trial court for further proceedings on the issue of the plaintiffs' attorney's fees.

ERG Res., L.L.C. v. Parex Res., Inc., Cause No. 2012-16446, *aff'd in part, rev'd in part,* 427 S.W.3d 407 (Tex. App. – Houston 2014, pet. filed)

ERG Resources ("ERG") sued Parex Resources ("Parex Canada"), Ramshorn International Limited ("Ramshorn"), and Parex Resources (Bermuda) ("Parex Bermuda") regarding a deal involving a failed agreement to purchase shares of a Bermudian oil and gas company from a Bermudian holding company. After an evidentiary hearing, I denied the special appearances of Parex Canada and Ramshorn, and granted the special appearance of Parex Bermuda. The Fourteenth Court of appeals reversed the decision to deny Parex Canada's special appearance and affirmed the decisions to deny Ramshorn's special appearance and to grant the special appearance of Parex Bermuda.

Rodriguez v. City of South Houston, Cause No. 2011-59812, 2012 WL 10785609 (Tex. Dist. Nov. 27, 2012), *rev'd,* 425 S.W.3d 629 (Tex. App. – Houston 2014, pet. filed)

A former chief municipal clerk filed suit against her former employer, the City of South Houston, alleging retaliatory discharge for her reporting of allegedly illegal conduct. I denied the city's plea based on governmental immunity pursuant to the Whistleblower Act after determining the plaintiff was a public employee and that she had in good faith alleged a violation of the Whistleblower Act. The appellate court reversed the decision after determining it was not reasonable for the employee to believe that the conduct she reported violated the law in light of her training and experience.

Houston Belt & Terminal Ry. Co. et al. v. City of Houston, Cause No. 2012-62909, 2013 WL 7344166 (Tex. Dist. Jan. 18, 2013), *aff'd in part, rev'd in part,* 424 S.W.3d. 663 (Tex. App. – Houston 2014, no pet.)

The City of Houston enacted an ordinance that allowed the imposition of a drainage fee on certain of the railroads' properties, specifically to recover the city's cost of service to provide drainage to "benefitted properties." The railroads sued the City and Krueger, the Director of Public Works, seeking declarations on the validity of "the drainage fee ordinance and, if valid, whether Krueger acted in violation of the ordinance by imposing drainage fees on their 'non-benefitted properties.'" The City and Krueger filed a plea to the jurisdiction based on governmental immunity. I sustained the plea as to the ultra vires claims against Krueger after determining he had used discretion to determine what constituted "benefitted properties." The appellate court affirmed the decision with respect to the granting of the plea to Krueger's decision on the "benefitted properties," and reversed in part on Krueger's decisions, if any, that impacted "non-benefitted properties."

ETC Mktg. LTD., v. Harris Cnty. Appraisal Dist., Cause No. 2009-63998, 2010 WL 9548403 (Tex. Dist. Aug. 23, 2010), *rev'd,* 399 S.W.3d 364 (Tex. App. – Houston 2013, pet. filed)

The appellate court reversed the denial of the plea to the jurisdiction and the

granting of the motion for the summary judgment based an interstate commerce argument that had been raised for the first time at the district court, concluding that the plaintiff had not exhausted its administrative remedies. The case was sent back for further proceedings on whether ETC was subject to double taxation.

Stinson v. Fontenot, Cause No. 2008-72561, 2010 WL 7785848 (Tex. Dist. Nov. 19, 2010), *rev'd,* 369 S.W.3d 268 (Tex. App. – Houston 2011), *aff'd on other grounds,* --- S.W.3d ---, 2014 WL 2547068 (2014)

On December 12, 2008, Stinson filed suit in state district court against Fontenot, a deputy with the Harris County Sheriff's Office, alleging various intentional torts. On December 29, 2008, Stinson filed a complaint against the Harris County Sheriff in federal district court. Fontenot moved for summary judgment arguing he was immune from suit under section 101.106 of the Texas Practice and Remedies Code. Following a First Court of Appeals decision, I denied the motion to dismiss as Stinson had first sued Fontenot in state court. The Fourteenth Court of Appeals, to which the appeal was taken, reversed and dismissed the case against Fontenot, finding that Stinson's later federal case against Harris County barred Stinson's suit against Fontenot regardless of who was sued first.

James v. Easton, Cause No. 2010-12915, 2010 WL 8749758, *aff'd in part, rev'd in part,* 368 S.W.3d 799 (Tex. App. – Houston 2012), pet. denied)

James sued Easton and an attorney for out-of-court behavior. Easton argued in his special exception that all complaints by one litigant about an opposing litigant's conduct in a lawsuit must be remedied in the lawsuit in which the conduct occurred and that it cannot be the basis for independent tort claims. I denied the temporary injunction and dismissed the case on special exceptions as to both Easton and the attorney. The appellate court affirmed the denial of the temporary injunction, but reversed the portion of the judgment dismissing the case on special exceptions ruling that James could bring independent torts claims in a separate suit for Easton's conduct and remanding for further proceedings.

James v. Calkins, Cause No. 2008-75812A, 2012 WL 8944696 (Tex. Dist. Feb. 14, 2012), *rev'd,* 2014 WL 810851 (Tex. App. – Houston 2014, no pet. h.) (mem. op.)

An appeal was taken regarding my decision not to strike an intervention. The parties later agreed that I should have dismissed the claims at issue and asked the court to reverse my judgment, which it did without further comment. .

Amcap Mortg. v. Citizen, Cause No. 2009-73072, *aff'd in part, rev'd in part,* 2014 WL 708492 (Tex. App. – Houston 2014, no pet. h.) (mem. op)

The appellate court determined that an improper measure of damages related to Amcap's fraud claim against JAAV was submitted to the jury. The appellate court

concluded that while actual damages did exist, the jury was asked to determine improper consequential damages. That portion of the judgment was reversed and remanded for a new trial on Amcap's fraud claim against JAAV. The remaining portions of the judgment were affirmed.

Galvan v. Mem'l Hermann Hosp. Sys., Cause No. 2012-52629, *rev'd,* 2014 WL 295166 (Tex. App. – Houston 2014, no pet. h)

The defendant hospital filed a motion to dismiss under chapter 74, asserting Ms. Galvan's claim was a health care liability claim and that she failed to timely serve any expert report as required by chapter 74. I denied the motion to dismiss after determining the slip-and-fall was a negligence claim and not a health care liability claim. The Fourteenth Court of Appeals, after examining the split decisions from the various appellate courts, determined it was a health care liability claim and reversed the order denying the motion to dismiss. However, under a more recent First Court of Appeals decision (*Williams v. Riverside General Hospital, Inc.* (Tex. App. – Houston 2014, no pet.)), my ruling would have been affirmed.

Sugar Land – Settlers Way/Ponderosa, Ltd. v. Stewart Title Guar. Co., Cause No. 2008-40783 (Tex. Dist. Aug. 9, 2010), *rev'd,* 2012 WL 195527 (Tex. App. – Houston 2012, no pet.) (mem. op)

An appeal was taken from a jury trial judgment. During the pendency of the appeal, the parties reached an agreement to settle and compromise their differences in the underlying suit. As part of the settlement agreement, the parties asked the appellate court to reverse my judgment and render judgment effectuating the parties' agreement. The merit of my decision was not discussed.

Crowder v. Univ. of Tex. Health Sci. Ctr., Cause No. 2009-26579, *rev'd,* 349 S.W.3d 640 (Tex. App. – Houston 2011, no pet.)

The government moved to dismiss the claims against its employee under section 101.106(e) of the Texas Civil Practice and Remedies Code. Claimants countered that dismissal would violate the Open Courts provision of the Texas Constitution by abrogating their common-law negligence claims against a government-employed doctor based on the doctor's negligence. Claimants also argued that that doctor may not have been in the course and scope of her employment with the hospital at the time of the surgery. I denied the motion to dismiss. The appellate court reversed, stating within the meaning of section 101.106(e) the employee doctor was within the course and scope of her employment and entitled to dismissal of all claims against her.

Ace Am. Ins. Co. v. Thompson, Cause No. 2008-19436, 2010 WL 4167368 (Tex. Dist. Aug. 19, 2010), *rev'd,* 2011 WL 3820889 (Tex. App. – Houston, pet denied) (mem. op.)

Thompson argued that Ace had waived its right to include a date of injury in its question to the jury in the jury charge because it specifically failed to appeal the date of injury from the Division of Workers' Compensation and did not include the issue in its original petition. Ace argued the date should be included in the question as the injury date because the original hearing officer found an injury date. I included the date of injury in the jury charge. The appellate court determined by including the date of injury in the charge it had the probable effect of misleading the jury and reversed the judgment and remanded for further proceedings.

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

As a state trial court judge, I have not authored opinions. My rulings on various matters are entered via orders or judgments, most of which are supplied by the party being afforded the relief being granted in the order or judgment. All of those opinions are stored in court files maintained by the District Clerk of Harris County.

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 had any significant opinions on federal or state constitutional issues.

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

I have not sat by designation on a federal court of appeals.

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

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

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

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

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

I strictly adhere to Texas Rules of Civil Procedure 18a and 18b on recusal and determine on a case-by-case basis whether a valid reason to recuse exists. I have voluntarily recused myself in the following seven cases for the stated reasons.

Karl Newman v. Delvin Chicas, Cause No. 2013-14728. I represented Mr. Newman immediately prior to taking the bench.

U.S. National Bank v. Janiero Roberts, et al., Cause No. 2007-74934. While in private practice, I previously provided Mr. Roberts legal advice on several unrelated matters.

Jeffrey Pitsenberg v. Richard Peters, Cause No. 2006-61053. I appeared as counsel of record for Mr. Peters in this case before taking the bench.

Redstone Golf Club v. Harris County Appraisal District, Cause No. 2011-71101. I am a member of Golf Club of Houston (f/k/a Redstone Golf Club).

Latonia Conversion v. U.S. Auto Insurance Co., Cause No. 2007-68271. I had represented two of the co-defendants in another matter immediately prior to taking the bench.

George Watkins v. Lyondell Chemical, Cause No. 2008-38436. The defendant was my wife's then current employer.

Ecosorb International, Inc. v. Supply Pro, Inc., Cause No. 2012-24524. The potential third-party defendant was my wife's then current employer.

I also was asked to recuse myself by plaintiff's counsel in *Carolyn James v. Richard Stephen Calkins*, Cause No. 2008-75812, after counsel alleged that I was biased in favor of the opposing party. I denied the motion and, pursuant to the Texas Rules of Civil Procedure and the Harris County District Court Rules, I referred the matter to Judge Olen Underwood, Presiding Judge of the Second Administrative Judicial Region, for further handling. After a full evidentiary hearing, the motion to recuse was denied for the second time.

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.

Since 2006, I have served on the Board of Directors for the OST/Almeda Corridors Redevelopment Authority & Reinvestment Zone Number Seven, after being appointed by then-Houston Mayor Bill White.

From 1999 to 2006, I served on the East Downtown Management District Board, after being appointed by then-Houston Mayor Lee Brown.

In 2006, I was an unsuccessful candidate in the Democratic primary for State Representative District 146 (Houston).

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, below is all of the information that I can recall regarding my political activities in addition to my own campaigns, though there may be some events that I missed.

In 2008, I was a Senate District 13 Delegate to the Texas Democratic Party state convention. I was one of several dozen delegates elected to serve, but I did not attend the state convention due to a conflict in my schedule. In 2006, I was a Senate District 13 Delegate to the Texas Democratic Party state convention. I was one of several dozen delegates elected to serve and attended several open forums and the nominations meeting of the state party officers during the convention.

I have participated in four campaigns other than my own. After the March 2006 Democratic Primary, I issued a statement endorsing Borris L. Miles in the April 2006 run-off for State Representative District 146 (Houston). In 2006, I also volunteered to hand out election materials at a poll location for Ellen Cohen's race for state representative, and I volunteered as a phone banker for the Harris County Democratic Party's "Get Out The Vote" Campaign. In 1984, while a college student, I was paid to hand out election materials at a poll location for Sheila Jackson Lee's campaign for district court judge.

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

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

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

I did not serve as a judicial clerk.

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

1998 – 2008
Law Offices of Alfred H. Bennett
1811 Southmore Boulevard
Houston, Texas 77004
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.

1991 – 1994
Fulbright & Jaworski LLP
1301 McKinney Street, Suite 5100
Houston, Texas 77010
Associate

1994 – 1998
Solar & Fernandes LLP (now defunct)
2800 Post Oak Boulevard, Suite 6400
Houston, Texas 77056
Senior Associate

1998 – 2008
Law Offices of Alfred H. Bennett
1811 Southmore Boulevard
Houston, Texas 77004
Solo 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.

Although trained as a mediator, I have not served as a mediator or arbitrator in any matter.

b. Describe:

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

Starting in 1991 as an associate at Fulbright & Jaworski LLP, a large international firm, I frequently worked on cases involving Fortune 500 companies. I was assigned to the Energy & Environmental Section, a section that specialized in energy and commercial litigation for the firm's

energy clients. The matters I worked on were pending in both state and federal courts throughout Texas. In addition to aiding in discovery and trial preparation in large-scale litigation matters, I was part of a small group of firm associates selected to receive their own docket of small to mid-size insurance defense files for a national insurance company. The cases involved both contract and tort matters. This required me to work up my own cases from pretrial discovery to trial preparation.

Starting in 1994 as an associate at Solar & Fernandes LLP, a small litigation firm, I continued to work on cases involving Fortune 500 companies, as well as representing individuals in tort and personal injury matters. I appeared in court more frequently both in motion practice and trial matters.

Starting in 1998 as the owner of my own law firm, I continued to work on tort matters but also represented larger companies in smaller litigation matters and small business owners and individuals involved in litigation in both state and federal courts. Additionally, I provided clients with assistance in negotiating franchise agreements, lease agreements, employee separation agreements, non-compete agreements, and build-out agreements. I also developed a tax practice that focused on protesting ad valorem valuations for large apartment complexes and commercially zoned property.

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

While at Fulbright & Jaworski LLP from 1991 to 1994, my typical clients were Fortune 500 companies in commercial and energy related matters. While at Solar & Fernandes LLP, my typical clients were mid-sized to large corporations in commercial matters and individuals in tort matters. As a solo practitioner, my typical clients were individuals and small business owners. I also represented large corporations on collection matters.

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

The vast majority of my legal practice was devoted to civil litigation, which required me to appear in court for various types of court proceedings, primarily oral arguments and to a lesser degree trials. Initially, at Fulbright & Jaworski LLP from 1991 to 1994, my court appearances were infrequent. At Solar & Fernandes LLP from 1994 to 1998, my court appearances noticeably increased in frequency. As a sole practitioner from 1998 to 2008, I was required to appear in court even more frequently. In addition, my practice expanded to include non-litigation legal

work which constituted less than 10% of my law practice at any given time. As an associate at prior firms, my practice was solely devoted to civil litigation.

i. Indicate the percentage of your practice in:
   1. federal courts: 2%
   2. state courts of record: 95%
   3. other courts: 2%
   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.

Over the course of my career, I tried 15 cases to verdict. Of those 15 cases, I was sole legal counsel in 12 cases (three jury trials and nine bench trials). In three other cases, I was appointed guardian ad litem counsel to represent the best interests of a minor while another lawyer was the lead lawyer during trial.

i. What percentage of these trials were:
   1. jury: 33%
   2. non-jury: 67%

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

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

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. 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. *Summers Group, Inc. v. Paige Electrical Company, L.P.*, Cause No. 2005-32442 (295th Judicial District Court); Judge Christopher

I represented defendant and third party plaintiff Paige Electrical Company, L.P. in a suit filed by plaintiff Summers Group, Inc., which alleged that it had been over-charged freight charges. The parties originally agreed that the freight charges would be $67,000, but due to changed circumstances the actual freight charges were $135,830. Defendant submitted invoices for that amount and was paid $121,214. As a result, plaintiff sued for $54,214 in overcharges plus attorney fees. My client argued that it was not responsible for any freight costs, freight errors, or shipping costs overruns once the electrical cable in question was picked up by a common carrier. Paige Electrical sued the common carrier, UPS Supply Chain Solutions, Inc. which in turn sued Lufthansa Cargo AG, the air carrier that picked up the cargo in question in Johannesburg, South Africa, for transport to Atlanta, Georgia. After a one-day bench trial, the court entered a judgment and findings of fact and conclusions of law which absolved Paige Electrical of any legal liability.

Counsel for Plaintiff

Ben Adelholt
Coats Rose P.C.
3 East Greenway Plaza, Suite 2000
Houston, TX 77046
(713) 651-0111

Counsel for Third-Party Defendant UPS Supply Chain Solutions, Inc.

James Koecher
Brown Sims
1177 West Loop South, 10th Floor
Houston, TX 77027
(713) 351-6227

Counsel for Third-Party Defendant Lufthansa Cargo AG

Stuart Brown
Jackson Walker LLP
901 Main Street, Suite 6000
Dallas, TX 75202
(214) 953-5819

Dates of representation: August 2005 – June 2007

2. *Simdesk Technologies, Inc. v. First Genesis, Inc.*, Cause No. 2004- 00390 (113th Civil District); Judge Hancock

Plaintiffs sued defendants First Genesis and Mr. Harris, their former employee, alleging that defendants had stolen valuable source code and were now marketing the source code in knock-off products that damaged plaintiff's ability to sell its product. Plaintiff sought both a temporary restraining order and a permanent injunction against the defendants. Because Mr. Harris had left the employment of defendant First Genesis, I was retained to represent him individually. Due to the nature of the relief sought by the plaintiff, we engaged in extensive expedited discovery, including expert witness and party depositions. After a temporary restraining order hearing and multiple-day injunction hearing, the court determined the source code did in fact belong to the plaintiff and granted the temporary restraining order and later the permanent injunction.

Counsel for Plaintiff

Brian Melton
Susman Godfrey L.L.P.
1000 Louisiana, Suite 5100
Houston, TX 77002
(713) 651-9366

Counsel for Co-Defendant First Genesis et al.

Joe Redden, Jr.
Beck Redden LLP
1221 McKinney, Suite 4500
Houston, TX 77010
(713) 951-3700

Dates of representation: January 2004 – August 2004

3. *Mott v. Red's True Value Hardware*, Cause No. 2003-36360 (164th Civil District Court); Judge Jamison

I represented defendant Red's True Value Hardware after the plaintiff sued, alleging an electrical "easy rooter" that had been rented by the plaintiff short-circuited and shocked him while he was using the rooter to clear a sewer pipe. Plaintiff claimed physical injuries, medical care expenses, loss of wage earning capacity, physical impairment, disfigurement, pain and suffering, mental anguish, and loss of consortium. Central issues were whether post-factory replacements of parts on the rooter rendered the rooter defective prior to its rental. We defended the case on the premise that the post-factory replacement of parts was standard procedure if parts had become worn. In addition, the rooter had never short-circuited before or after the incident in question. We also alleged the improper

operation of the rooter by the plaintiff led to the malfunction. After extensive pre-trial discovery, the case was settled at mediation and later dismissed.

Counsel for Plaintiff

John Wittenmyer
LeBoeuf & Wittenmyer, P.C.
3200 Wilcrest, Suite 460
Houston, TX 77042
(713) 463-5422

Dates of representation: June 2003 – September 2004

4. *Miller v. El Patio Mexican Restaurant,* Cause No. 2002-65740 (190th Judicial District Court); Judge Elrod

I represented Ms. Miller, a customer of El Patio Mexican Restaurant, after she was injured in an accident inside the restaurant. During Ms. Miller's visit to the restaurant, one of the defendant's employees bumped a table and knocked it over, causing the table and broken glass to fall over on Ms. Miller and open a large gash on her lower right leg. Ms. Miller's injuries required over 70 stitches to close. The defendant was sued for negligence and gross negligence. A jury was empaneled, and the case was tried over two days. After deliberations, the jury returned a verdict placing 60% fault on the plaintiff and 40% fault on the defendant. Based upon the plaintiff's percentage of fault, she was barred from recovery. A judgment was entered and signed in November 2004.

Counsel for Defendant

Maureen Spector
3355 West Alabama, Suite 1200
Tribble & Ross
Houston, TX 77098
(713) 622-0444

Dates of representation: December 2002 – November 2004

5. *Midtown Redevelopment Authority v. Honeywell, Inc.*, Cause No. 2001-20459 (190th Civil District Court); Judge Elrod

I represented Midtown Redevelopment Authority, a local governmental entity that owned real property that previously was the site of a gasoline service station in the 1960s that was operated and/or supplied with hydrocarbons by corporate interests that were now owned by Honeywell. After the gasoline service station ceased to do business, an underground storage tank was left in place with hydrocarbons still present. Midtown Redevelopment incurred significant expense

to determine the extent of the contamination and to remove the underground tanks from the property. Honeywell removed the case to federal court shortly after its filing and after additional extensive pre-trial discovery the case settled in mediation.

Counsel for Defendant

Marcy Rothman
Kane Russell Coleman & Logan PC
919 Milan, Suite 2200
Houston, TX 77002
(713) 425-7444

Dates of representation: April 2001 – April 2003

6. *Mouton v. Uniformed Security of America, Inc.*, Cause No. 1999-18891 (189th Civil District Court); Judge Work

I represented Mr. Mouton, a young man who was shot as he walked out of a Randalls Food Market by an armed security guard. The security guard told investigators he believed Mr. Mouton was a shoplifter. As a result of the shooting, Mr. Mouton underwent emergency surgery, which included the removal of his right kidney and the repair of numerous internal organs. It was later shown that the security guard had minimal training and had been working as an armed security guard less than a year. After extensive pre-trial discovery, the case settled.

Counsel for Co-Defendant Randalls Food Markets, Inc.

Steven Howard
Tucker Taunton Snyder & Slade
10370 Richmond Avenue, Suite 1400
Houston, TX 77042
(713) 965-4914

Counsel for Co-Defendant Uniformed Security of America, Inc.

William Sherwood
Gordon Arata McCollam Duplantis & Eagan LLC
1980 Post Oak Boulevard, Suite 1800
Houston, TX 77056
(713) 333-5500

Dates of representation: April 1999 – May 2000

7. *Eldridge v. Almost Heaven Campground & Recreation*, Cause No. 1997-01197 (333rd Civil District Court); Judge Halbach

I represented the family of a teenager who drowned at a campground. The teenager had gone to the campground with a scout group. One of the recreational amenities advertised by the campground to attract scout groups and other day campers was a pond with a designated swimming area. The pond was in fact an abandoned sand pit filled with water. Despite having designated an area of the pit for swimming, the rope marking the swimming area was not properly secured, which allowed it to drift over deeper parts of the pit. The teenager was within the designated swimming area when he stepped off into a sinkhole and drowned. A water-safety expert also demonstrated that the pit had not been properly prepared for swimmers and was unreasonably dangerous. After discovery, including the deposition of a nationally known water-safety expert, the case settled at mediation.

Counsel for Defendant

David Cluck
Attorney at Law
P.O. Box 201329
Austin, TX 78720
(512) 477-4405

Dates of representation: January 1997 – February 1998

8. *Adams v. Houston Lighting & Power Co.*, Cause No. 1995-48441 (190th Civil District Court); Judge Devine

I represented Houston Lighting & Power Co. after a pole to which a power line was attached fell, landed on a garage, and caused a fire destroying all of its contents. Ms. Adams, the plaintiff, was a recent wealthy divorcee who had allegedly stored all of her personal belongings in the garage after the divorce. Pre-trial discovery focused on what caused the pole to fall because numerous utilities had connecting lines on the pole at the time, as well as recreating an inventory of rare and valuable property stored in the garage and assigning an appropriate value to the same. Numerous valuation experts were hired to value clothing, furniture, artwork, and other items. The case was settled after extensive discovery.

Counsel for Plaintiff

Scott Lannie
Attorney at Law
4000 Garth Road, Suite 150
Baytown, TX 77521
(281) 303-9200

Counsel for Co-Defendant TCI Cablevision of Texas, Inc.

Kevin Hood
Fabrega Hood, L.L.P.
1221 McKinney, Suite 3150
Houston, TX 77056
(713) 228-2322

Dates of representation: September 1995 – August 1997

9. *Obregon v. Mario's El Dorado Ltd.*, Cause No. 1994-63355 (129th Civil District Court); Judge Mizell

Along with a partner at the firm, I represented the family of Mr. Obregon, who was stabbed and killed by an unknown assailant outside a Houston nightclub. Earlier in the night, Mr. Obregon had been involved in an altercation with unknown men inside the nightclub. The bouncer at the nightclub evicted Mr. Obregon and the other men from the nightclub and steered them into the parking lot where the altercation continued and Mr. Obregon was eventually stabbed. The nightclub had previous problems with patrons fighting in the parking lot but failed to take any steps to secure the parking lot for their patrons' safety. Extensive pretrial discovery was conducted, including reviews of adherence to Texas Alcohol & Beverage Commission standards and personal safety standards both inside of the nightclub and in the parking lot. The case settled at mediation.

Counsel for Co-Defendant Mario's El Dorado, Ltd.

Robert McCabe
Oldenettel & McCabe
510 Bering, Suite 675
Houston, TX 77057
(713) 622-9220

Counsel for Co-Defendant/Cross Plaintiff Almeda Mall, Inc.

Bruce C. Gaible
Hays, McConn, Rice & Pickering
1233 West Loop South, Suite 100
Houston, TX 77027
(713) 654-1111

Dates of representation: December 1994 – March 1996

10. *Reyes v. Floyd*, Cause No. 1990-65365 (151st Civil District Court); Judge Garcia

I represented Mr. Floyd, who was a member of the Houston Rockets, against a civil assault case filed by the plaintiff. The case was filed after the plaintiff approached Mr. Floyd and his then-girlfriend as they were having a loud discussion outside of their car in a parking lot. The plaintiff attempted to intervene and ascertain whether Mr. Floyd's girlfriend was all right. He was pushed away from the scene by Mr. Floyd, who testified that he believed the plaintiff was attempting to steal his wallet from inside of the open car. As a result of the push, Mr. Reyes fell and suffered abrasions to his hands and arms. He visited an emergency clinic that night and was charged less than $300 for the doctor's visit. Mr. Reyes filed suit and demanded over $50,000 in damages. Extensive discovery was conducted. The case was tried to a jury over two days. After deliberations, the jury returned a verdict of $250.

Counsel for Plaintiff

Mark Weycer
The Weycer Firm, PC
4545 Bissonnet Street, Suite 294
Houston, TX
(713) 668-4545

Dates of representation: November 1991 – June 1993

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

Since becoming a judge, I have served two terms as Administrative Judge for the Harris County Civil District Courts. This position had required me to chair the monthly board meetings of the civil district judges' board, appoint committee chairs and members to the board's standing committees, reassign cases after voluntary recusals, and sit on the Executive Committee of the Harris County District Judges. I currently chair the Rules Committee for the Harris County Board of District Judges and the Internal Procedures Committee for the Harris County Civil District Court Board of Judges.

I continue to be active in bar work, including serving as a Commissioner on the Texas Access to Justice Commission, serving on committees for the Houston Bar Association (Administration of Justice, Bench Bar Pro Bono Awards), and serving as a guest speaker at continuing legal education events (State Bar of Texas, Houston Lawyers Association,

Houston Bar Association, and African Bar Association).

I have not performed any lobbying activities on behalf of any entity or individual.

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

    I taught Trial Advocacy at Thurgood Marshall School of Law–Texas Southern University as an Adjunct Professor of Law from 2003 to 2013. The course covered the basics of trial from opening statement to final arguments. Representative syllabus supplied.

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

    I have no deferred income arrangements, stock, options, uncompleted contracts, or other future benefits from which I anticipate payment.

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

    No.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest

when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I do not anticipate that any family members might posed conflicts of interest. As is my current practice, I would continue to take very seriously any actual or potential conflicts-of-interest and recuse myself as appropriate.

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 closely follow 28 U.S.C. 455, Canon 3 of the Code of Conduct for United States Judges, as well as the related advisory opinions issued by the ethics committee of the Judicial Conference. I would utilize the court's automated conflict checking system. I would assess any potential conflicts, and determine for myself whether I believed they justified my recusal or not. If so, I would follow the procedure used by the district court for the Southern District of Texas in recusing myself.

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

Early in my career, I frequently participated in Fulbright & Jaworski's volunteer night at the Houston Bar Association's Legal Lines, which provided free legal advice to callers on a wide-range of topics. I also took on several cases from the Houston Volunteer Lawyers Program, which involved divorces and other simple civil matters. After I moved to Solar & Fernandes, I continued to participate in Legal Lines, as well as assisting on cases that were pro bono and reduced fee.

After I formed my own firm in 1998, I personally took on several clients on a pro bono basis. My work was mainly focused on drafting basic wills for elderly clients and assisting the disadvantaged with debt collection efforts. However, in one more complex case I assisted an elderly client with clearing title to inherited real property that in turn allowed her to deed the property to her children.

Since I have been on the bench, my efforts have been geared towards bar activities that provide recognition or assistance to lawyers and firms engaged in pro bono efforts. Specifically, I served on the Houston Bar Association's Bench Bar Pro Bono Awards Committee from 2009 to 2011, which determined HBA award recipients based upon their previous year's pro bono service. Since October 2011, I have served as a Commissioner on the Texas Access to Justice Commission ("TAJC"). The TAJC's seeks to improve the quality of justice in civil legal matters for low-income Texans by developing initiatives that increase access and reduce barriers to the judicial system. I also currently chair the TAJC's Strategic Planning Committee.

26. **Selection Process**:

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

In early 2013, I submitted an application to the Congressional Judicial Selection Committee formed by Congressman Al Green. In March 2013, I participated in three interviews with the Committee in Houston, Texas. In August 2013, I submitted an application to the Texas Federal Judicial Evaluation Committee (FJEC) formed by Senators Cornyn and Cruz. In September 2013, I met with the chief legal counsels for Senators Cornyn and Cruz in Washington, D.C. On December 13, 2013, I interviewed with the FJEC in Houston, Texas. Since June 24, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 17, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. Later the same day, I met with Senators Cornyn and Cruz in Washington, D.C. On September 18, 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
Bennett, Alfred H.	U.S. District Court - Southern District of Texas	09/18/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Nominee, U.S. District Judge	5a. Report Type (check appropriate type) ☑ Nomination Date 09/18/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2013 to 09/18/2014
7. Chambers or Office Address Harris Civil Courthouse 201 Caroline Street, 9th Floor Houston, Texas 77002		

***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	OST/Almeda Corridors Redevelopment Authority & Reinvestment Zone Number Seven
2. Commissioner	Texas Access to Justice Commission
3.	
4.	
5.	

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

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 11	Name of Person Reporting Bennett, Alfred H.	Date of Report 09/18/2014

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	Salary for State Judgeship	$111,529.13
2. 2013	Salary for State Judgeship	$145,483.28
3. 2013	Teaching Salary - Texas Southern University	$3,000.00
4. 2012	Salary for State Judgeship	$140,000.00
5. 2012	Teaching Salary - Texas Southern University	$3,000.00

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2014	Lyondell Chemical Co., Long-term incentive plan payment
2. 2013	Lyondell Chemical Co.: NextSource
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 11	Name of Person Reporting Bennett, Alfred H.	Date of Report 09/18/2014

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.			

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Name of Person Reporting	Date of 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				
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	J	T	Exempt				
2. Wells Fargo Bank (accounts)	A	Interest	M	T					
3. Amazon (stock)		None	K	T					
4. College America 529 Capital Income Builder Fund		None	K	T					
5. American Funds Capital World Bond Fund	A	Dividend	L	T					
6. American Funds Capital World Growth and Income Fund	A	Dividend	L	T					
7. College America 529 Capital World Growth		None	K	T					
8. American Funds EuroPacific Growth Fund	A	Dividend	K	T					
9. American Funds Fundamental Investors Fund	A	Dividend	J	T					
10. American Funds Investment Company of America Fund	B	Dividend	M	T					
11. College America 529 Investment Company of America Fund		None	K	T					
12. American Funds New Economy Fund	A	Dividend	J	T					
13. American Funds New Perspective Fund	A	Dividend	K	T					
14. College America 529 New Perspective Fund		None	K	T					
15. American Funds SmallCap World Fund	A	Dividend	K	T					
16. American Funds The Growth Fund of America	A	Dividend	L	T					
17. College America 529 Growth Fund of America		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		

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Name of Person Reporting	Date of 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				
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. Ariel Appreciation Fund		None	J	T					
19. AT & T (stock)	A	Dividend	J	T					
20. Blackrock Equity Dividend 529 option		None	J	T					
21. Blackrock Growth Target-Risk 529 option		None	J	T					
22. Columbia Seligman Communication and Information Fund	A	Dividend	K	T					
23. Davis New York Venture Fund	A	Dividend	L	T					
24. Delaware High-Yield Opportunites Fund	A	Dividend	J	T					
25. Duke Energy Stock	A	Dividend	J	T					
26. Eaton Vance Dividend Builder Fund	A	Dividend	K	T					
27. Eaton Vance Worldwide Health Sciences Fund	A	Dividend	L	T					
28. Exxon-Mobil (stock)	A	Dividend	J	T					
29. First Eagle Fund of America	A	Dividend	K	T					
30. First Trust Capital Strength UIT	A	Dividend	J	T					
31. First Trust European Deep Value Dividend UIT	A	Dividend	K	T					
32. First Trust Innovative Technology UIT		None	K	T					
33. First Trust Mega-Cap UIT	A	Dividend	J	T					
34. First Trust SmallMid Capital Strength UIT	A	Dividend	K	T					

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

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. First Trust Technology Dividend UIT	A	Dividend	K	T					
36. First Trust International Capital Strength UIT	A	Dividend	K	T					
37. Ford Motor Co. (stock)	A	Dividend	J	T					
38. Franklin Mutual Global Discovery Fund	A	Dividend	K	T					
39. Franklin Rising Dividends Fund	A	Dividend	K	T					
40. Freeport-McMoran Copper and Gold, Inc (stock)	A	Dividend	J	T					
41. Hewlett-Packard (stock)	A	Dividend	J	T					
42. Kraft Foods (stock)	A	Dividend	J	T					
43. Lord Abbett Value Opportunities Fund	B	Dividend	K	T					
44. LyondellBasell (stock)	A	Dividend	K	T					
45. McDonald's (stock)	A	Dividend	J	T					
46. Merck (stock)	A	Dividend	J	T					
47. MFS Utilities Fund	A	Dividend	J	T					
48. Microsoft (stock)	A	Dividend	J	T					
49. Mondelez (stock)	A	Dividend	J	T					
50. PIMCO Long-Term US Government Fund	A	Dividend	J	T					
51. PIMCO Real Return Fund	A	Dividend	J	T					

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

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Name of Person Reporting	Date of Report
Bennett, Alfred H.	09/18/2014

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
52. PIMCO Total Return Fund	A	Dividend	J	T					
53. Powershares QQQ Trust, Series 1 (ETF)	A	Dividend	K	T					
54. Royce Premier Fund	B	Dividend	K	T					
55. Royce Special Equity Fund	A	Dividend	K	T					
56. Starbucks (stock)	A	Dividend	K	T					
57. Templeton World Fund	A	Dividend	K	T					
58. Atlanta GA Water and Waste bond	B	Interest	K	T					
59. Bay Area Toll Authority of California bond	B	Interest	K	T					
60. Beaumont, TX Independent School District bond	A	Interest	K	T					
61. Belton, TX Independent School District bond	A	Interest	J	T					
62. Carrollton GA Payroll Development Authority bond	B	Interest	K	T					
63. Chicago O'Hare International Airport bond	B	Interest	K	T					
64. Cypress-Fairbanks, TX Independent School District bond	A	Interest	K	T					
65. Detroit Sewage Disposal System bond	B	Interest	K	T					
66. Detroit, MI Water Supply System bond	B	Interest	K	T					
67. District of Columbia bond	C	Interest	K	T					
68. Elk Grove, CA Unified School District bond	B	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
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Name of Person Reporting	Date of Report
Bennett, Alfred H.	09/18/2014

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. Grayson County, TX Junior College bond	B	Interest	K	T					
70. Hawaii Pacific Health bond	B	Interest	K	T					
71. Houston, TX Utilities System bond	B	Interest	K	T					
72. Jacksonville, TX Independent School District bond	A	Interest	J	T					
73. Lucas County, OH Hospital bond	C	Interest	L	T					
74. NJ Transit Trust bond	A	Interest	J	T					
75. North Texas Thruway Authority bond	C	Interest	L	T					
76. Pennsylvania State Public Schools bond	B	Interest	K	T					
77. San Diego County, CA Water Authority Bond	A	Interest	J	T					
78. Tuscaloosa, AL Public Educational Building Bond	B	Interest	K	T					
79. TransAmerica Liberty 2008 Class L Annuity		None	N	T					
80. Chane Investment Holdings (rental property)	F	Rent	N	W					
81. UBS RMA Tax Free Fund	A	Interest	K	T					
82. Series EE Savings Bonds	A	Interest	J	T					
83. Allstate Universal Life Insurance		None	K	T					
84. NY Life Variable Life Insurance		None	K	T					
85. Puerto Rico Electric Power Authority Bond	A	Interest							

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 11	Name of Person Reporting Bennett, Alfred H.	Date of Report 09/18/2014

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
86. Cummins Inc	A	Dividend							
87. First Trust Economic Expansion Portfolio UIT	A	Dividend							
88. Sacramento County Airport Bond	A	Interest							
89. Monterey Peninsula CA Bond	B	Interest							
90. California State Sync Bond	A	Interest							
91.									

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
Bennett, Alfred H.	09/18/2014

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

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting Bennett, Alfred H.	Date of Report 09/18/2014

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/ Alfred H. Bennett

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		131	679	Notes payable to banks-secured (auto)			
U.S. Government securities–Series EE bonds		5	000	Notes payable to banks-unsecured			
Listed securities – see schedule	2	163	821	Notes payable to relatives			
Unlisted securities – see schedule		662	109	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		124	709
Real estate owned – personal residence		575	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		110	000				
Cash value-life insurance		62	107				
Other assets itemize:							
				Total liabilities		124	709
				Net Worth	3	585	007
Total Assets	3	709	716	Total liabilities and net worth	3	709	716
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	
Amazon stock	33,132
American Funds American High Income Trust Fund	712
College America 529 Capital Income Builder Fund	41,499
American Funds Capital World Bond Fund	57,761
American Funds Capital World Growth & Income Fund	54,070
College America 529 Capital World Growth & Income Fund	45,498
American Funds EuroPacific Growth Fund	47,545
American Funds Fundamental Investors Fund	8,013
American Funds Investment Company of America Fund	104,219
College America 529 Investment Company of America Fund	49,051
American Funds New Economy Fund	6,176
American Funds New Perspective Fund	45,883
College America 529 New Perspective Fund	46,221
American Funds SMALLCAP World Fund	46,101
American Funds The Growth Fund of America	97,986
College America 529 The Growth Fund of America	97,954
Ariel Appreciation Fund	6,242
AT&T stock	2,568
Blackrock Equity Dividend 529 Option	8,106
Blackrock Growth Target-Risk 529 Option	6,921
Columbia Seligman Communications and Information Fund	40,587
Davis New York Venture Fund	85,746
Delaware High-Yield Opportunities Fund	9,253
Duke Energy stock	14,876
Eaton Vance Dividend Builder Fund	49,566
Eaton Vance Worldwide Health Sciences Fund	52,236
ExxonMobil stock	11,293
First Eagle Fund of America	43,223
First Trust Capital Strength UIT	13,230
First Trust European Deep Value Dividend UIT	20,791
First Trust Innovative Technology UIT	20,492
First Trust International Cap Strength UIT	22,997
First Trust Mega-Cap UIT	12,576
First Trust SMid Capital Strength UIT	22,061
First Trust Technology Dividend UIT	25,977
Ford Motor Co. stock	3,330
Franklin Mutual Global Discovery Fund	32,661
Franklin Rising Dividends Fund	35,854
Freeport-McMoran Copper and Gold Inc. stock	6,812
Hewlett-Packard stock	1,846
Kraft Foods stock	11,382

Lord Abbett Value Opportunities Fund	48,446
LyondellBasell stock	15,161
McDonald's stock	7,599
Merck stock	12,098
MFS Utilities Fund	4,935
Microsoft stock	2,661
Mondelez stock	7,134
PIMCO Long-Term US Government Fund	6,997
PIMCO Real Return Fund	6,847
PIMCO Total Return Fund	11,348
PowerShares QQQ Trust, Series 1 (ETF)	22,495
Royce Premier Fund	39,605
Royce Special Equity Fund	33,867
Starbucks stock	19,017
Templeton World Fund	41,902
UBS RMA Tax Free Fund	37,134
Van Kampen Income Investment Trust	879
Atlanta GA Water and Waste bond	18,199
Bay Area Toll Authority of California bond	23,034
Beaumont, TX Independent School District bond	22,155
Belton, TX Independent School District bond	11,206
Carrollton GA Payroll Development Authority bond	17,281
Chicago O'Hare International Airport bond	15,064
Cypress-Fairbanks, TX Independent School District bond	22,456
Detroit, MI Sewage Disposal System bond	19,975
Detroit, MI Water Supply System bond	25,856
District of Columbia bond	33,760
Elk Grove CA Unified School District bond	28,959
Grayson County, TX Junior College bond	27,975
Hawaii Pacific Health bond	21,673
Houston, TX Utilities System bond	26,371
Jacksonville, TX Independent School District bond	11,347
Lucas County, OH Hospital bond	53,378
NJ Transit Trust bond	11,677
North Texas Thruway Authority bond	50,112
Pennsylvania State Public Schools bond	29,282
San Diego County, CA Water Authority bond	11,082
Tuscaloosa, AL Public Educational Building bond	22,407
Total Listed Securities	$2,163,821

Unlisted Securities	
Chane Investment Holdings	$ 320,000
TransAmerica Liberty 2008 Class L Annuity	342,109
Total Unlisted Securities	$ 662,109

AFFIDAVIT

I, Alfred H. Bennett, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

9/19/14
(DATE)

(NAME)

DARLA GAE COONS
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
APRIL 12, 2017

(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   George Carol Hanks, Jr.

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

   United States District Judge for the Southern District of Texas

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

   United States District Court, Southern District of Texas
   515 Rusk Avenue, Room 7727
   Houston, Texas 77002

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

   1964; Breaux Bridge, 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.

   2012 – 2014, Duke University Law School; LL.M. (Judicial Studies), 2014

   1986 – 1989, Harvard Law School; J.D., 1989

   1982 – 1986, Louisiana State University; B.A. (*summa cum laude*), 1986

   1985 – 1986, University of Wales, College of Swansea; 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
United States District Court, Southern District of Texas
515 Rusk Avenue, Room 7727
Houston, Texas 77002
United States Magistrate Judge

2002 – Present
University of Houston Law Center
100 Law Center
Houston, Texas 77204
Adjunct Professor

2002 – 2010
Court of Appeals for the First District of Texas
301 Fannin Street, Room 208
Houston, Texas 77002
Justice

2001 – 2002
157th Civil District Court
Harris County Civil Courthouse
201 Caroline, 11th Floor
Houston, Texas 77002
Judge

1996 – 2000
Wickliff & Hall, P.C. (now Cozen O'Connor LLP)
1221 McKinney Street, Suite 2900
Houston, Texas 77010
Associate (1996 – 1999)
Shareholder (2000)

1991 – 1996, Summer 1988
Fulbright & Jaworksi, L.L.P. (now Norton Rose Fulbright LLP)
Fulbright Tower
1301 McKinney Suite 1500
Houston, Texas 77010
Summer Associate (Summer 1988)
Associate (1991– 1994)
Participating Associate (1995 – 1996)

1989 – 1991
United States District Court, Southern District of Texas (Houston Division)
515 Rusk Avenue
Houston, Texas 77002
Law Clerk to the Honorable Sim Lake

Summer 1988
Andrews Kurth LLP
600 Travis Street, Suite 4200
Houston, Texas 77002
Summer Associate

Summer 1987
Robinson Cox, Barrister and Solicitors (now Clayton Utz)
QV.1 Building, Level 27
250 St. Georges Terrace
Perth, Western Australia
Summer Associate

Other Affiliations (uncompensated):

2013 – Present, 1999 – 2000
Lakes of Fondren Homeowners Association
8107 Lake Edge Circle
Houston, Texas 77071
Board Member (1999 – 2000)
Vice President of the Board (2013 – Present)

2011 – Present
George Mason University Law and Economics Center
3301 Fairfax Drive
Arlington, Virginia 22201
Judicial Education Program Advisory Board Member

2004 – 2005
Texas Center for the Judiciary
1210 San Antonio, Suite 800
Austin, Texas 78701
Board of Directors

2001 – Present
Greater Houston Chapter of the American Red Cross
2700 Southwest Freeway
Houston, Texas 77098
Board of Directors, Executive Committee, 2001 – Present
Chairman-Elect, Board of Directors (2006 – 2008)
Chairman, Board of Directors (2009 – 2011)

1995 – 1998
Big Brothers and Big Sisters of Houston
6437 High Star Drive

Houston, Texas 77074
Board of Directors

1997 – 1998
Ensemble Theatre
3535 Main Street
Houston, Texas 77002
Board of Directors

1997
Sheltering Arms Senior Services
3838 Aberdeen Way
Houston, Texas 77025
Board of Directors

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

   I have not served in the military. I have registered for selective service.

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

   5 Year Faculty Award, National Judicial College (2009)
   Volunteer of the Year, Flower Garden Banks National Marine Sanctuary (2009)
   Texas Bar Foundation Life Fellow (2003)
   Outstanding Service Award, Houston Lawyers Association (2001)
   Houston Bar Foundation Life Fellow (1995)
   Editor, *Harvard Blackletter Law Journal* (1988)
   NAACP Legal Defense Fund/Earl Warren Scholarship (1986)
   Graduated First in Class, Louisiana State University (1986)
   University Medal for Highest Academic Achievement, Louisiana State University (1986)
   Selected by Phi Kappa Phi Honor Society as the "Most Outstanding Junior at Louisiana State University" (1985)
   Phi Kappa Phi Honor Society (1984)
   Selected by Mortar Board Senior Honor Society as one of the "Ten Most Outstanding Freshman at Louisiana State University" (1983)
   Mu Sigma Rho Honor Society (1983)
   Phi Eta Sigma Honor Society (1983)
   Mortar Board Senior Honor Society (1983)
   NAACP/Herbert Lehman Educational Scholarship (1982)
   Alpha Phi Alpha/Ulric Pryce Memorial Scholarship (1982)

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

American Bar Association (2004 – Present)
- Chairman, Appellate Judges Conference Judicial Clerkship Subcommittee (2009 – 2010)
- Co-Chair, Judicial Clerkship Program (2006 – 2007)

American Judges Association (2003 – 2010)
American Law Institute (2003 – Present)
- Members Consultative Group, Restatement of the Law Third, The U.S. Law of International Commercial Arbitration (2013 – Present)

Bar Association of the Fifth Circuit (2005 – 2010)
College of the State Bar of Texas (2000 – Present)
Customs and International Trade Bar Association (2003 – 2010)
Federal Bar Association (2012 – Present)
Federal Magistrate Judges Association (2010 – Present)
George Mason University Law and Economics Center (2011 – Present)
- Judicial Education Program Advisory Board

Houston Bar Association (1991 – Present)
- Eikenburg Fun Run Committee (2012 – 2013)
- Editorial Board (1996 – 2003)

Houston Lawyers Association (1991 – Present)
Houston Young Lawyers Association (1996 – 2002)
Institute of Judicial Administration (2003 – 2010)
National Bar Association (2001 – 2010)
National Bar Institute (2008 – 2009)
State Bar of Texas
- Houston Course Director, 37th Annual Advanced Civil Trial Course (2013 – 2014)
- Committee on Pattern Jury Charges (2008 – 2010)
- Board of Directors, Judicial Section of the State Bar of Texas (2007 – 2009)
- District 4F State Bar Grievance Committee (1994 – 1998), Chairman (1998 – 1999)
- Special Disciplinary Counsel, Commission for Lawyer Discipline (1994 – 1996)

South Texas College of Law Advanced Civil Trial Law Conference (2005)
- Planning Committee

Texas Association of Defense Counsel (1994 – 2001)
Texas Center for the Judiciary
- Appellate Judges Education Committee (2008 – 2009)
- Scholarship Committee (2007 – 2008)
- Board of Directors (2004 – 2005)

Texas Court of Criminal Appeals Education Committee (2009 – 2010)

10. **Bar and Court Admission**:

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

Texas, 1989
District of Columbia, 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 District Court for the Southern District of Texas, 1992
United States Court of Appeals for the Fifth Circuit, 1993
United States District Court for the District of Arizona, 1994
United States Court of International Trade, 2003
Supreme Court of the United States, 2003

After becoming a judge, I did not renew several of my admissions. My membership in the District of Arizona lapsed in September 1999, my membership in the United States Court of Appeals for the Fifth Circuit lapsed in February 2003, and my membership in the Court of International Trade lapsed in June 2014.

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 Leadership Forum Class XXIV (2006 – Present)

American Red Cross (2005 – 2006)
National Nominations Committee

Bronze Eagles Flying Club (1998 – 2001)

Downtown Houston Pachyderm Club (2003 – 2006)

Federalist Society (2007 – 2010)

Garland Walker Inns of Court (2003)

Greater Houston Chapter of the American Red Cross (2001 – Present)
Board of Directors, Executive Committee (2001 – Present)
Chairman, Military Services Committee (2001 – 2009)
Chairman-Elect, Board of Directors (2006 – 2008)
Chairman, Board of Directors (2009 – 2011)

Greater Houston Pachyderm Club (2003)

Houston Fit Running Club (2009 – Present)
Assistant Marathon Coach

Houston Realty Breakfast Club (now known as the Houston Realty Business Coalition) (2005)

Houston Underwater Photography Society (2008 – 2010)

Knights of Columbus, Council #5678 (2010 – Present)

Lakes of Fondren Homeowners Association (1999 – 2000, 2013 – Present)
Board Member (1999 – 2000)
Vice President of the Board (2013 – Present)

National Association of Black Scuba Divers/Nubian Dive Club (1999 – 2010)

National Federation of Pachyderm Clubs (2005)

Phi Delta Phi International Legal Honors Society, South Texas College of Law – Wood Inn (2003– Present)

San Jacinto Club (now known as the Harris County Republican Leadership Council) (2003 – 2006)

St. Albert of Trapani Catholic Church (1996 – Present)
Liturgical Minister

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 Knights of Columbus is a Catholic organization focused on educational, charitable, religious and social welfare works that limits its membership to men, although there is a corresponding organization—Catholic Daughters of America—that limits its membership to women. To the best of my knowledge, none of the other organizations listed above invidiously 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.

Midway: A Place of Healing, Papahanaumokuakea ` Ahahui Alaka'i (PAA) Blog (June 21, 2010). Copy supplied.

Introduction: George Hanks, Papahanaumokuakea ` Ahahui Alaka'i (PAA) Blog (June 10, 2010). Copy supplied.

Profile in Professionalism, 45 HOUSTON LAWYER 32 (2007). Copy supplied.

A View from the Bench: Using Motions in Limine Effectively, The College of the State Bar of Texas Bulletin (2007). Copy supplied.

With William J. Carpathe, *Judicial Clerkship Program 2007*, American Bar Association Judicial Division Record (2007). Copy supplied.

Public Service and the Law, 43 HOUSTON LAWYER 11 (2006). Copy supplied.

Contribution and Indemnity after H.B. 4, 67 TEX. B.J. 288 (2004). Copy supplied.

With R. Polinger-Hyman, *Redefining the Battlefield—Expert Reports in Medical Malpractice Litigation after HB4*, 67 TEX. B.J. 936 (2004). Copy supplied.

Gazing into the Murky Crystal Ball: The Rise of Design Professional Liability for the Criminal Acts of Third Parties, 4 HOUS. BUSN. & TAX L.J. 339 (2004). Copy supplied.

Children and the Law in Texas: What Parents Should Know, 38 HOUSTON LAWYER 49 (1999) (book review). Copy supplied.

When Sovereign Immunity Is not Enough: The Rise of Premise Liability Claims Against Governmental Entities, 36 HOUSTON LAWYER 27 (1998). Copy supplied.

When Sticks & Stones May Break Your Bones: An Overview of Texas Premise Liability Law for Business Owners, 60 TEX. B.J. 1010 (1997). Copy supplied.

From 1996 to 2003, I served on the Editorial Board of the Houston Bar Association's publication, THE HOUSTON LAWYER. The magazine publishes six bi-monthly issues per year. As a member of the Editorial Board, I assisted in selecting the topics for each issue, although I did not write or edit any articles except my own articles listed above.

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.

With Steve Vetrano. "Message from the Chairman and CEO," Greater Houston Chapter of the American Red Cross (July 2011). Copy supplied.

With Steve Vetrano. "Message from Our Leadership," Greater Houston Chapter of the American Red Cross (June 2010). Copy supplied.

With Steve Vetrano. "Message from Our Leadership," Greater Houston Chapter of the American Red Cross (June 2009). Copy supplied.

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

On February 17, 2003, I appeared before the Texas Senate Committee on Nominations. I gave an opening statement regarding my desire to serve as a justice on the Texas Court of Appeals. Video recording available at: http://tlcsenate.granicus.com/MediaPlayer.php?clip_id=5243.

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

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

May 6, 2014: Panelist, "Ethics and Professionalism from a Judge's Perspective," Kessler-Eidson Trial Techniques Program, Emory University School of Law, Atlanta, Georgia. Video recording available at: https://www.youtube.com/watch?v=tnjr__4r-LQ.

April 27, 2014: Speaker, "Papahanaumokuakea National Marine Monument," Florida Marine Science Educators Association Annual Conference, Panama City, Florida. My presentation addressed the topics of the national marine sanctuary system and ocean conservation. PowerPoint supplied.

February 23, 2014: Speaker, "Keynote Address," National Black Law Students Association-Rocky Mountain Region Annual Conference, Austin, Texas. Draft remarks supplied.

February 2014, February 2013: Speaker, "*Grovey v. Townsend*, 295 U.S. 45 (1935) and *Smith v. Allwright* 321 U.S. 649 (1944)," Harris County Black History Month Program, Houston, Texas. PowerPoint supplied.

October 23, 2013, December 12, 2012, April 27, 2011: Speaker, United States Naturalization Ceremony, Houston, Texas. I gave the same remarks on each of these occasions. Draft remarks supplied.

October 11, 2013: Panelist, "Perspectives from the Bench: Everything You Wanted to Know But Were Too Afraid to Ask," State Bar of Texas Labor & Employment Law Section, Montgomery, Texas. The panel addressed the topic of best practices in handling labor and employment cases in federal court. I have no notes, transcript, or recording. The address for the State Bar of Texas is 1414 Colorado Street, Austin, Texas 78701.

October 2013, June 2011, October 2007: Instructor, Borden Ladner & Gervais LLP Litigation Training Program, Montreal and Toronto, Canada. I taught courses in trial advocacy skills. I have no notes, transcript, or recording. The address for Borden Ladner & Gervais LLP is Scotia Plaza, 40 King Street West, Toronto, Canada M5H 3Y4.

June 22, 2013: Speaker, "Papahanaumokuakea National Marine Monument," National Association of Black Scuba Divers Youth Education Summit, Texas A&M, Galveston, Texas. My presentation addressed the topics of the national marine sanctuary system and ocean conservation. PowerPoint previously supplied for the April 27, 2014 event.

April 9, 2013: Speaker, "Federal Magistrate Mediation," Houston Bar Association, Houston, Texas. My presentation addressed recommendations on

how to use magistrate judge mediations to manage cases. I have no notes, transcript, or recording. The address for the Houston Bar Association is 1111 Bagby Street FLB 200, Houston, Texas 77002.

December 4, 2012: Speaker, "Federal Practice Section: Motions Practice," Houston Bar Association, Houston, Texas. My presentation addressed the topic of best practices in handling motions in federal court. I have no notes, transcript, or recording. The address for the Houston Bar Association is 1111 Bagby Street FLB 200, Houston, Texas 77002.

April 27, 2012: Panelist, "Judges Panel," Texas Minority Attorney Program, Houston, Texas. My presentation addressed best practices in handling motions in federal court. I have no notes, transcript, or recording. The address for the Houston Bar Association is 1111 Bagby Street FLB 200, Houston, Texas 77002.

March 24, 2012: Speaker, "Papahanaumokuakea National Marine Monument," Oppe Elementary School Coastal Studies Campus' Coastal Carnival, Galveston, Texas. PowerPoint previously supplied for the April 27, 2014 event.

February 2012: Speaker, "*Sweatt v. Painter*," Harris County Black History Month Program, Houston, Texas. PowerPoint supplied.

December 13, 2011: Speaker, "Perspectives of a New Magistrate Judge," Houston Metropolitan Paralegal Association, Houston, Texas. My presentation addressed recommendations on how to use magistrate judge mediations to manage cases. I have no notes, transcript, or recording. The address for the Houston Metropolitan Paralegal Association is 440 Louisiana Street, Houston, Texas 77002.

October 12, 2011: Speaker, "Papahanaumokuakea National Marine Monument," Galveston Aggie Club, Galveston, Texas. PowerPoint previously supplied for the April 27, 2014 event.

September 30, 2011: Speaker, "Flower Garden Banks National Marine Sanctuary," Sallie Curtis Elementary School, Beaumont, Texas. My presentation addressed the topic of marine life in the Gulf of Mexico. I have no notes, transcript, or recording. The school address is 6225 North Circuit Drive, Beaumont, Texas 77706.

September 23, 2011: Speaker, "You Are What You Tweet: Emerging Ethical Issues for Lawyers Using Social Media," Defense Research Institute Construction Law Seminar, Phoenix, Arizona. PowerPoint supplied.

July 27, 2011: Panelist, "Tips from the Bench: What Not To Do in the Courtroom," Houston Chapter of the Asian American Bar Association, Houston, Texas. The panel provided CLE credit and discussed the topics of courtroom etiquette and professionalism. I have no notes, transcript, or recording. The

address for the Asian American Bar Association is P.O. Box 1554, Houston, Texas 77251.

June 2011: Instructor, National Institute of Trial Advocacy ("NITA"), Dallas, Texas. I taught courses in trial advocacy skills. I have no notes, transcript, or recording, but syllabus supplied.

May 14, 2011: Speaker, "Papahanaumokuakea National Marine Monument," Houston Zoo, Houston, Texas. PowerPoint previously supplied for the April 27, 2014 event.

April 11, 2011: Speaker, "Papahanaumokuakea National Marine Monument," Seaside Chat at the Flower Garden Banks National Marine Sanctuary, Galveston, Texas. PowerPoint previously supplied for the April 27, 2014 event.

February 2011: Speaker, "*Margaret Gess v. Francis Lubbock*," Harris County Black History Month Program, Houston, Texas. I gave a presentation on an 1848 case that addressed the constitutionality of slavery in the Republic of Texas. I have no notes, transcript, or recording. The address of the Harris County Courthouse is 301 Fannin Street, Houston, Texas 77002.

2011: Speaker, "The Blueprint," The Effective Advocate Training Program: Arbitration Advocacy for Arbitrations and Trials, National Institute for Trial Advocacy, Boulder, Colorado. Transcript supplied and video is available at http://blog.nita.org/2013/02/the-blueprint/.

October 20, 2010: Speaker, United States Magistrate Judge Investiture Ceremony for George C. Hanks, Jr., Houston, Texas. Video recording supplied.

July 2010: Instructor, National Institute of Trial Advocacy ("NITA"), Boulder, Colorado. I taught courses in trial advocacy skills. I have no notes, transcript, or recording, but syllabus supplied.

June 2010, January 2010: Speaker, "Effective Handling of Electronic Discovery Disputes," Texas Center for the Judiciary, Austin, Texas and Fort Worth, Texas. PowerPoint supplied.

2010: Speaker, "Mentoring Moments," Garland R. Walker American Inn of Court Professionalism Program, Houston, Texas. Video supplied.

July 2009: Instructor, National Institute of Trial Advocacy ("NITA"), Boulder, Colorado. I taught courses in trial advocacy skills. I have no notes, transcript, or recording. The address for NITA is 1685 38th Street, Suite 200, Boulder, Colorado 80301-2735.

June 21-25, 2009: Instructor, "Current Issues in the Law" Program, National

Judicial College, West Yellowstone, Montana. PowerPoints supplied.

April 29, 2009: Speaker, Remarks at the Harris County Bench Bar Pro Bono Awards, Harris County Bar and Harris County Judiciary, Houston, Texas. Transcript supplied.

March 2009, March 2007: Lecturer, "Sidebar at Sea," Annual Houston Young Lawyers Association Continuing Legal Education Program, Carnival Ecstasy and Royal Caribbean Splendor of the Seas. My lectures covered the topics of effective appellate advocacy, courtroom etiquette and professionalism. I have no notes, transcript, or recording. The address for the Houston Young Lawyers Association is P.O. Box 61208, Houston, Texas 77208.

February 2, 2009: Speaker, "Flower Garden Banks National Marine Sanctuary," JASON Learning Alliance of Southeast Texas Marine Education Program, Beaumont, Texas. My presentation addressed the topic of the Flower Garden Banks National Marine Sanctuary. I have no notes, transcript, or recording. The address for the JASON Learning Alliance is P.O. Box 1609, Nederland, Texas 77627.

October 2008: Panelist, "Risk Allocation in Litigation," State Bar of Texas Minority Attorney Program, Austin, Texas. The panel discussed effective litigation strategies at the State Bar of Texas' CLE program. I have no notes, transcript, or recording. The address for the State Bar of Texas is 1414 Colorado Street, Austin, Texas 78701.

July 2008: Instructor, National Institute of Trial Advocacy ("NITA"), Boulder, Colorado. I taught courses in trial advocacy skills. I have no notes, transcript, or recording. The address for NITA is 1685 38th Street, Suite 200, Boulder, Colorado 80301-2735.

June 4, 2008: Speaker, "The Discovery of Evidence in the Electronic Age," and "The Admissibility of Electronic Evidence," Washington State Judges' Annual Educational Conference, Lake Chelan, Washington. PowerPoints supplied.

February 2008: Speaker, "Bullet-Proofing Motions for Summary Judgments," Galveston County Bar Association, Galveston, Texas. I gave a presentation about how to successfully prepare and argue motions for summary judgment. I have no notes, transcript, or recording. The address for the Galveston County Bar Association is P.O. Box 36, Galveston, Texas 77553.

August 26-30, 2007: Instructor, "Current Issues in the Law" Program, National Judicial College, Bar Harbor, Maine. PowerPoints supplied.

February 2007: Panelist, "What Do Judicial Clerks Do?," American Bar Association Annual Judicial Clerkship Program, Miami, Florida. The panel

discussed differences and similarities in clerking for state and federal trial and appellate courts. I have no notes, transcript, or recording. The address for the American Bar Association is 1050 Connecticut Ave, N.W., Suite 400, Washington, D.C. 20036.

November 2006: Instructor, National Institute of Trial Advocacy ("NITA"), Boulder, Colorado. I taught courses in trial advocacy skills. I have no notes, transcript, or recording. The address for NITA is 1685 38th Street, Suite 200, Boulder, Colorado 80301-2735.

October 21, 2006: Speaker, "Closing Remarks," Houston Bar Association Professionalism Day, Houston, Texas. Remarks supplied.

April 18, 2006: Speaker, "The USA Patriot Act: An Overview of the Debate," Mississippi Trial and Appellate Judges' Annual Conference, Tunica, Mississippi. PowerPoint supplied.

March 29, 2006: Speaker, "The Importance of Jury Service," Houston Bar Association, Houston, Texas. I addressed the topic of jury service in Texas courts. I have no notes, transcript, or recording. The address for the Houston Bar Association is 1111 Bagby Street FLB 200, Houston, Texas 77002.

March 18-23, 2006: Instructor, "Current Issues in the Law" Program, National Judicial College, Key West, Florida. PowerPoints supplied.

March 2006: Panelist, Harvard Black Law Students Association Annual Conference, Cambridge, Massachusetts. I was a panelist on the topic of how to pursue a career as a judicial officer. I have no notes, transcript, or recording. The address for the Black Law Students Association is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

February 2006: Panelist, "The Students Question the Judges," ABA Judicial Clerkship Program, Chicago, Illinois. I was a panelist in a question-and-answer session where judges addressed topics such as jurisprudence and life experiences. I have no notes, transcript, or recording. The address for the American Bar Association is 1050 Connecticut Ave, N.W., Suite 400, Washington, D.C. 20036.

February 2006 and March 2005: Lecturer, "Cruisin' Through Trial," Annual Houston Young Lawyers Association Continuing Legal Education Program, Carnival Celebration. My lectures covered the topic of effective appellate advocacy, courtroom etiquette and professionalism. I have no notes, transcript, or recording. The address for the Houston Young Lawyers Association is P.O. Box 61208, Houston, Texas 77208.

October 20, 2005: Panelist, "Judicial Campaign Rhetoric after *Republican Party of Minnesota v. White*," National Association of Women Judges, Houston, Texas. PowerPoint supplied.

September – December 2005: While running for re-election as a Justice on the First Court of Appeals, I attended various Republican club meetings and events where I was introduced as an incumbent state justice. Although I cannot recall every club or meeting that I may have attended, they likely included the Greater Houston Pachyderm Club and the Austin County Pachyderm Club. After reviewing my files and public records, I could not determine the specific dates or locations of these meetings. At these events, if given the opportunity, I generally spoke about my qualifications, experience and community involvement. I did not speak from a prepared text. I have no notes, transcripts or recordings from these meetings. The address for the Greater Houston Pachyderm Club is P.O. Box 22531, Houston, Texas 77227. The Austin County Pachyderm Club is located in Bellville, Texas and does not have an office or mailing address.

June 11 – 16, 2005: Instructor, "Current Issues in the Law" Program, National Judicial College, San Francisco, California. PowerPoint supplied.

March 2005: Speaker, "The Jury Charge: Navigating the Charge Conference after the Demise of Broad-Form Submission," Civil District/Appellate Bench Bar Conference, Houston Bar Association, Houston, Texas. PowerPoint supplied.

February 17, 2005: Panelist, "Trying a Case for a Successful Appeal," South Texas College of Law Advanced Civil Trial Law Conference, Houston, Texas. The panel addressed the topic of successful appellate strategies. I have no notes, transcript, or recording. The address for South Texas College of Law is 1303 San Jacinto Street, Houston, Texas 77002.

January 2005: Instructor, National Institute of Trial Advocacy ("NITA"), New Orleans, Louisiana. I taught courses in trial advocacy skills. I have no notes, transcript, or recording. The address for NITA is 1685 38th Street, Suite 200, Boulder, Colorado 80301-2735.

November 2004: Speaker, "Responsible Third Parties, Contribution and Indemnity: An Overview," State Bar of Texas, 27th Annual Advanced Civil Trial Program, Houston, Texas. Paper on which presentation was based previously supplied in response to 12a.

June 26-July 1, 2004: Instructor, "Current Issues in the Law" Program, National Judicial College, Newport, Rhode Island. PowerPoints supplied.

March 2004: Speaker, "The Next Evolution: Contribution and Indemnity after HB4," Houston Bar Association, Appellate Practice Section, Houston, Texas. Paper on which presentation was based previously supplied in response to 12a.

February 2004: Speaker, American Bar Association Judicial Clerkship Program, San Antonio, Texas. I spoke to minority law students about the benefits of clerking. I have no notes, transcript, or recording. The address for the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

December 2003: Speaker, Civil Court Ad Litem Institute, Houston Bar Association, Houston, Texas. I spoke on the topic of the ethical requirements for guardian ad litems appointed in Texas. I have no notes, transcript, or recording. The address for the Houston Bar Association is 1111 Bagby Street FLB 200, Houston, Texas 77002.

December 2003, December 2002, July 1995: Speaker, "Litigation and Trial Tactics," University of Houston Law Foundation, Houston, Texas. I gave substantially similar presentations on excluding inadmissible evidence at trial at University of Houston Law Foundation seminars. Unpublished paper on which presentation was based supplied.

October 24, 2003: Speaker, "House Bill 4," Jefferson County Bar Association, Beaumont, Texas. I provided a summary analysis of the then recently-enacted Texas House Bill 4. Paper on which presentation was based previously supplied in response to 12a.

August 2003: Speaker, "Contribution and Indemnity in Texas," Harris County Judicial Education Seminar, Houston, Texas. Paper on which presentation was based previously supplied in response to 12a.

March 30, 2003: Speaker, "American Red Cross Youth Recognition Day," American Red Cross, Houston, Texas. Draft remarks supplied.

March 13, 2003: Speaker, Court of Appeals for the First District of Texas Investiture Ceremony for George C. Hanks, Jr., Houston, Texas. Draft remarks supplied.

January – December 2003: While running for election as a Justice on the First Court of Appeals, I attended various Republican club meetings and events where I was introduced as an incumbent state justice. Although I cannot recall every club or meeting that I may have attended, I recall that they included the Greater Houston Pachyderm Club and the Austin County Pachyderm Club. After reviewing my files and public records, I have listed two specific events below, but I do not recall the specific dates or locations of all such meetings. At these events, if given the opportunity, I generally spoke about my qualifications, experience and community involvement. I did not speak from a prepared text. I have no notes, transcripts or recordings from these meetings.

March 2003: Speaker, Greater Houston Pachyderm Club, Houston, Texas. I spoke about my qualifications to continue serving as a Justice on the First Court of Appeals. The address for the Greater Houston Pachyderm Club is P.O. Box 22531, Houston, Texas 77227.

January 2003: Speaker, Austin County Pachyderm Club, Bellville, Texas. I spoke about my qualifications to continue serving as a Justice on the First Court of Appeals. This organization does not have an office or mailing address.

January 2003, October 2002, January 2002: Speaker, Texas Insurance Law Symposium, South Texas College of Law Legal Education Department, Houston, Texas. I gave substantially similar presentations on the topic of summary jury trials. PowerPoint supplied.

June 12, 2002: Panelist, "Securities Litigation Judicial Panel," State Bar of Texas, Houston, Texas. I was a panelist at the State Bar of Texas' Annual Meeting and spoke on judicial management of securities law cases in Texas. I have no notes, transcript, or recording. The address for the State Bar of Texas is 1414 Colorado Street, Austin, Texas 78701.

March 2002, February 2001, March 1999, August 1998, March 1998, December 1997, August 1997, September 1996, August 1996, March 1996, March 1995: Speaker, University of Houston Law Foundation, Houston, Texas. My presentations were based on two unpublished papers for the University of Houston Law Foundation, one of which is supplied here and one of which was previously supplied in response to the "Litigation and Trial Tactics" events.

September – December 2001: While running for election as a district court judge, I attended various Republican club meetings and events where I was introduced as an incumbent state judge. Although I cannot recall every club or meeting I may have attended, they likely included the Greater Houston Pachyderm Club. After reviewing my files and public records, I could not determine the specific dates or locations of these meetings. At these events, if given the opportunity, I generally spoke about my qualifications, experience and community involvement. I did not speak from a prepared text. I have no notes, transcripts or recordings from these meetings. The address for the Greater Houston Pachyderm Club is P.O. Box 22531, Houston, Texas 77227.

May 2001: Speaker, "Civil Trial Tactics: Tips from the Experts," Houston Young Lawyers Association, Houston, Texas. I gave a presentation about successful litigation strategies that I had seen from the bench thus far. I have no notes, transcript, or recording. The address for the Houston Young Lawyers Association is P.O. Box 61208, Houston, Texas 77208.

February 20, 2001: Speaker, 157th District Court Investiture Ceremony for

George C. Hanks, Jr., Houston, Texas. I gave remarks at my investiture thanking the Governor of Texas, my family, my staff and the public for the honor of serving the citizens of the State of Texas. I have no notes, transcript, or recording. The address of the Harris County Courthouse is 201 Caroline Street, Houston, Texas 77002.

April 2000: Speaker, "Advanced Civil Litigation Under the New Rules," University of Houston Law Foundation, Houston, Texas. I provided a summary analysis of the then recently-enacted House Bill 4 for a University of Houston Law Foundation seminar. I have no notes, transcript, or recording. The address for the University of Houston Law Center is 100 Law Center, Houston, Texas 77204.

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.

John K. Rabiej, *Duke Law Holds Post-Graduate Degree Program for Judges*, 50 HOUSTON LAWYER 43 (May/June 2013). Copy supplied.

Neil Offen, *The Judges Take a Seat*, DURHAM HERALD SUN (June 11, 2012). Copy supplied (comments reprinted on the Duke Law Center for Judicial Studies website at http://law.duke.edu/judicialstudies/).

Perspectives and Commentaries: The Judges, AMERICAN BAR ASSOCIATION JUDICIAL CLERKSHIP PROGRAM (2010). Copy supplied.

George C. Hanks, Jr., *George Hanks*, HOUSTON FIT, FALL PROGRAM – FULL MARATHON COACHES (2009). Copy supplied.

Mary Alice Robbins, *A Diversity Dilemma: Justices, Lawmakers Work to Increase Number of Minority Law Clerks, Staff Attorneys*, TEXAS LAWYER (July 24, 2006). Copy supplied.

Fulbright & Jaworski LLP, *Fine Points of the Law and Human Nature: Judge George Hanks*, 2 AFTERWORDS 9 (July 2005). Copy supplied.

Mary Alice Robbins, *Lawyers Feel TRAPped When 1st Court Strikes Motions Based on Technicalities*, TEXAS LAWYER (February 28, 2005). Copy supplied.

Robert W. Higgason, *Diversity Strengthens the Texas Judiciary*, 40 HOUSTON LAWYER 30 (May/June 2003). Copy supplied.

Harvey G. Brown, *The Summary Jury Trial Perspectives of the Bench and Bar (Part II)*, 38 HOUSTON LAWYER 16 (May/June 2001). Copy supplied.

Harvey G. Brown, *The Summary Jury Trial Perspectives of the Bench and Bar (Part I)*, 38 HOUSTON LAWYER 32 (March/April 2001). Copy supplied.

Carol Christian, *New Judge Gets Help Dressing*, HOUSTON CHRONICLE (January 13, 2001).

Carol Christian, *Houston Lawyer is Perry's First Judicial Appointment*, HOUSTON CHRONICLE (January 11, 2001). Copy supplied.

Clifford Pugh, *A Big Brother Relationship Can Last a Lifetime*, HOUSTON CHRONICLE (October 12, 1995). Copy supplied.

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

I have served as a United States Magistrate Judge for the United States District Court for the Southern District of Texas, Houston Division after being appointed by Ricardo Hinojosa, Chief Judge of the Southern District of Texas, in September 2010. My jurisdiction is set by federal statute and orders issued by the Chief Judge of the District. According to General Order 2002-13, my jurisdiction includes "any duty allowed by 28 U.S.C. § 636 or any other law," such as trial and pretrial matters for civil and criminal cases, with the exception of felony criminal trials.

In 2003, I was appointed as a Justice for the Court of Appeals for the First District of Texas by Governor Rick Perry. I was subsequently elected to the position in 2004 and 2006. The First Court of Appeals has intermediate appellate jurisdiction of civil and criminal cases appealed from district or county courts in ten Texas counties, with the exception of criminal cases in which the death penalty has been assessed. The First Court of Appeals also has original jurisdiction of certain matters, including writs of mandamus and writs of habeas corpus.

In 2001, I was appointed as a Judge, 157th Civil District Court, Harris County, Texas by Governor Rick Perry. I was subsequently elected to the position 2002. The 157th Civil District Court in Harris County, Texas hears civil cases in which the amount in controversy is $200 or more, as well as suits involving title to land and requests for declaratory or injunctive relief. The 157th Civil District Court has the power to issue writs, including writs of habeas corpus, mandamus, sequestration, attachment and garnishment.

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

I have presided over 91 trials ending in a verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	32%
bench trials:	68%
civil proceedings:	99%
criminal proceedings:	1%

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

See attached lists for opinions issued as a Justice on the First Court of Appeals, as a member of the Texas Judicial Panel on Multidistrict Litigation, and as a United States Magistrate Judge. Not every opinion that I have written is reported via services such as Westlaw and Lexis. These opinions are available to the public and the parties through the federal or state court websites.

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 presided over the following cases as a judge in Texas' 157th District Court.

1. *Chee et al. v. Pinkmonkey.com, Inc. et al.*, Case No. 2000-38766.

In this complex securities case, the plaintiffs brought Texas Blue Sky, common law fraud, and negligent misrepresentation claims against the defendants, alleging that the defendants had unlawfully sold securities for a company providing education software without any intention of registering those securities to the plaintiffs. In this case, an officer of defendant Pinkmonkey.com sold the same securities to two different sets of investors – one, a group of sophisticated investors in New York City and the other, a group of relatively unsophisticated investors in Houston. The officer then resigned from the company and took the securities sales proceeds from both sets of investors but only registered the securities in the names of the sophisticated investors. I denied a motion for summary judgment filed by one of Pinkmonkey.com's employees shortly before trial. The basis for the ruling was that there were fact issues regarding the elements of all of the claims brought against this defendant. No written opinion was issued regarding this ruling. After a six-day trial, the jury returned a verdict for the plaintiffs, awarding over $900,000 in actual damages, $250,000 in exemplary damages, $400,000 in attorney's fees, $5,561 in costs, and $11,587 in expert witness fees.

Counsel for all Plaintiffs:
Julia Anderson Cook
Schlanger, Silver, Barg & Paine, LLP
109 North Post Oak Lane, Suite 300
Houston, TX 77024
713-785-1700

Counsel for all Defendants:
Mark W. Racer (Solo Practitioner)
212 East Burleson Street
Wharton, TX 77488
979-531-0322

2. *French American Banking Corp. vs. Deloitte & Touche L.L.P.*, Case No. 1996-44542.

The plaintiff, French American Banking, had hired the defendant, Deloitte, to issue an audit and report regarding a warehouse inventory of plastic resins that was being held as collateral for a loan made by plaintiff. The plaintiff had hired the defendant to make sure that the total inventory in the warehouse did not fall below a certain amount. The plaintiff discovered that its actual inventory was much lower than the amounts the defendant had reported in the previous years. The defendant responded that pursuant to the letter of engagement, the audit was designed only to test whether certain portions of the warehouse contained the requisite amount of resins and that defendant never agreed to make a manual count of 100% of the inventory in the entire warehouse. Subsequently, the plaintiff brought various negligence and breach of fiduciary duty claims against the defendant. I denied defendant's motion for summary judgment on the grounds that there were fact issues regarding the elements of all of the claims brought against the defendant. No written opinion was issued regarding this ruling. After a 12-day trial, the jury returned a verdict for the defendant.

Counsel for Plaintiff:
Melvin Lee Smith, Jr. (Solo Practitioner)
4201 Cypress Creek Parkway, Suite 315
Houston, TX 77068
281-893-4284

Counsel for Defendant:
James Kennedy Taylor
Beck Redden LLP
1221 McKinney Street, Suite 4500
Houston, TX 77010
713-951-3700

3. *Juanopulos v. ARC Insurance et al.*, Case No. 1997-56593.

   This lawsuit arose out of an insurance coverage dispute. The plaintiffs alleged that the defendants, an insurance company and an individual agent, sold them a commercial liability policy and specifically represented that any injuries occurring on the premises of the plaintiffs' automobile repair business would be covered under the policy that they were to receive. After an injury occurred on their business premises, plaintiffs' insurance claim was refused payment, because their policy did not in fact cover their type of business. The plaintiffs brought fraud and Texas Deceptive Trade Practices Act claims against the defendants for the damages they suffered from relying on the insurance company and agent's representations. I denied defendants' motion for partial summary judgment on the grounds that there were fact issues regarding the elements of the breach of contract claims against the defendants. No written opinion was issued regarding this ruling. After a five-day trial, the jury returned a verdict awarding the plaintiffs $246,218 in actual damages, $20,000 in Deceptive Trade Practices Act damages, and $60,000 in attorneys' fees.

   Counsel for Plaintiffs:
   Frank W. Mitchell (Solo Practitioner)
   2930 South Tioga Way
   Las Vegas, NV 89117
   702-443-6166

   Counsel for Defendants:
   Michael A. Maness
   Deceased

4. *Mejia v. Farmers New World Life Insurance Co. et al.*, Case No. 1996-26163.

   In this insurance case, the surviving spouse of the policyholder alleged the defendant insurer breached the insurance policy by refusing to pay mortgage protection insurance after the policyholder died. Defendants asserted that the plaintiff's husband generally requested insurance "to take care of his family" in the event of his death but did not specifically request mortgage insurance in addition to a life policy for $100,000. The policy that was sold to him did not include mortgage protection nor did the insurance company receive any premiums for additional mortgage protection. Plaintiff responded that her husband specifically requested mortgage protection insurance and defendants made specific representations to her that the policy would pay not only $100,000 but also $45,000 for the mortgage. The plaintiff, who could not read English, alleged that she and her husband relied on representations to purchase a

policy with defendants. After a five-day trial, the jury returned a verdict for the plaintiff and awarded $195,327 in damages and attorney's fees.

Counsel for Plaintiff:
Bradford Wald Irelan
Ireland & Hargis PLLC
440 Louisiana Street, Suite 1800
Houston, TX 77002
713-222-7666

Counsel for Defendants:
William Gregory Looser (Solo Practitioner)
Current business contact information not available.
713-291-9673
(Farmers New World Life Insurance Company)

Ileana M. Blanco
DLA Piper LLP
1000 Louisiana Street, Suite 2800
Houston, TX 77002
713-425-8435
(Gonzalo Jimenez Insurance Agency)

5. *Ramakrishna v. Sisters of Charity et al.*, Case No. 1998-06597.

This was an employment discrimination suit brought by the plaintiff against his employer, St. Joseph's Hospital. The plaintiff, a doctor of Indian descent, alleged that the defendants discriminated against him on the basis of race, color, and national origin when they wrongfully suspended him from having privileges at the hospital. Defendants asserted that the plaintiff was not suspended because of his color, race, or national origin, but because of persistent complaints about the quality of his medical care. Defendants also asserted that the individual who initiated plaintiff's suspension was an ethnic minority. Plaintiff responded that he had received excellent evaluations in the past and only starting receiving negative reviews after he had complained about racial epithets, which defendants conceded were made by another doctor during a staff meeting. I denied defendants' motion for summary judgment on the grounds that there were fact issues regarding the reason for plaintiff's suspension. No written opinion was issued regarding this ruling. After a 13-day trial, the jury found for the defendants on all of plaintiff's claims.

Counsel for Plaintiff:
Paul Danziger
Danziger & Dellano, PC

440 Louisiana Street, Suite 1212
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713-222-9998

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Current business contact information unavailable

6. *Yucca Supply Company v. Continental Operating Co.*, Case No. 1998-32894.

This dispute arose out of a complex oral agreement for drilling-mud supplies and services. Plaintiff, an oil field services provider, entered into an oral contract with the defendant for the drilling of an oil well on defendant's property. The well blew out during drilling, damaging the property. The plaintiff then sued the defendant for amounts due for supplies and services it provided under the contract and also brought a claim for quantum meruit. The defendant responded with a claim for damages allegedly caused by plaintiff's negligent drilling activities. After a seven-day trial, the jury found that an express contract existed between the parties and ruled in favor of the defendant on all of its claims. The jury awarded the defendants $59,813 in actual damages, plus all court costs. The jury found against the plaintiff on its breach of contract claim and awarded damages to the plaintiff on its quantum meruit claim. After the verdict, I denied plaintiff's motion for judgment notwithstanding the verdict on its contract claim. I also granted defendant's motion for the court to disregard the jury's quantum meruit finding for plaintiff because the jury found the existence of an express contract. There is no written opinion regarding these rulings. My rulings were affirmed by the 14th Court of Appeals in *Yucca Supply Co. v. Cont'l Operating Co.*, 14-02-00085-CV, 2003 WL 297557 (Tex. App.—Houston [14th Dist.] Feb. 13, 2003, no pet.).

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7. *New Millennium Business Systems, Inc. v. Jackson et al.*, Case No. 2000-52550.

The plaintiff, an office machine sales company, brought this action seeking declaratory relief against the defendants, one of which was Southern Office Solutions. The defendants operated a competing office machine sales company and, in a concurrent action, had sued the plaintiffs for tortiously interfering with defendants' business by hiring one of defendant Southern Office Solutions' former employees and thereby obtaining its trade secrets. The plaintiff sought declarations that the concurrent action could not be prosecuted because the plaintiff owed no obligations to defendants and because there was no enforceable agreement with which the plaintiff could have interfered. After a six-day trial, I accepted the jury's findings of fact in favor of plaintiff and held as a matter of law that the defendants had no valid claims against plaintiff or its employees.

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(All defendants as cross-plaintiffs)

8. *Anderson v. Landmark Chevrolet et al.*, Case No. 2000-47849.

In this personal injury case, the plaintiff brought suit alleging that a car salesman sexually assaulted her during a test drive. Defendants denied that the assault had occurred and asserted that the lawsuit was in retaliation for the salesman not giving plaintiff the sales price that she had requested. Plaintiff sued the individual salesman, as well as the car dealership, one of the largest in the Houston area, and the salesman's supervisor under a vicarious liability theory. At the close of evidence in this jury trial, which lasted ten days, I granted the supervisor's motion for a directed verdict because the plaintiff had not put forth any evidence to support her claims against him. There is no written opinion regarding this ruling. With respect to the alleged assailant and the car dealership, the jury found for the defendants.

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(Mr. Aguilar)

9. *Dayton v. Lord*, Case No. 1997-47756.

The plaintiff brought breach of warranty and Texas Deceptive Trade Practices claims against the defendant. The plaintiff alleged that the defendant had advertised the sale of two very expensive Cummins V8-555 vessel engines, but in fact sold the plaintiff defective engines of a different model. The defendant responded that he agreed to sell the engines to plaintiff and the plaintiff agreed to accept the responsibility of transporting the engines from Jacksonville, Florida to Puerto Rico. Plaintiff, in turn, delegated this responsibility to a third party. This party delivered engines to plaintiff that were not the same engines that defendant had delivered to him in Florida for shipment. After a two-day trial, the jury returned a verdict for the defendant.

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10. *McKenzie v. A.P. Green Refractories Co., et al.,* Case No. 1999-42808.

In this products liability case, the plaintiff alleged that he was exposed to materials containing asbestos during his employment at Union Carbide. The plaintiff brought claims against the defendants – the plaintiff's employer and the manufacturers of various products containing asbestos – alleging that the defendants' negligence and inadequate warnings were the producing causes of his asbestos-related injuries. The defendants argued, among other things, that the plaintiff could not establish that either their conduct or products caused his illness. I denied a motion for summary judgment filed by defendants shortly before trial on the basis that there were fact issues regarding the elements of causation on all of the claims brought against the defendants. No written opinion was issued regarding this ruling. After a 13-day trial, the jury returned a verdict for the defendants on all of the plaintiff's claims.

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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. *The Burlington Insurance Company v. Ranger Specialized Glass, Inc. et al.*, 4:12-CV-1759 (S.D. Tex. February 10, 2014).

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2. *Kroger Co. v. Persley*, 261 S.W.3d 316 (Tex. App.—Houston [1st Dist.] 2008, no pet.).

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3. *Texas S. Univ. v. State St. Bank & Trust Co.*, 212 S.W.3d 893 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

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4. *Jones v. Republic Waste Serv. of Texas, Ltd.*, 236 S.W.3d 390 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

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5. *Excel Auto and Truck Leasing, L.L.P. v. Alief Indep. Sch. Dist.*, 249 S.W.3d 46 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

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6. *Sterling Chems, Inc. v. Texaco Inc.*, 259 S.W.3d 793 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

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7. *Reiland v. Patrick Thomas Properties, Inc.*, 213 S.W.3d 431 (Tex. App.—Houston [1st Dist.] 2006, pet. denied).

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8. *Trigeant Holdings, Ltd. v. Jones*, 183 S.W.3d 717 (Tex. App.—Houston [1st Dist.] 2005, pet. denied).

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9. *Daniels v. Lyondell-Citgo Ref. Co., Ltd.*, 99 S.W.3d 722 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

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10. *IP Petroleum Co., Inc. v. Wevanco Energy, L.L.C.*, 116 S.W.3d 888 (Tex. App.—Houston [1st Dist.] 2003, pet. denied).

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

Aspenwood Apartment Corp. v. Link, No. 01-05-00555-CV, 2007 WL 2832985 (Tex. App.—Houston [1st Dist.] April 19, 2007) (*cert. denied* in 129 S. Ct. 997).

Payan v. State, 199 S.W.3d 380 (Tex. App.—Houston [1st Dist.] 2006) (*cert. denied* in 127 S. Ct. 1129).

Lazo v. State, Nos. No. 01-04-00875-CR, 2005 WL 3071955 (Tex. App.—Houston [1st Dist.] November 17, 2005) (*cert. denied* in 127 S. Ct. 439).

Brockman v. Tyson, No. 01-03-01335-CV, 2005 WL 2850128 (Tex. App.—Houston [1st Dist.] Oct. 27, 2005) (*cert. denied* in 127 S. Ct. 191).

Mapp v. State, No. 01-03-00195-CR, 2004 WL 638393 (Tex. App.—Houston [1st Dist.] April 01, 2004) (*cert. denied* in 125 S. Ct. 2258).

Leachman v. State, No. 01–98–01255–CR, 2004 WL 744820 (Tex. App.—Houston [1st Dist.] April 8, 2004) (*cert. denied* in 128 S. Ct. 2295).

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.

Serna v. Law Office of Joseph Onwuteaka, P.C., 2012 WL 2360805 (S.D.Tex. June 19, 2012), *rev'd*, 732 F.3d 440, 443–46 (5th Cir. 2013). In a split decision on an issue of first impression, the Fifth Circuit reversed the grant of summary judgment for the defendant, holding that, in light of Congress's purpose in enacting the Fair Debt Collection Practices Act, a violation of the Act's venue requirement did not occur until the debtor received notice of the debt collection suit and the limitations clock was therefore not triggered until the debtor received such notice.

Mitchell v. Methodist Hosp., 2009 WL 5174186 (Tex. App.—Houston [1st Dist.] 2009) (No. 01-08-00898-CV), *rev'd*, 335 S.W.3d 610 (Tex. 2011). In this case regarding the sufficiency of an expert report in a medical malpractice case, the Texas Supreme Court reversed and remanded on the issue of the sufficiency of

the expert report to allow the trial court to reconsider the issue in light of intervening standards that the Texas Supreme Court had issued.

Walters v. Cleveland Regional Medical Center, 264 S.W.3d 154 (Tex. App.—Houston [1st Dist.] 2007) (No. 01–06–01068–CV), *rev'd*, 307 S.W.3d 292, 294 (Tex. 2010). This was a medical malpractice case in which the Texas Supreme Court found that summary judgment was improper because there was a genuine issue of material fact as to whether the patient discovered the surgical sponge left by a prior procedure within a reasonable time. The Texas Supreme Court disposed of another medical malpractice limitations case on the same day, clarifying Texas law on that issue.

Conte v. Ditta, 287 S.W.3d 28 (Tex. App.—Houston [1st Dist.] 2007) (No. 01-05-00603-CV), *rev'd*, 298 S.W.3d 187 (Tex. 2009). In a matter of first impression, the Texas Supreme Court reversed and held that no statute of limitations applied to a trustee removal action brought by a guardian.

Lin v. Metro Allied Ins. Agency, Inc., 305 S.W.3d 1 (Tex. App.—Houston [1st Dist.] 2007) (No. 01-05-00196-CV), *rev'd*, 304 S.W.3d 830 (Tex. 2009). This case addressed the standard of causation when bringing a claim for failure to provide insurance under a negligence theory and the Texas Deceptive Trade Practices Act. The Texas Supreme Court clarified its previous holdings and reversed, holding that the contractor was required to prove the availability of an insurance policy that would have provided coverage for plaintiff's damages in order to prevail under these theories of recovery.

Danos v. Rittger, 253 S.W.3d 294 (Tex. App.—Houston [1st Dist.] 2007) (No. 01-06-00350-CV), *rev'd*, 253 S.W.3d 215 (Tex. 2008). In light of its opinion in *Lewis v. Funderburk*, released the same day, the Texas Supreme Court reversed the decision as to the admissibility of an expert report and held that deficiencies in an expert medical report served by a medical malpractice plaintiff can be cured, during a 30-day cure period, by serving a report from a separate expert.

Chau v. Riddle, 212 S.W.3d 699 (Tex. App.—Houston [1st Dist.] 2006) (No. 01-04-00551-CV), *rev'd*, 254 S.W.3d 453 (Tex. 2008). The parents of a newborn infant who suffered permanent brain damage from lack of oxygen during delivery brought a medical malpractice action against the anesthesiologist and anesthesiologist's professional association. The Texas Supreme Court held that genuine issues of material fact as to whether the anesthesiologist was associated with the admitting or attending physician, thus precluding him from Good Samaritan statute's protection, prevented summary judgment from being granted.

Allen v. State, 263 S.W.3d 168 (Tex. App.—Houston [1st Dist.] 2007) (No. 01-04-00235-CR), *vacated by* 253 S.W.3d 260 (Tex. Crim. App. 2008). Although the Texas Court of Criminal Appeals noted that there should have been an instruction given to the jury that it was required to acquit the defendant on a charge of simple

assault if it had reasonable doubt as to whether victim consented to assault, the Court of Criminal Appeals ultimately held that the lack of such an instruction did not rise to level of egregious harm.

Leachman v. State, 2004 WL 744820 (Tex. App.—Houston [1st Dist.] 2004) (No. 01-98-01255-CR), *vacated by* 2005 WL 2990698 (Tex. Crim. App. Nov. 9, 2005). The Texas Court of Criminal Appeals granted the petition for review and vacated the opinion, ordering a reconsideration solely as to whether the defendant, who was charged with aggravated sexual assault, should have been allowed to cross-examine the nine-year complainant regarding complainant's prior sexual encounters—a point that the original opinion had not reached. On remand, my panel found that the defendant had failed to preserve his objection at trial. On subsequent appeal, the Court of Criminal Appeals denied the petition for review and the United States Supreme Court denied appellant's petition for writ of certiorari.

Ford v. State, 2003 WL 22310499 (Tex. App.—Houston [1st Dist.] 2003) (No. 01-02-00643-CR), *rev'd*, 158 S.W.3d 488 (Tex. Crim. App. 2005). In a split decision, the Texas Court of Criminal Appeals held that in a suppression hearing, a trooper's testimony that he saw the driver following another car "too closely" was conclusory and could not satisfy the State's obligation to show specific articulable facts for his reasonable suspicion—even though appellant testified that another car had "squeezed in" front of him while driving and state statute committed assessment of such violations to officers' subjective judgment, based upon particular factors.

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

United States Magistrate Judge:
All of my opinions and reports and recommendations are filed electronically in the Court's Electronic Case filing system (CM/ECF), making them available to the public. The Federal Supplement has published two of my opinions (approximately 2%), and most others are available on Westlaw or Lexis.

Justice on the First Court of Appeals:
All of my opinions were released for publication to the reporting agencies and are available to the public from the First District Court of Appeals website at www.1stcoa.courts.state.tx.us. The Southwestern Reporter has published 115 of these opinions (approximately 11%), and many others are available on Westlaw or Lexis.

Texas Judicial Panel on Multidistrict Litigation:
All of my opinions were released for publication to the reporting agencies and are available to the public from the Supreme Court of Texas website at

http://www.supreme.courts.state.tx.us/mdl/mdlhome.asp. Of the three opinions I authored, two were published in the Southwestern Reporter, and all are available on Westlaw or Lexis.

Judge of the 157 District Court, Harris County:
I did not author any written opinions as a district judge.

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.

Momentum EMS, Inc. v. Sebelius, No. 4:11-CV-298, 2014 WL 199061 (S.D. Tex. Jan. 13, 2014).

Jackson v. State, 314 S.W.3d 118 (Tex. App.—Houston [1st Dist.] 2010, no pet.). *Hotze v. White*, No. 01-08-00016-CV, 2010 WL 1493115 (Tex. App.—Houston [1st Dist.] April 15, 2010, pet. denied).

Sanchez v. Saghian, No. 01-07-00951-CV, 2009 WL 3248266 (Tex. App.—Houston [1st Dist.] Oct. 8, 2009, no pet.).

Sanders v. State, No. 01-07-00775-CR, 2009 WL 884741 (Tex. App.—Houston [1st Dist.] Apr. 2, 2009, pet. ref'd).

City of Houston v. Guthrie, 332 S.W.3d 578 (Tex. App.—Houston [1st Dist.] 2009, pet denied).

Williams v. State, 294 S.W.3d 674 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd).

Weaver v. State, 265 S.W.3d 523 (Tex. App.—Houston [1st Dist.] 2008, pet. ref'd).

Crocker v. State, 248 S.W.3d 299 (Tex. App.—Houston [1st Dist.] 2008, pet. ref'd).

Texas S. Univ. v. State St. Bank & Trust Co., 212 S.W.3d 893 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

Wybony v. State, 209 S.W.3d 285 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd).

Curry v. State, 186 S.W.3d 39 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

Schultze v. State, 177 S.W.3d 26 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd).

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

I have 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.

I am guided in my decisions regarding recusals by the federal recusal statutes and the Code of Conduct for United States Judges, as well as the applicable disciplinary and ethical rules of the State of Texas. The United States District Court for the Southern District of Texas has a system in place by which automated conflict checks are run. I have listed the names of my wife's employers, the University of Houston, and the American Red Cross. In addition to this automated system, I am assiduously attentive to the issue of conflicts, at all stages of a case, and I have trained my law clerks and staff to be similarly sensitive. I believe in erring on the side of caution in disclosing any potential conflicts to parties. During my time as a magistrate judge, I have not had to recuse myself from any cases, and no party has filed a motion seeking my recusal.

Similarly, as judge of the 157th District Court and a justice on the First Court of Appeals, I complied with all rules regarding recusal in every case before me. As a justice on the First Court of Appeals, I was automatically recused without my knowledge from hearing any appeal of a case that I presided over as a district judge. Further, if any matters had been assigned to me that I felt required my recusal, such as those involving my wife's employers, the University of Houston or the American Red Cross, I would have immediately recused myself *sua sponte*

from hearing the matter. During my time as a state judge, I did not have to recuse myself from hearing any cases, and no party filed a motion seeking my recusal.

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

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

I have not held public office other than judicial offices.

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

Other than my own election and re-election campaigns, I have not participated in any other political campaign. I have not held a position in a political party or on an election committee.

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

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

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

From 1989 to 1991, I was a law clerk to the Honorable Sim Lake, District Judge for the United States District Court for the Southern District of Texas.

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

I have never practiced alone.

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

1991 – 1996
Fulbright & Jaworksi, L.L.P. (now Norton Rose Fulbright, LLP)
Fulbright Tower

1301 McKinney Suite 1500
Houston, Texas 77010
Associate (1991 – 1994)
Participating Associate (1995 – 1996)

1996 – 2000
Wickliff & Hall, P.C. (now Cozen O'Connor LLP)
1221 McKinney Street, Suite 2900
Houston, Texas 77010
Associate (1996 – 1999)
Shareholder (2000)

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

In private practice, I never served as an arbitrator or mediator.

b. Describe:

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

In September 1991, I joined the law firm of Fulbright & Jaworski in one of its commercial litigation sections. I had day-to-day responsibilities for general civil litigation matters, including legal malpractice, accounting malpractice, securities fraud, and complex business disputes. My practice did not change significantly during my time at Fulbright & Jaworski.

In 1996, I joined the law firm of Wickliff & Hall. I had day-to-day responsibility for a similar docket. In addition to handling commercial litigation matters, my docket consisted of a large number of product liability and medical malpractice defense cases.

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

While working at both Fulbright & Jaworski and Wickliff & Hall, I primarily represented corporate clients. In medical malpractice cases, my clients included individual healthcare practitioners.

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: 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: 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 17 cases to a verdict, 16 of which were jury trials. I served as counsel in 13 of the cases and associate counsel in four.

i. What percentage of these trials were:
   1. jury: 94%
   2. non-jury: 6%

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

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. *Johnson et al. v. Foster et al.*, Case No. 1997-01497, 152nd District Court, Harris County, Judge Harvey Brown, 1999 – 2000.

   This case involved an alleged child-on-child sexual assault. The plaintiffs sued the defendants for, among other things, intentional torts and negligent supervision of a minor. I was counsel for Mr. and Mrs. Foster, whose 13-year-old child allegedly molested a neighbor's seven-year-old child. I was responsible for the overall representation of the clients, including trial, depositions, and pleadings. This emotionally-charged case involved unique issues of insurance coverage, the selection and trial role of a guardian ad litem and the evaluation of the impact of a prior juvenile criminal case arising from the facts of this case. The Fosters prevailed in a summary jury trial of this case, and the parties subsequently settled this matter in mediation.

   Counsel for Plaintiffs:
   Andrew L. Drapkin (Solo Practitioner)
   440 Louisiana Street, Suite 1125
   Houston, TX 77002
   713-222-1501

   Co-Counsel for Defendants:
   Alton J. Hall, Jr.
   Cozen O'Connor, P.C.
   1221 McKinney Street, Suite 2900
   Houston, TX 77010
   713-750-3114
   (Mr. and Mrs. Foster)

   Roy Lanier Fuller (Solo Practitioner)
   1300 Rollingbrook Street, Suite 608
   Baytown, TX 77521
   281-422-3555
   (Foster's minor child)

2. *Crye et al. v. Reichold Chemicals, Inc. et al.*, Case No. 1997-24399 (234th District Court, Harris County), Judge Scott Brister, 1999 – 2000.

   This environmental tort case involved claims by a class of thousands of individuals alleging that the smell from the refineries in the Channel View area was causing a multitude of health problems in the surrounding area. I was counsel for the defendant, Shell Oil Company, and was responsible for the overall representation of the client, including all depositions and pleadings, and preparing the case for trial. I also coordinated and participated in the depositions of dozens of plaintiffs during the span of two weeks. The year before this matter was set for trial, Shell was one of the sole remaining target defendants in this lawsuit. On the eve of trial, after my team had conducted in-depth plaintiff-by-plaintiff discovery

and analysis of claims, the parties settled this matter on terms favorable to my client.

Counsel for Plaintiffs:
Tony Martinez
Martinez, Barrera y Martinez, LLP
1201 East Van Buren
Brownsville, TX 78520
956-546-7159

3. *Parkway Imaging et al. v. Greensage et al.* Case No. 4:95-cv-4250 (S.D. Tex.), *aff'd, Parkway Imaging Ctr., Inc. v. Home Life Fin. Assur. Corp.*, 198 F.3d 240 (5th Cir. 1999); Judge Melinda Harmon, 1999 – 2000.

   I represented the Greensage defendants, who acted as agents to procure employee benefits packages for the plaintiffs. I served as counsel in the successful removal of this case from state district court to federal district court, as well as presenting oral argument at the final appeal of this case. I was responsible for the overall representation of the client, including all depositions and pleadings. The plaintiffs alleged that the defendants had committed numerous violations of ERISA including breaches of their fiduciary duty to plaintiffs. This allegedly resulted in a number of plaintiffs' employees not receiving coverage for very expensive medical treatments. Given the amount of damages claimed and the nature of plaintiffs' allegations of fraud and intentional misconduct, this case was a bet the company lawsuit for my clients. The district court granted all defendants' motions for summary judgment, and these rulings were affirmed following oral argument on plaintiffs' appeal to the Fifth Circuit Court of Appeals.

   Counsel for Plaintiffs:
   Fulton W. Broemer
   Broemer & Associates
   2918 Bagby
   Houston, TX 77006
   713-328-1101

   Co-Counsel for Defendants:
   Robert S. Harrell
   Norton Rose Fulbright, LLP
   1301 McKinney Street, Suite 5100
   Houston, TX 77010
   713-651-5583
   (Greensage)

   Anne Marie Finch
   Zimmerman Axelrad Meyer Stern & Wise PC
   3040 Post Oak Boulevard, Suite 1300

Houston, TX 77056
713-552-1234
(Greensage and Home Life Financial Assurance Corporation)

4. *Hernandez et al. v. Ella Square Associates et.al.*, Case No. 1998-39563 (234th District Court, Harris County), Judge Scott Brister, 1998 – 2000.

   This was a premises liability case involving a brutal murder and carjacking that was widely reported in the media. I was counsel for the apartment complex, Ella Square, in this action and the companion insurance coverage case filed by Ella Square against Essex Insurance Company in federal court to provide coverage for this lawsuit. I was responsible for the overall representation of the client, including all depositions and pleadings. A group of young men went joyriding and decided to carjack Mr. Hernandez, who had fallen asleep in his car in the parking lot of his apartment complex. When he cried out during the attack, the young men shot him at point-blank range. Given the nature of the pleadings and the language in Ella Square's insurance policies, coverage for this incident was in doubt. In addition, because of the amount of damages sought, an adverse judgment in this case or protracted litigation could have resulted in the bankruptcy of my client. First, I successfully negotiated very limited insurance coverage with the carrier for settlement. Next, I joined the criminal defendants as defendants in this suit as responsible third parties. Then, after thorough discovery involving security experts and local law enforcement and the filing of dispositive motions, I was able to settle this case on terms favorable to my client and to the satisfaction of the insurance carrier.

   Counsel for Plaintiffs:
   Erin Lunceford
   Sprott Rigby Newsom Lunceford
   2211 Norfolk, Suite 1150
   Houston, TX 77098
   713-523-8338

   Counsel for Essex Insurance Company:
   James Tompkins
   Galloway, Johnson, Tompkins, Burr & Smith
   1301 McKinney, Suite 1400
   Houston, TX 77010
   713-599-0700

5. *Memorial Hospital-Spring Branch et al. v. Mendoza and METRO Transit Workers Union*, Case No. 1994-61938, 189th District Court, Harris County, Judge Lee Duggan, 1998 – 2000.

   This was a complex medical malpractice/insurance fraud case involving an alleged widespread scheme by the plaintiff/counter-defendants, Memorial

Hospital-Spring Branch and one of its doctors, to commit patients for repressed memory syndrome and then discharge them when the insurance proceeds were expended. This case received much attention in the mental health field. I was associate counsel for the defendant/counter-plaintiff, METRO Transit Workers Union, which was responsible for paying for the hospitalization of employee dependents. I was responsible for the pleadings, depositions, and the trial. The day before trial, the individual doctor settled with my client. After unsuccessful settlement negotiations with Memorial Hospital, the case was tried to a jury for one-and-one-half weeks. The jury returned a verdict in favor of the hospital. The next day, however, before the trial judge entered the jury's verdict as a final judgment, the hospital settled this case in mediation on terms favorable to my client.

Counsel for Plaintiffs/Counter-Defendants:
John R. Strawn, Jr.
Strawn Pickens LLP
711 Louisiana, Suite 1850
Houston, TX 77002
713-659-9600

Co-Counsel for Defendants:
A. Martin Wickliff
Cozen O'Connor, PC
1221 McKinney Street, Suite 2900
Houston, TX 77010
713-750-3110

6. *Valle v. H. E. Butt Grocery Company*, Case No. 1998-22754, 281st District Court, Harris County, Judge Jane Bland 1998 – 2000.

This premises liability case involved issues of contributory negligence and duties owed to business invitees. My client was H.E.B., one of the largest supermarket chains in Texas. The plaintiff was a deliveryman who entered the supermarket as a business invitee and allegedly suffered injuries when concrete pavement caused his cart to capsize and his merchandise fell and struck him. I served as counsel in the case and was responsible for the trial and conducting settlement negotiations. After unsuccessful settlement attempts, the case was tried to a jury, which returned a verdict for the plaintiff that was substantially less than my client's expected costs of defense. After the trial, the plaintiff filed a motion for a new trial on the grounds that the jury award was substantially less than the amount of damages he suffered. The court denied the motion.

Counsel for Plaintiff:
Gwen E. Richard
Godwin Lewis, PC

1331 Lamar Street, Suite 1665
Houston, TX 77010
713-595-8300

Co-Counsel for Defendant:
Deborah E. Lewis
White and Wiggins LLP
901 Main Street, Suite 6200
Dallas, TX 75202
214-665-4157

7. *Best Care EMS and Baranovski v. Kislyuk et al.*, Case No. 1997-23465, 11th District Court, Harris County, Judge Mark Davidson 1997 – 2000.

   This case involved a business dispute between partners in a general partnership. I was counsel for plaintiffs. I was responsible for the overall representation of the clients, including the pleadings, depositions, and the trial. The Baranovskis came to this country from the former Soviet Union with very little money after the Chernobyl disaster. They started Best Care EMS, a medical transport company, as their sole means of support. The success of this business was critical to the United States government allowing them to remain in this country and work toward citizenship. After the company became very successful, their American partners attempted to take over the company and have the Baranovskis deported. After a three-day trial, the jury found for the Baranovskis, and they maintained control of the company.

   Counsel for Defendants:
   Bret S. Kisluk (Solo Practitioner)
   2813 West T.C. Jester Boulevard
   Houston, TX 77018
   713-685-5000

8. *Southwest Tenant v. Rowan Companies*, Case No. 1992-20622, 113th District Court, Harris County, Judge Patricia Hancock, 1995 – 1996.

   This was a complex construction lawsuit in which I was associate counsel for the defendant, Rowan Companies ("Rowan"). I participated in taking depositions and preparing the pleadings and motions filed in this case. At trial I presented Rowan's expert witnesses on direct examination and prepared the cross-examination of Southwest Tenant's experts. This case involved the requisite expert testimony to establish the existence of delay damages in a construction project and the proper calculation of these damages. The case resulted in a jury verdict in favor of the plaintiff, but was later remanded for a new trial by the court of appeals based on the issues raised in Rowan's motion for summary judgment. Rowan successfully argued that Southwest Tenant's expert's methodology for determining the existence of delay damages was inherently flawed and had never

been accepted by any court. This was one of only a handful of Texas state court cases up to that time that had addressed the methodology used by plaintiff's expert. The case was subsequently settled.

Counsel for Plaintiff:
Tom Bayko
McKool Smith
600 Travis Street, Suite 7000
Houston, TX 77002
713-485-7306

Co-Counsel for Defendant:
Edmund Lee Haag, III
Reed Smith LLP
811 Main Street, Suite 1700
Houston, TX 77002
713-469-3888

Jack Edward Urquhart
Beirne, Maynard & Parsons, LLP
1300 Post Oak Boulevard, Floor 25
Houston, TX 77056
713-623-0887

9. *Lonergan et al. v. Bank of America*, Case No. 1994-35350, 164th District Court, Harris County, Judge Katie Kennedy, 1995.

This was a premises liability case involving a shooting at a bank ATM. I was associate counsel and responsible for preparing and filing all pleadings and motions in this case, as well as taking and defending some of the depositions. My client was Bank of America N.T. & S.A. This case involved three high school athletes who had recently graduated from Aldine High School in Houston and had received football scholarships for the upcoming fall semester. During the summer after their senior year, the athletes decided to hold up bank customers at ATMs located in remote areas for spending money. Mr. Lonergan alleged that as a result of the design of the drive-thru ATM, he was unable to flee the scene of his attack. Mr. Lonergan was shot in the back and became a paraplegic. This case was settled at mediation for a sum that was reasonable to the client. Our investigations into the occurrence resulted in the client reevaluating and redesigning its older drive-thru ATMs nationwide.

Counsel Plaintiffs:
J. Steven Houston (Solo Practitioner)
P.O. Box 388
Marathon, TX 79842
408-286-5800

Co-Counsel for Defendants:
Frank G. Jones
Norton Rose Fulbright
1301 McKinney Street, Suite 5100
Houston, TX 77010
713-651-5473
(Bank of America)

Louis E. McCarter, Jr.
(No longer practicing law)

10. *In re Browning Ferris Industries Securities Litigation,* 876 F. Supp. 870 (S.D. Tex. 1995) and *In re Browning Ferris Industries Shareholder Derivative Action*, 830 F.Supp. 361 (S.D. Tex. 1993), Judge Lee Rosenthal, 1994 – 1996.

These consolidated class action lawsuits involved very complicated securities fraud allegations against Browning Ferris Industries ("BFI") and its directors for insider trading and false statements in quarterly reports. The actual damages alleged by the plaintiffs totaled in the hundreds of millions of dollars. I was the associate counsel on both cases representing BFI, and I was responsible for preparing the briefing and motions in these cases, from discovery and the challenges to class certification to the filing of the motions for summary judgment. Summary judgment motions in both cases were granted in favor of BFI. I also assisted in successfully defending these cases before the United States Courts of Appeals for the Fifth Circuit.

Co-Counsels for Defendants:
Dan McClure
Richard Carroll
Norton Rose Fulbright, LLP
1301 McKinney Street, Suite 5100
Houston, TX 77010
713-651-5151

John Rufus Wallingford
3711 San Felipe, #14-B
Houston, TX 77027
713-598-1818

David Beck
Beck Redden LLP
1221 McKinney Street, Suite 4500
Houston, TX 77010
713-951-3700

Tom Godbold
Twin Eagle Resource Management, L.L.C.
8847 West Sam Houston Parkway North
Houston, TX 77040
(All defendants except Mr. Hoover and Mr. Stanton)

Samuel J. Cuming, Jr. (Solo Practitioner)
100 Interstate 45 North, Suite 101A
Conroe, TX 77301
936-756-1313
(Mr. Hoover)

Joseph Eugene Clements
(Deceased)
(Mr. Stanton)

Lead Counsel for All Plaintiffs in *In re Browning Ferris Industries Securities Litigation*:
Richard Greenfield
Greenfield & Goodman
250 Hudson Street, 8th Floor
New York, NY 10013
917-495-4446

Harvey Greenfield
(Deceased)

Leads Counsel for All Plaintiffs in *In re Browning Ferris Industries Shareholder Derivative Action*:
Max Tribble and Mark Wawro
Susman Godfrey, LLP
1000 Louisiana Street, Suite 5100
Houston, TX 77002
713-651-9366

Terrell Oxford
Susman Godfrey, LLP
901 Main Street, Suite 5100
Dallas, TX 75202
214-754-1933

Bruce Cohen
Meredith, Cohen, Greenfogel & Skirnick, P.C.
1521 Locust Street, 8th Floor
Philadelphia, Pennsylvania 19102
215-564-5182

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 appointed by the Chief Justice of the Texas Supreme Court to serve as a member of the Texas Judicial Panel on Multidistrict Litigation from December 2003 to December 2009. Composed of five judges, the panel was designated to determine whether civil actions pending in different state district courts should be transferred to one judge for coordinated or consolidated pretrial proceedings, and to select the judge assigned to conduct such proceedings.

    While at Wickliff & Hall, the firm was hired by the State of Texas to conduct an outside investigation of alleged wrongful conduct within a state agency. I was assigned to lead this investigation and prepared a report to the State of Texas regarding my findings.

    I have never provided lobbying services to any client.

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 2002 to the present, I have served as an adjunct professor at the University of Houston Law Center teaching courses in trial advocacy skills and pre-trial litigation. Representative syllabus supplied.

    In 2007 and 2014, I served as an instructor at Emory University School of Law's Kessler-Eidson Program for Trial Techniques, teaching trial advocacy skills. Representative syllabus supplied.

    In 2005, 2007, 2011, 2012, 2013 and 2014, I served as an instructor for Louisiana State University Law Center's Trial Advocacy Program, teaching trial advocacy skills. Representative 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.

    Time permitting, I would like to continue to teach trial advocacy as an adjunct professor at the University of Houston 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).

    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 were to be confirmed, I would continue to recuse myself from cases involving my wife's employers, United Airlines and Depelchin Children's Center, and those involving the Greater Houston Chapter of the American Red Cross as long as I remain a member of its Board of Directors. I also would continue to recuse myself from cases involving the University of Houston Law Center as long as I continued to teach there as an adjunct professor. I would use the District Court Judge Conflict/Exclusion List.

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

       I would continue to follow the federal recusal statute and the Code of Conduct for United States Judges. I also would continue to use the District Court Judge Conflict/Exclusion List. This system sends me an alert if a listed person or entity

is named as a party or counsel in any of my cases. I would also consult with colleagues and with ethics officials from the Administrative Office of the United States Courts.

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

    Between 1991 and 1995, I volunteered to provide legal assistance to callers on the Houston Bar Association's Legal Lines. In 1995, I accepted a pro bono divorce matter from the Houston Bar Association, *McLanahan v. McLanahan*, which I litigated to judgment on behalf of Mrs. McLanahan in the 310th District Court in Harris County, Texas. I have also participated in the Houston Bar Association's Lawyers in Public Schools program as a substitute teacher in Houston area classrooms. Throughout my legal career I have actively participated in the Houston Bar Association's classroom reading and jury service programs in local schools.

    Since 1999, I have served as both a volunteer and member of the Board of Directors of the Greater Houston Chapter of the American Red Cross, assisting victims of natural disasters, ranging from fires and floods to hurricanes in the Gulf Coast Region.

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 August 2013, I submitted an application for this position with the Federal Judiciary Evaluation Committee of Senators John Cornyn and Ted Cruz. In November 2013, I interviewed with the Committee in Houston, Texas. Since June 25, 2014, I have been in contact with officials from the Department of Justice Office of Legal Policy regarding the nomination process. On July 10, 2014, I met with Senators Cornyn and Cruz in Washington, D.C. On July 11, 2014, I met with Congressman Al Green in Houston, Texas. On August 25, 2014, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 18, 2014, I spoke with Congresswoman Shelia Jackson Lee by telephone. On September 18, 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
Hanks, George C.	U.S. District Court, Southern District of Texas	09/23/2014
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**
Nominee -U.S. District Judge	☑ Nomination Date 09/18/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 09/23/2014
7. Chambers or Office Address		
Uniteds States Courthouse 515 Rusk Rm 7727 Houston, TX 77002		

IMPORTANT NOTES: ***The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.***

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Board of Directors	Greater Houston Area Red Cross
2.	Advisory Board Member	Judical Education Program George Mason University Law & Economics Center
3.	Board of Directors	Lakes of Fondren Homeowners Association
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Hanks, George C.	Date of Report 09/23/2014

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2013	University of Houston Law Foundation, adjunct professor wages	$3,200.00
2. 2012	University of Houston Law Foundation, adjunct professor wages	$3,200.00
3.		
4.		
5.		

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	Depelchin's Children's Center, wages
2. 2014	United Airlines,wages
3. 2013	Depelchin's Children's Center, wages
4. 2013	United Airlines,wages
5.	
6.	

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.				

Name of Person Reporting	Date of Report
Hanks, George C.	09/23/2014

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Hanks, George C.	Date of Report 09/23/2014

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	Credit Card	J
2.	Chase Bank	Credit Card	J
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting Hanks, George C.	Date of Report 09/23/2014

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. Texas Employee Retirement System	B	Interest	M	T	Exempt				
2. Wells Fargo Savings Account	A	Interest	K	T	Exempt				
3. Protective Life Insurance	A	Interest	J	T	Exempt				
4. 401 TexSaver Account	B	Int./Div.			Exempt				
5. -Black Rock Bond Index									
6. -Black Rock Liquidity Temp Fund									
7. Continental 401K Savings Plan	A	Int./Div.	J	T	Exempt				
8. -Black Rock Global Allocation Fund									
9. -Black Rock Large Cap Core Fund									
10. -PIMCO All Asset Fund									
11. -Sands Large Cap Growth Fund									
12. -Thornburg International Equity Fund									
13. -Wellington Trust Real Total Return Portfolio									
14. -Wellington Trust Unconstrained Themes Portfolio									
15. -Westwood LargeCap Value Fund									
16. -Westwood SMidCap Fund									
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
Hanks, George C.	09/23/2014

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Hanks, George C.	Date of Report 09/23/2014

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/ George C. Hanks

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		33	320	Notes payable to banks-secured (auto)		24	967
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		3	026	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		35	579
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		107	585
Real estate owned -- see schedule		215	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		75	000				
Cash value-life insurance		6	000				
Other assets itemize:							
Texas Employees Retirement System		104	442				
Thrift Savings Plan		34	995				
				Total liabilities		168	131
				Net Worth		303	652
Total Assets		471	783	Total liabilities and net worth		471	783
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
BlackRock Global Allocation Fund	$ 237
BlackRock Large Cap Core Fund	100
PIMCO All Asset Fund	237
Sands Large Cap Growth Fund	452
Thornburg International Equity Fund	760
Wellington Trust Real Total Return Portfolio	127
Wellington Trust Unconstrained Themes Portfolio	237
Westwood LargeCap Value Fund	452
Westwood SMidCap Fund	424
Total Listed Securities	$ 3,026

Real Estate Owned	
Personal residence	$ 200,000
Time share	15,000
Total Real Estate Owned	$ 215,000

AFFIDAVIT

I, George C. Hanks Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

9/22/2014
(DATE)

George C. Hanks Jr.
(NAME)

Cynthia Jantowski
(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jose Rolando Olvera, Jr. (Rolando Olvera)

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

   United States District Court Judge for the Southern District of Texas

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.

   Cameron County Courthouse
   445th State District Court
   974 East Harrison Street
   Brownsville, TX 78520

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

   1963; Houston, Texas

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 – 1989, University of Texas School of Law; J.D., 1989
   1985 – 1986, University of Texas Southwestern Medical Center; no degree
   1981 – 1985, Harvard University; 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.

   2011 – Present
   Fifth Administrative Judicial Region
   Cameron County Courthouse
   974 East Harrison Street

Brownsville, TX 78520
Presiding Judge

2009 – Present
445th State District Court
Cameron County Courthouse
974 East Harrison Street
Brownsville, TX 78520
State District Court Judge

2007 – 2008
Law Office of Rolando Olvera
35 Holly Lane
Brownsville, TX 78520
Attorney/Mediator

2007 – 2008
City of Brownsville (Part-time)
1034 East Levee Street
Brownsville, TX 78520
Brownsville Municipal Judge

2005 – 2006
138th State District Court
Cameron County Courthouse
974 East Harrison Street
Brownsville, TX 78520
State District Court Judge

2004
Spain & Olvera
103 East Price Road
Brownsville, TX 78521
Partner & Mediator

2003
Rolando Olvera, P.C.
1650 Paredes Line Road
Brownsville, TX 78520
Attorney & Mediator

2001 – 2002
357th State District Court
Cameron County Courthouse
974 East Harrison Street
Brownsville, TX 78520

State District Court Judge

1998 – 2000
Fleming & Olvera, P.C.
1650 Paredes Line Road
Brownsville, TX 78520
Partner

1995 – 1997
Fleming, Hewitt & Olvera
1650 Paredes Line Road
Brownsville, TX 78520
Partner

1994
Fleming & Hewitt
1650 Paredes Line Road
Brownsville, TX 78520
Associate

1990 – 1993, Summer 1989
Atlas & Hall, L.L.P.
818 Pecan Boulevard
McAllen, TX 78501
Associate (1990 – 1993)
Summer Law Clerk (Summer 1989)

1986 – 1987
Law Office of Richard Arroyo
1325 Palm Boulevard
Brownsville, TX 78520
Law Clerk

Other affiliations (uncompensated):

2009 – 2011
Texas Youth Commission
11209 Metric Boulevard
Austin, TX 78758
Board Member

2007 – 2008
Brownsville Community Foundation
550 East Levee Street
Brownsville, TX 78520
Director

2003 – 2005
Texas Lottery Commission
611 East 6th Street
Austin, TX 78701
Commissioner

1999 – 2005
Children's Museum of Brownsville, Inc.
501 East Ringgold Street, #5
Brownsville, TX 78520
Director

1998 – 2004
United Way "Success by Six" Program
634 East Levee Street
Brownsville, TX 78520
Director

1997 – 1998
Rio Grande Bankruptcy Bar Association
McAllen, TX
Vice-President

1993 – 1994
Cameron County Young Lawyers Association
Brownsville, TX
President

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

   I have not served in the military. I 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.

   2012 Cameron County Judicial Poll: Highest ranked judge among my judicial peers and received an overall "Outstanding Rating"

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 Health Lawyers Association (2007 – 2008)
Cameron County Bar Association (1990 – Present)
Cameron County Young Lawyers Association (1993 – 1998)
President (1993 – 1994)
Hidalgo County Bar Association (2003 – 2005)
Judicial Section, State Bar of Texas (2001 – 2002, 2005 – 2006, 2009 – Present)
Region 5 District Judge Representative (2001 – 2002)
Rio Grande Valley Bankruptcy Bar Association (1997 – 2000)
Vice President (1997 – 1998)
State Bar of Texas (1990 – Present)
Texas Bar Foundation (1995 – Present)
Life Fellow
Texas Young Lawyers Association (1990 – 1994)

10. **Bar and Court Admission**:

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

Texas, 1990

There has been no lapse in membership.

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

United States District Court Southern District of Texas, 1992
United States Court of Appeals for the Fifth Circuit, 1993

There have been no lapses in membership.

11. **Memberships**:

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

Brownsville Community Foundation (2007 – 2008)
Director
Children's Museum of Brownsville, Inc. (1999 – 2005)
Director

Harvard University (1993 – Present)
Regional Interviewer of Prospective Students
St. Joseph Academy Alumni Golf Tournament (1991 – 2000)
Director
Texas Lottery Commission (2003 – 2005)
State Appointment/Commissioner
Texas Youth Commission (2009 – 2011)
State Appointment/Director
United Way "Success by Six" Program (1998 – 2004)
Director
University of Texas Alumni Association (1990 – Present)
Lifetime 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 above listed organizations currently discriminates or has previously discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

None.

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

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.

2009 – 2011: As a member of the Board of Directors, I participated in nearly all of the quarterly meetings of the Texas Youth Commission. I offered extemporaneous remarks during the meetings about youth commission matters, including but not limited to juvenile detention facility operations and reports, security, budgets and audits, and rehabilitation program and recidivism updates. Meeting minutes available at: http://www.tjjd.texas.gov/aboutus/archivedmeetings.aspx.

2003 – 2005: As one of three Commissioners, I participated in nearly all of the quarterly meetings of the Texas Lottery Commission. I offered extemporaneous remarks during the meetings about lottery matters, including but not limited to budgets, audits, financial reports, multistate lottery participation, and lottery profits paid to the Texas general education fund. Meeting minutes available at: http://www.txlottery.org/export/sites/lottery/About_Us/Meetings/Commission_Meeting_Transcripts/.

On February 21, 2005, I testified before the Texas Senate Committee on Nominations concerning my appointment to the Texas Lottery Commission. 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.

The below list was produced by researching my personal records and calendars in conjunction with information gained from the Internet. I rarely used notes, nor did I retain any notes.

May 15, 2014: Panelist, "*Judges Panel*," Soaking Up Some CLE, TexasBarCLE, South Padre Island, TX. The judicial panel answered diverse questions from the audience during a lunch session. I have no notes, transcript or recording. The address of TexasBarCLE is 1414 Colorado Street, Austin, TX 78701.

April 24, 2014: Guest Lecturer, "Opening & Closing Statements in Trial," Cameron County Young Lawyers Association, Brownsville, TX. This was primarily a question-and-answer session, in which I discussed the distinction

between opening and closing arguments. I have no notes, transcript or recording. The Cameron County Young Lawyers Association has no mailing address.

May 15, 2013: Panelist, "Judges Panel," Soaking Up Some CLE, a South Texas Litigation Seminar sponsored by TexasBarCLE, South Padre Island, TX. The judicial panel answered diverse questions from the audience during a lunch session. I have no notes, transcript or recording. The address of TexasBarCLE is 1414 Colorado Street, Austin, TX 78701.

April 11, 2013: Guest Lecturer, "Daubert Challenges," Cameron County Young Lawyers Association, Brownsville, TX. This was primarily a question-and-answer session, in which I discussed the standard for expert opinion challenges. I have no notes, transcript or recording. The Cameron County Young Lawyers Association has no mailing address.

May 12, 2011: Panelist, "Judges Panel," Soaking Up Some CLE, a South Texas Litigation Seminar sponsored by TexasBarCLE, South Padre Island, TX. The judicial panel answered diverse questions from the audience during a lunch session. I have no notes, transcript or recording. The address of TexasBarCLE is 1414 Colorado Street, Austin, TX 78701.

January 27, 2011: Speaker, Investiture Ceremony as the Presiding Judge of the Fifth Administrative Judicial Region of Texas, Brownsville, TX. Although not present, I thanked Governor Rick Perry and Senator Eddie Lucio for the appointment and the opportunity to serve in this capacity; for those present, I thanked all the members of the judiciary, public officials, staff, friends, and family for their support and well wishes. In addition, I spoke briefly as to my goals and plans for this position, and confirmed my intent to serve as a resource for the judiciary. I have no notes, transcript or recording of the investiture ceremony. The address of the 445th State District Court is 974 East Harrison Street, Brownsville, TX 78520.

January 26, 2011: Guest Lecturer, "Preserving and Presenting Evidence: Principle, Problems, and Pitfalls to Avoid," Cameron County Young Lawyers Association, Brownsville, TX. This was a trial skills workshop in which I discussed the standard for introducing, admitting, and publishing evidence at trial. I have no notes, transcript or recording. The Cameron County Young Lawyers Association has no mailing address.

November 5, 2007 – March 4, 2008: I gave a number of speeches and participated in debates while campaigning to serve as a judge for the 445th State District Court, through the end of the contested primary. I spoke to various civic, political, and professional organizations, and I also appeared at various forums. Although I cannot recall specific groups that I spoke to, they likely would have included the following: the Brownsville Rotary Club, the Cameron County Bar Association, the Cameron County Democratic Party, the Cameron County Young

Lawyers Association, South Texans for Good Government, and the University of Texas Brownsville Democrats Club. After reviewing my files and public records, I could only determine the specific date or location of one meeting, listed below. If given the opportunity, I generally spoke about my qualifications, experience, and community involvement. I typically did not speak using prepared notes, and I have no transcripts or recordings.

> February 19, 2008: Speaker, "Judicial Candidate Forum," Cameron County Bar, Cameron County Young Lawyers Association and the Brownsville Herald, Brownsville, TX. This was a political forum moderated by the local bar and newspaper. Each candidate was given the opportunity to speak about their qualifications. I have no notes, transcript or recording, but press coverage is supplied. The address for the Cameron County Bar Association is P.O. Box 3866, Brownsville, TX 78520.

January 1, 2006 – November 7, 2006: I gave a number of speeches and participated in debates while campaigning to serve as a judge for the 138th State District Court. I spoke to various civic, political, and professional organizations, and I also appeared at various forums. Although I cannot recall specific groups that I spoke to, they likely would have included the following: the Brownsville Rotary Club, the Brownsville Union Coalition, the Cameron County Bar Association, the Cameron County Republican Party, the Cameron County Sheriff Deputies Association, the Cameron County Young Lawyers Association, and South Texans for Good Government. After reviewing my files and public records, I could only determine the specific dates or locations of two meetings, listed below. If given the opportunity, I generally spoke about my qualifications, experience, and community involvement. I typically did not speak using prepared notes, and I have no transcripts or recordings.

> September 21, 2006: Speaker, "Judicial Candidate Forum," South Texans for Good Government, Brownsville, TX. This was a political forum in which candidates responded to questions from a moderator about their qualifications. I have no notes, transcript or recording, but press coverage is supplied. The South Texans for Good Government has no physical address.

> September 13, 2006: Speaker, "Judicial Candidate Forum," Cameron County Sheriff Deputies Association and the Brownsville Union Coalition, Brownsville, TX. This was a political forum in which candidates responded to questions from the audience via a moderator about their qualifications. I have no notes, transcript or recording, but press coverage is supplied. Neither the Cameron County Sheriff Deputies Association nor the Brownsville Union Coalition has a physical address.

May 22, 2006: Speaker, Commencement Speech for the Sixth Grade class of St. Mary's Catholic School, Brownsville, TX. I discussed character development and

goals. I have no notes, transcript or recording. The address for St. Mary's Catholic School is 1300 East Los Ebanos Street, Brownsville, TX 78520.

October 12, 2005: Panelist, "Ivy League in the Boardroom" Brownsville Independent School District, Brownsville, TX. Each Ivy League alumnus was seated at a table and provided the opportunity to answer questions from local students about the respective college the alumni attended. I have no notes, transcript or recording, but press coverage is supplied. The address for Brownsville Independent School District is 1900 Price Road, Brownsville, TX 78520.

January 1, 2002 – November 5, 2002: I gave a number of speeches and participated in debates while campaigning to serve as a judge for the 357th State District Court. I spoke to various civic, political, and professional organizations, and I also appeared at various forums. Although I cannot recall specific groups that I spoke to, they likely would have included the following: the Brownsville Rotary Club, the Cameron County Bar Association, the Cameron County Republican Party, the Cameron County Young Lawyers Association, and South Texans for Good Government. After reviewing my files and public records, I could not determine the specific dates or locations of these meetings. If given the opportunity, I generally spoke about my qualifications, experience, and community involvement. I typically did not speak using prepared notes, and I have no transcripts or recordings.

June 27, 2001: Speaker, Investiture as 357th State District Court Judge, Brownsville, TX. The ceremony included a brief speech wherein I discussed my judicial goals. There was no transcript or recording made of the ceremony, but press coverage is supplied. The address of the 357th State District Court is 974 East Harrison Street, Brownsville, TX 78520.

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.

Meet the New Presiding Judge of the 5th Judicial Region: Judge J. Rolando Olvera, Jr., Your Honor.Com, Texas Center for the Judiciary, January 24, 2011. Copy supplied.

Mary Ann Cavazos, *Perry Appoints Judge from Brownsville to Regional Post; Cameron County Justice Takes Over Role from Banales*, Corpus Christi Caller-Times, January 5, 2011. Copy supplied.

Emma Perez-Trevino, *Olvera Appointed to Additional Judge Position*, The Brownsville Herald, January 4, 2011. Copy supplied.

Laura B. Martinez, *First of Two New State District Courts Now in Session*, The Brownsville Herald, October 7, 2009. Copy supplied.

Laura B. Martinez, *A Shower Cometh and a Shower Goeth*, The Brownsville Herald, June 28, 2009. Copy supplied.

Louie Vera, *Historic Brownsville Open Notebook: Golfers Pitch in at Youth Clinic*, The Brownsville Herald, April 24, 2009. Copy supplied.

Laura B. Martinez, *New Judges Await Courts*, The Brownsville Herald, November 9, 2008. Copy supplied.

Laura B. Martinez, *New Judge Lacks Court*, The Brownsville Herald, September 21, 2008. Copy supplied.

As a candidate for 445th State District Court in 2007 to 2008, I previously maintained a campaign website at www.olvera445.org, which has been defunct since March 2008.

Jose Borjon, *Olvera Wins Seat for 445th*, The Brownsville Herald, March 5, 2008. Copy supplied.

Press Conference regarding my candidacy for the 445th State District Court in Brownsville, TX, November 5, 2007. Representative press coverage supplied and video recording available at:
http://www.youtube.com/watch?v=TmDwtNUANOk.

Laura B. Martinez, *Judge Alleges Discrimination by City*, The Brownsville Herald, June 21, 2007. Copy supplied.

Laura B. Martinez, *Nelson Won't Take Bench Today*, The Brownsville Herald, December 12, 2006. Copy supplied.

Emma Perez-Trevino, *Nelson May be Able to Take Bench on Dec. 12*, The Brownsville Herald, November 26, 2006. Copy supplied.

Laura Martinez, *Recently Elected Judge May Take Bench Early*, The Brownsville Herald, November 18, 2006. Copy supplied.

Emma Perez-Trevino, *Nelson Takes 138th Bench*, The Brownsville Herald, November 8, 2006. Copy supplied.

Elizabeth Pierson and Emma Perez-Trevino, *Election of 2006 in Voters' Hands: County Judge Candidates Fling Last of Campaign Mud*, The Brownsville Herald, November 7, 2006. Copy supplied.

Emma Perez-Trevino, *Minor Complaints, No Consequences for County Campaigners*, The Brownsville Herald, November 4, 2006. Copy supplied.

Emma Perez-Trevino, *Olvera Raises More, Spends Less*, The Brownsville Herald, November 2, 2006. Copy supplied.

Emma Perez-Trevino, *Olvera, Nelson Claim Experience, Values in Judge Candidacy*, The Brownsville Herald, September 24, 2006. Copy supplied.

Emma Perez-Trevino, *Olvera Seeks Nomination to 138th District Judgeship*, The Brownsville Herald, November 21, 2005. Copy supplied.

Kevin Garcia, *Students Encouraged to Attend Ivy League Night*, The Brownsville Herald, October 12, 2005. Copy supplied.

Lottery Officials Admit Jackpots Were Inflated, Las Vegas Sun, June 27, 2005. Copy Supplied.

Texas Lottery Eager About South Texas Mega Millions Ticket - $175,000 Prize Still Unclaimed, Texas Lottery Commission Press Release, June 8, 2004. Copy Supplied.

Emma Perez-Trevino, *Former Brownsville Judge Named to Lottery Commission*, The Brownsville Herald, August 29, 2003. Copy supplied.

Emma Perez-Trevino, *Republican Shutout Shines Harsh Light for Local Partisans*, The Brownsville Herald, November 7, 2002. Copy supplied.

Emma Perez-Trevino, *Alejandro Dumps Olvera*, The Brownsville Herald, November 6, 2002. Copy supplied.

Emma Perez-Trevino, *High-Profile Local Contests Bring Out the Voters*, Brownsville Herald, November 5, 2002. Copy supplied.

Emma Perez-Trevino, *Alejandro Exceeds Olvera's Bid for Bench*, The Brownsville Herald, November 3, 2002. Copy supplied.

James Pinkerton and Bennett Roth, *Of Humble Origins / Garza's Hard Work Pays Off as Envoy Pick*, Houston Chronicle, July 21, 2002. Copy supplied.

Emma Perez-Trevino, *Local Judge Returns From White House Visit*, The Brownsville Herald, October 5, 2002. Copy supplied.

Emma Perez-Trevino, *Democratic Candidate Called Out for Questionable Contributions Campaign: Judicial Hopeful Faults Oversight, Claims No Ill Intent*, Brownsville Herald, March 3, 2002. Copy supplied.

Steve Taylor, *Three to Compete for Bench in the 357th*, The Brownsville Herald, January 4, 2002. Copy supplied.

Emma Perez-Trevino, *Local Attorney Appointed by Perry; Law: Brownsville Lawyer Appointed 357th District Court Judgeship*, The Brownsville Herald, April 19, 2001. Copy supplied.

Lisa Marie Gomez, *May 1 Election Pivotal for Union*, The Brownsville Herald, May 1, 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.

In 2001, I began my judicial service on the 357th Texas State District Court after I was appointed by the Governor. I was subsequently required to run for election to this court in November 2002. After losing the election, I served until the end of December 2002. The 357th Texas State District Court was a court of general jurisdiction in Cameron County and Willacy County, with a docket that included criminal, civil, and family law cases. The jurisdiction of said court has since been modified exclusively to Cameron County.

In 2005, I served as a judge for the 138th Texas State District Court after I was appointed by the Governor. I was subsequently required to run for election to this court in November 2006. After losing the election, I served until the end of December 2006. The 138th Texas State District Court is a court of general jurisdiction in Cameron County, with a docket that included criminal, civil, and family law cases.

From 2007 to 2008, I served as a Brownsville municipal judge after I was appointed by the Brownsville City Commission. I resigned upon winning election in 2008 to the 445th Texas State District Court. My duties included the setting of bail for criminal defendants and hearing criminal misdemeanor cases.

Since 2009, I have served as a judge for the 445th Texas State District Court. I retained my seat in an unopposed race in 2012. The 445th Texas State District Court is a court of general jurisdiction in Cameron County, with a docket that includes criminal, civil, and family law cases.

In January 2011, I was appointed by the Governor to a four-year term as the presiding judge of the Fifth Administrative Judicial Region, one of nine presiding judges in Texas. I administratively supervise local administrative judges, the district judges, county court at law judges, visiting judges, and capital murder committee in the eleven counties in South Texas that comprise the Fifth Administrative Judicial Region. My duties also include managing recusal hearings in the region, appointing active or visiting judges to courts that need assistance with their docket, and serving as a resource to all of the judges in the region.

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

With almost eleven years of combined service as a state court judge, I estimate that I have presided over 5,000 cases that have gone to verdict or judgment. This overall number includes cases in which the final judgment was derived from a plea agreement. Once a plea agreement is completed through the sentencing stage, a final judgment is prepared. Our court records do not distinguish these final judgments from plea agreements from other types of judgments. I estimate that I have presided over approximately 500 jury or bench trials over the course of my career.

i. Of these, approximately what percent were:

jury trials:	10%
bench trials:	90%
civil proceedings:	30%
criminal proceedings:	70%

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

None.

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).

Below please find a general cross-section of ten cases over which I have presided:

1. *State of Texas v. Barrientos*, No. 10-CR-915-I

On February 7, 2009, the defendant, along with co-defendants, sexually assaulted and murdered the victim. The mother of the deceased later discovered the body inside the refrigerator of the deceased's apartment. The defendant and adult co-defendants were charged with capital murder. After I denied defense counsel's motion to disqualify the special prosecutor assigned to the case, the defense counsel filed a petition for writ of mandamus as to this issue. The 13th Court of Appeals denied the writ of mandamus and remanded the case to my court. In the interim, a co-defendant received life in prison without parole in a different court. After presiding in numerous miscellaneous pretrial hearings, the defendant executed a plea agreement and pled guilty to capital murder. I accepted and granted the plea bargain for life in prison without parole.

First Chair and Second Chair Counsel for Defendant:
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O. Rene Flores PC
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Second Chair:
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(956) 542-8985

Counsel for the State:
Mr. Luis Saenz
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2. *State of Texas v. Stafford*, No. 10-CR-1661-I

On March 26, 2010, the defendant allegedly repeatedly stabbed Mr. Martinez with a knife in the chest, leading to Mr. Martinez's death two weeks after the incident. The State argued that DNA results revealed that the victim's blood was on the defendant's hands, clothing, and shoes. The defendant argued self-defense, but a co-victim and survivor rebutted said defensive allegation. This case also involved questions related to the defendant's competency to stand trial. After a four-day trial, the jury found the defendant guilty of murder, found the allegations in the enhancement counts to be true, and assessed punishment at confinement for life in prison. This case is currently awaiting a decision from the 13th Court of Appeals.

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Co-Counsel for the State:
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Ms. Brandy Bailey
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3. *State of Texas v. Duran*, No. 2012-DCR-867-I

On December 10, 2002, the defendant, along with two unidentified individuals, broke into the victim's home. The defendant proceeded to strike the victim in the head with his fist, a Wii player and a DVD player until the victim escaped. The victim found police officers who were patrolling the neighborhood. Police Officer Villarreal saw the victim bleeding and also witnessed the defendant, along with several other individuals, run down an alley near victim's home. The defense alleged that the police were already at the scene because the victim was the aggressor, that the victim had thrown a brick through the window of a home where the defendant was visiting, and that it was the owner of said home whom had called the police. After a three-day trial, the jury found the defendant guilty of burglary of a habitation and aggravated assault with a deadly weapon, found the allegations in the enhancement counts to be true, and assessed punishment at confinement for 25 years in the Texas Department of Criminal Justice. The 13th Court Appeals affirmed the judgment, including the enhancement counts.

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Counsel for the State:
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4. *State of Texas v. Herrera*, No. 11-CR-1312-I

On May 20, 2014, the defendant saw the victim inside a convenience store and walked out of the convenience store and waited for the victim to exit. Once the victim exited the store, the defendant struck the victim on the head with a bat. The defendant's brother-in-law vandalized the victim's truck while the defendant continued to strike the victim with the bat. The defendant claimed self-defense, alleging the victim was a gang member and first attacked the defendant inside the convenience store for being a rival gang member. After a four-day trial, the jury found the defendant guilty of aggravated assault with a deadly weapon and assessed punishment at confinement for six years in the Texas Department of Criminal Justice. Although the defendant filed his notice of appeal after the deadline expired, the case

is currently awaiting a decision from the 13th Court of Appeals.
Counsel for Defendant:
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(956) 233-5533

Co-Counsel for the State:
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Mr. Brian Erskine (current address unknown)
Cameron County District Attorney's Office
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5. *State of Texas v. Comeaux*, No. 10-CR-2671-I

On January 4, 2010, defendant, Ms. Comeaux, assisted her paramour, Mr. Mendez, in the murder of Mr. Torres. During the course of the evening on the date of the incident, the defendants were smoking crack cocaine. While the defendants were under the influence, they attacked Mr. Torres in his home during an attempted burglary. Ms. Comeaux allegedly beat the victim repeatedly over the head with a steel pipe, as well as kicking him in the head and back with a steel-toe boot. At trial, Ms. Comeaux alleged Mr. Mendez was the one who murdered the victim because the autopsy report confirmed the cause of death was by strangulation and not blunt force trauma. Mr. Mendez, who had previously pled guilty to the same offense of murder, testified against Ms. Comeaux. After a four-day trial, the jury found her guilty of murder and assessed punishment at confinement for 22 years in the Texas Department of Criminal Justice. Ms. Comeaux filed a notice of appeal but later requested dismissal of the appeal.

Counsel for Defendant:
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Co-Counsel for the State:
Mr. Samuel Smith
(current business contact information unavailable)

Ms. Stephanie Rollins
Cameron County District Attorney's Office
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(956) 544-0849

6. *State of Texas v. Herrera*, No. 11-CR-901-I

From August 2010 through February 2011, the defendant sexually abused his nine-year-old niece. The victim's parents admitted the child to the hospital as soon as she reported it. Originally, the defendant requested a jury trial, but on the eve of trial, he signed a written statement wherein he admitted to having sexual intercourse with his niece, pled guilty, and executed a plea agreement with the State. I accepted and granted the plea bargain and sentenced the defendant to serve 30 years in the Texas Department of Criminal Justice.

Counsel for Defendant:
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Counsel for the State:
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7. *Garza v. Ramos*, No. 2007-07-3607-I

Plaintiff was driving his vehicle on a public roadway when he was struck by a vehicle driven by defendant, who had failed to yield the right of way to oncoming traffic when entering the public roadway from a private drive. As a result of the collision, the plaintiff alleged severe and disabling injuries and sued defendant for past and future medical expenses, mental pain and suffering, and loss of earning capacity. In all, the plaintiff claimed a total of $300,000 in damages. The case was transferred to my court in 2010. On September 10, 2010, I granted the plaintiff's motion for partial summary judgment as to the defendant's liability but not as to damages. After a four-day trial, the jury awarded the plaintiff $1,000 for past pain and mental anguish and $9,000 for incurred medical expenses. I denied the plaintiff's motion for a new trial.

Counsel for Plaintiff:
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Counsel for Defendant:
Jesus Quezada, Jr.
Quezada Law Firm
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8. *Curtin v. Texas Windstorm Insurance Association*, No. 2008-10-5630-I

This was a trial of importance for hurricane/windstorm insurance in Texas, which was managed by the State of Texas. The plaintiffs suffered severe roof damage and interior water damage to their home from Hurricane Dolly. The parties disagreed as to the amount recoverable under the subject insurance policy. The plaintiffs sought recovery for any and all damages, but the defendant cited language and disclaimers in the policy in offering partial payment. The plaintiffs sued for damages for breach of the insurance policy. After a five-day trial, the jury held defendant breached the insurance policy and awarded judgment in favor of the plaintiffs. The jury awarded $87,000 in actual damages and $64,000 in plaintiffs' attorney fees. Subsequent to the verdict, an agreed final judgment, wherein plaintiffs agreed to take nothing was subsequently submitted by the parties and executed August 1, 2011.

Counsel for Plaintiff:
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Solo Practitioner
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Counsel for Defendant:
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9. *Touchstone Cardiovascular Resources, Inc. v. Dr. Martinez, MD, PA; Dr. Lopez, MD, PA; Cardiovascular Associates of Harlingen; Valley Baptist Medical Center; Harlingen Medical Center; and Rio Perfusion, LLC*, No. 2008-12-6480-I. Decision supplied.

This was a complex case alleging contractual tortious interference, general and gross negligence, and antitrust violations. Plaintiff was a profitable corporation providing perfusion services to the defendants. The two doctors, Dr. Martinez and Dr. Lopez, who were contractually affiliated with all of the defendant medical providers, allegedly met with the owner of the plaintiff medical provider and attempted to coerce the plaintiff into selling a 2/3 controlling interest in the plaintiff corporation to

the doctors. They allegedly threatened that a failure to sell would result in a severe loss of business with all of the defendants. Plaintiff owner secretly tape recorded the meeting with the doctors. I granted the defendants' motion for summary judgment solely as to the plaintiff's antitrust allegation, but denied the motion for summary judgment as to all other causes of action. My order denying summary judgment as to both hospitals specifically addressed complex contractual language regarding agency. The case subsequently settled.

Counsel for Plaintiff:
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Counsel for Dr. Martinez, MD, PA; Dr. Lopez, MD, PA; and Cardiovascular Associates of Harlingen:
Benigno Martinez
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(956) 546-7159

Counsel for Harlingen Medical Center:
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(956) 544-7110

Counsel for Rio Perfusion, LLC:
Ricardo J. Navarro
Denton, Navarro, Rocha, Bernal, Hyde & Zech PC
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Harlingen, TX 78550
(956) 421-4904

Counsel for Valley Baptist Medical Center:
Ferriel Hamby, Jr.
Adams & Graham LLP
P.O. Drawer 1429
Harlingen, TX 78551
(956) 428-7495

10. *Hernandez v. City of San Benito*, No. 2010-02-8-0860-1

The issue in this case involved a City of San Benito ordinance, which granted the City Commission the authority to remove any public official from office if the official failed to pay required ad valorem taxes. The facts were undisputed that the mayor had failed to pay required ad valorem taxes for a period of years but had made payment in full prior to filing suit in February 2010. The plaintiff mayor was seeking an order enjoining the city from enforcing the ordinance based upon the allegation that the ordinance was unconstitutional and for lack of damages based upon his payment of the taxes owed. After holding a hearing, I ruled that the city ordinance was constitutional and denied the plaintiff's request for an injunction. I did verbally caution the defendant that although it had the power to enforce the ordinance, it also had the responsibility to act judiciously in its enforcement, and ordered the City Commission to properly post the prospective removal of the mayor on the city agenda for the next city meeting. The plaintiff mayor subsequently filed a dismissal without prejudice.

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Miguel D. Wise PC
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Co-Counsel for Defendant:
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Ricardo J. Navarro
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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

As a state district judge, it is extremely rare that I issue substantive written opinions. The county seat for all of my judicial positions was and is Cameron County, Texas. The standard operating procedure set forth in the Cameron County Local Rules was

and is for each party to submit an order granting or denying the relief requested in conjunction with the party's respective pleading. I may make minor revisions, but the bulk of the language in any prospective order is from a standard template form submitted by the prevailing party. As a municipal judge in Brownsville, I did not issue any opinions. However, I was able to find the following two orders I drafted as a district judge:

1. *Touchstone Cardiovascular Resources, Inc. v. Dr. Martinez, MD, PA; Dr. Lopez MD, PA; Cardiovascular Associates of Harlingen; Valley Baptist Medical Center; Harlingen Medical Center; and Rio Perfusion, LLC*, No. 2008-12-6480-I. Copy previously supplied in response to 13c.

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Counsel for Dr. Martinez, MD, PA; Dr. Lopez, MD, PA; and Cardiovascular Associates of Harlingen:
Benigno Martinez
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Counsel for Harlingen Medical Center:
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Counsel for Valley Baptist Medical Center:
Ferriel Hamby, Jr.
Adams & Graham LLP
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2. *Baldonado v. Texas Dept. of Health and Human Services Commission*, No. 2008-08-4696-I, *rev'd* 2012 WL 1073278 (Tex. App. – Corpus Christi, March 29, 2012, No. 13-11-00167). Copy supplied.

   Counsel for Plaintiff:
   Mark Sanchez
   Gale Wilson & Sanchez PLLC
   115 East Travis Street, 19th Floor
   San Antonio, TX 78205
   (210) 222-8899

   Counsel for Defendant:
   Marc Rievtvelt
   Office of the Attorney General
   General Litigation Division-019
   P.O. Box 12548
   Austin, TX 78711
   (512) 463-2120

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.

   Baldonado v. Texas Dept. of Health and Human Services Com'n, No. 2008-08-4696-I (copy previously supplied in response to 13d), *rev'd* 2012 WL 1073278 (Tex.App.—Corpus Christi, March 29, 2012, No. 13-11-00167).

   In this age discrimination suit brought by Mr. Baldonado against the Texas Health and Human Services Commission ("HHSC"), the HHSC filed a concurrent motion for summary judgment and motion to dismiss for lack of jurisdiction. I denied the summary judgment motion, but granted the state's jurisdictional motion. I concluded that the court lacked jurisdiction because although the suit had been timely filed on the last day of the applicable deadline, service of process was not effectuated until after the time to do so had expired. I noted that any due diligence requirements as to tolling the statute of limitations had been met by the plaintiff, but that the plaintiff had not presented any legal basis for the theory that due diligence as to service of process may toll jurisdictional requirements. The 13th Court of Appeals reversed and remanded, concluding that service of process can only occur after suit has been filed,

and therefore cannot be a jurisdictional prerequisite.

State of Texas v. Rodriguez, No. 99-CR-1044-B, *rev'd,* 218 S.W.3d 837 (Tex.App.—Corpus Christi March 15, 2007).

In March 2005, the original judge assigned to this case granted the defendant's request for post-conviction DNA testing. The 13th Court of Appeals denied the appeal from this motion for lack of jurisdiction. During the pendency of this appeal, the original judge retired, and I was assigned to the case. I denied the State's motion to reconsider the March 2005 order. On considering the State's subsequent writ of mandamus, the 13th Court of Appeals reversed the previous judge's March 2005 order, concluding that because the defendant's identity was not at issue, the defendant's request for DNA testing should have been denied. On remand, I executed an order August 3, 2006, denying the defendant's post-conviction DNA application. Copy supplied.

Lawson v. Cameron Appraisal Dist., No. 2000-07-3059-E (copy supplied), *rev'd sub. nom. Rourk v. Cameron Appraisal Dist.*, 131 S.W.3d 285 (Tex.App.—Corpus Christi March 4, 2004), *rev'd in part,* 194 S.W.3d 501, 49 Tex. Sup. Ct. J. 660 (Tex. June 2, 2006).

Mr. Rourk and 33 other plaintiffs with similar claims brought a class action requesting a declaratory judgment that the travel trailers in which they lived at respective mobile home parks were recreational vehicles, that said vehicles should be classified as personal property, and that they be deemed exempt from taxation under the Texas Tax Code and the Texas Constitution. I granted summary judgment in favor of appellee Cameron Appraisal District. The 13th Court of Appeals reversed and remanded, holding that the plaintiffs/appellants were not required to exhaust their administrative tax remedies because they alleged constitutional violations; the subject travel trailers were recreational vehicles; and the plaintiffs' class definition was sufficient. The Texas Supreme Court then held the 13th Court of Appeals erred in two of the three above listed rulings. The Texas Supreme Court affirmed the partial dismissal based upon the plaintiffs' failure to exhaust their administrative tax remedies and further affirmed that class certification was not proper based upon said failure to exhaust. However, the court held that a fact issue existed as to whether the taxpayers' vehicles were manufactured homes or recreational vehicles and remanded to the trial court based on that issue.

Levitas v. Barraza, No. 2001-10-4369-E (copy supplied), *rev'd*, 2004 WL 1687884 (Tex.App.—Corpus Christi, July 29, 2004).

Prior to the proceedings at issue, the subject real estate was foreclosed upon twice during two different bankruptcy cases, each of which were dismissed without any record of any automatic stay violations. The plaintiff debtor subsequently filed suit against defendant creditors seeking declaratory judgment that the prior foreclosures

were void because said foreclosures were conducted in violation of the automatic stay provision of the bankruptcy code. I granted summary judgment in favor of the defendant creditors. The 13th Court of Appeals reversed, concluding that the foreclosures and subsequent sales of the property violated the bankruptcy automatic stay, and were void.

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

As a state district judge, it is extremely rare that I issue substantive written opinions in any case. I would estimate less than 1% of my orders contain language that could be considered an opinion. The standard operating procedure set forth in the Cameron County Local Rules, which governed all of my state judicial positions, has been for each party to submit an order granting or denying the relief requested in conjunction with the party's respective pleading. I may make minor revisions, but the bulk of the language in any prospective order is from a standard template form submitted by the prevailing party. Any and all executed orders are public records, and filed with the Cameron County District Clerk.

As a municipal judge, I issued no orders containing opinions. My role was merely to set criminal bonds, and preside over traffic citation cases. Any and all executed orders are public records, and filed with the City of Brownsville.

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.

As a state district judge with a docket comprised predominantly with felony criminal matters, I routinely render decisions and orders related to due process, search and seizure, and right to counsel issues derived from the Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and similar provisions of the Texas Constitution. However, I have not written any significant opinions on such issues.

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

None.

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

an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

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

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

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

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

As a state district judge, I follow the recusal requirements set forth in the Texas Code of Judicial Conduct and Rule 18b, Texas Rules of Civil Procedure. I decide each recusal determination on a case-by-case basis; if my impartiality may reasonably be questioned based upon any association with the litigants or attorneys, I recuse myself sua sponte. None of the courts in which I have presided employed an automatic system. The below list is exclusive to the 445th District Court because I have no records for any of my prior state district court benches, and I do not recall any prior motions to recuse from either bench. As to my municipal bench duties, recusal was never an issue.

I recused myself sua sponte in the following cases:

Bonner v. City of Harlingen, et al., No. 2010-DCL-6559-I. The plaintiff was a practicing attorney before my court.

Carduco, Inc., D/B/A Cardenas Metroplex v. Mercedes-Benz, USA, LLC, Holt, Dearing, and Oswald, No. 2011-DCL-3754-I. The owners of the plaintiff were former clients and friends.

Cowen v. Cameron County and Sheriff Omar Lucio in His Official Capacity, No. 2011-DCL-04402. Defendant Cameron County pays a judicial supplement to every district judge in the county.

Delta Steel, Inc. vs. Descon & Travelers Surety, No. 11-DCL-8054-I. The plaintiff was a former client.

Guillen v. Gulf Stream Marine, Inc., No. 2011-DCL-6144-I. The defendant was a former client.

Hernandez v. Staff Force, Inc., No. 2009-10-5731-I. The plaintiff was the wife of my former associate.

Jansen International, LLC v. Cameron County, No. 2012-DCL-6783-I. Defendant Cameron County pays a judicial supplement to every district judge in the county.

Law Office of Bobby Garcia, P.C. v. Luz A. Williamson D/B/A Williamson Law Firm, No. 2011-DCL-4109-I. Both parties have practicing attorneys before my court.

Lopez v. Luis Saenz, County and District Attorney of Cameron County, Texas, No. 2013-DCL-00210-I. The defendant was the District Attorney for Cameron County.

Ozuna v. Deutsche Bank National Trust Company as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2007-NC4 Successor to: Saxon Mortgage Services, Inc., No. 2012-DCL-05513. The plaintiff was a former employee.

Rodriguez v. JP Morgan Chase, National Association, No. 2010-DCL-5909-I. The plaintiff was a practicing attorney before my court.

There have only been two motions to recuse filed against me. In both instances, the criminal defendants cited my pretrial rulings against them as the basis for recusal. I referred the motions for a hearing. The Chief Justice assigned a new judge to hear the motions, and in both instances, the respective motions were denied:

State of Texas v. Barrera, No. 10-CR-572-I, 10-CR-573-I, 10-CR-574-I, 10-CR-575-I, 10-CR-1992-I

State of Texas v. Rubio, No. 2011-DCR-2619-I, 11-CR-1007-I, 09-CR-2178-I, 08- CR-2314-I

In addition, there are instances in which a motion to recuse is filed against another judge in a different court ("referring judge") that is subsequently referred to me in my capacity as presiding judge of the Fifth Administrative Judicial Region, wherein the factors in the subject motion are also applicable to me, although the referring judge is the only judge referenced in the subject motion. In such cases, the motion is referred to the Chief Justice of the Texas Supreme Court for hearing either by himself or a newly assigned judge from outside Cameron County. The following are cases that I referred to the Chief Justice for assignment of a judge from outside my home county:

Castillo-Hamm v. Cameron & Willacy Counties Community Supervision & Corrections Department, No. 2012-DCL-8361-G. The defendant is administratively overseen by every district judge and county court at law judge in Cameron County, collectively referred to as the Board of Judges.

In re: Castro, No. 12-5AJR-301. The defendant was and is a practicing attorney in Cameron County.

In re: Gonzalez, No. 12-5AJR-300. The defendant was and is a practicing attorney in Cameron County.

In re: Oliveira, No. 12-5AJR-302. The defendant was and is a practicing attorney in Cameron County, in addition to being one of two state representatives for the county.

In re: Nelson, No. 12-5AJR-303. The defendant was and is the current district judge for the 138th District Court in Cameron County.

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.

From 2009 to 2011, I served as a Director of the Texas Youth Commission after I was appointed by Governor Rick Perry. From 2003 to 2005, I served as a Commissioner of the Texas Lottery Commission after I was appointed by Governor Rick Perry.

In the November 2006 general election, I lost a retention election for a position on the 138th State District Court, to which I had been appointed in 2005. In the November 2002 general election, I lost a retention election for a position on the 357th State District Court, to which I had been appointed in 2001.

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

Aside from my own judicial campaigns, from approximately January to March 1996, I served as the treasurer for Michael Rodriguez in his unsuccessful bid for State Representative for District 37. My duties were limited to assisting with fundraising.

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;

2003
Rolando Olvera, P.C.
1650 Paredes Line Road
Brownsville, TX 78520
Attorney/Mediator

2007 – 2008
Law Office of Rolando Olvera
35 Holly Lane
Brownsville, TX 78520
Attorney/Mediator

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 – 1993
Atlas & Hall LLP
818 Pecan Boulevard
McAllen, TX 78501
Associate

1994
Fleming & Hewitt
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Associate

1995 – 1997
Fleming, Hewitt & Olvera
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Brownsville, TX 78520
Attorney/Partner

1998 – 2000
Fleming & Olvera PC
1650 Paredes Line Road

Brownsville, TX 78520
Attorney/Partner

2003
Rolando Olvera PC
1650 Paredes Line Road
Brownsville, TX 78520
Attorney/Mediator

2004
Spain & Olvera
103 East Price Road
Brownsville, TX 78521
Attorney/Mediator/Partner

2007 – 2008
Law Office of Rolando Olvera
35 Holly Lane
Brownsville, TX 78520
Attorney/Mediator

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 2003 to 2004, and 2007 to 2008, I served as a mediator in countless civil and family law cases. The family cases were contested divorce proceedings, primarily related to negotiating property distribution and support, although occasionally also including child custody issues. The civil cases were primarily personal injury, commercial and labor. The majority of the personal injury cases I mediated were "soft tissue/car wreck" cases with insurance policy limits of $20,000, the minimum limit required by the State of Texas. However, I also mediated complex personal injury cases that included severe physical injury or death, with mediated settlements arriving at six or seven figures. In addition, I also mediated commercial cases involving business disputes, and labor cases where employees alleged some form of harassment and/or discrimination against their employer.

Unfortunately, I no longer have any records of any of my mediated cases, except for the following docket information obtained from the federal PACER system: *Renteria v. Union Pacific RR Co.*; 1:02-CV-00229. To the best of my recollection, the suit involved a personal injury incurred by a Mexican national citizen injured at a railroad crossing.

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 2000, the general character of my law practice was broad based and diverse. My practice areas included business/commercial law and litigation, admiralty and maritime law, creditor bankruptcy, banking law, corporate law, insurance law, international law, and general civil practice. From 1990 to 1994, I served as an associate, and was typically second chair in both my involvement with clients and cases. From 1995 to 2000, my duties as a partner expanded, as I was required to generate business, maintain client relations, and manage cases on my own. Subsequent to my first term as a state district judge, from 2003 to 2008, I concentrated in alternative dispute resolution as a certified mediator and arbitrator.

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

Initially, my typical clients were business entities because the bulk of my practice was in business/commercial litigation. However, subsequent to each judicial term, attorneys continued to seek me out as a mediator, and ADR became the bulk of my practice.

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

From 1990 to 2000, I would describe my appearances in court as occasional. As an attorney, I tried cases at the trial court level, state and federal, and also argued as an appellate attorney twice before the United States Court of Appeals for the Fifth Circuit.

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

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

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather

than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I would estimate that I tried approximately 60 cases to verdict, judgment, or final decision. Of these cases, I tried approximately a third as sole counsel, a third as co-counsel, and a third as associate counsel.

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

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

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

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

a. the date of representation;

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

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

The ten most significant litigation matters I handled as an attorney were from 1990 to 2000. One of my major areas of practice was creditor bankruptcy. I represented numerous clients/creditors and litigated a vast amount of bankruptcy cases before the United States Bankruptcy Court Southern District of Texas (Brownsville Division), the Hon. Richard Schmidt presiding. In addition, I litigated a general cross-section of cases at the U.S. District Court level (Brownsville Division) and in state court. Unfortunately, due to the passage of time, change in career to the judiciary, and the dissolution of my prior law firm, I no longer have access to any files litigated in the state or federal forums. However, I have produced the below list based on the dockets available in the federal PACER system, and the best of my recollection.

1. *United States of America v. Mancillas*, 1:93-CV-00153 (S.D. Tex.).

The government sued my firm's client, Dr. Mancillas, for breach of contract. As part of his financial aid from the government, he was required to serve five years in an underprivileged area. Dr. Mancillas moved to Brownsville, Texas, which was one of the designated cities, to comply with said requirement. Approximately three years into his service, however, Brownsville was removed from the government's designated list, and the lawsuit ensued as to whether Dr. Mancillas would now have to move to a new city. I served as second chair in this case. After trial commenced, the parties came to an agreement to allow Dr. Mancillas to finish his service in Brownsville, and the case was dismissed

Dates of Representation: 1992 – 1994

U.S. District Court Brownsville Division: Judge Filemon Vela

Co-Counsel:
Tom Fleming
Fleming & Fleming PLLC
144 Landa Street, Suite 152
New Braunfels, TX 78130
(830) 627-9278

Counsel for Plaintiff United States:
Nancy Lynn Masso
U.S. Attorney's Office for the Southern District of Texas
600 East Harrison Street, Suite 201
Brownsville, TX 78520
(956) 548-2554

2. *Izegbu, et al v. Luger, et al.,* 1:93-CV-00095 (S.D. Tex.).

My client, Mr. Izegbu, filed suit for the payment of a commercial debt for airplane repairs. I served as second chair during the litigation, and I coordinated the seizure of the defendant's airplane through the U.S. Marshal's Office. After the defendants failed to answer or contest the debt, the magistrate court granted a default judgment.

Date of Representation: 1993

U.S. Magistrate Court Brownsville Division: Judge Stewart A. Newblatt

Co-Counsel:
Tom Fleming
Fleming & Fleming PLLC
144 Landa Street, Suite 152
New Braunfels, TX 78130
(830) 627-9278

3. *Zimco Marine, Inc. v. Lady M, in rem, et al.,* 1:93-CV-00098 (S.D. Tex.).

My client, Zimco Marine Inc., filed suit in admiralty against the defendants for maritime repairs incurred on the subject vessel. I served as first chair and coordinated the seizure of the defendant vessel through the U.S. Marshal's Office. The defendants failed to answer and did not dispute the validity or enforceability of the maritime liens. The district court granted default judgment.

Dates of Representation: 1993

U.S. District Court Brownsville Division: Judge Filemon Vela

Co-Counsel:
Tom Fleming
Fleming & Fleming PLLC
144 Landa Street, Suite 152
New Braunfels, TX 78130
(830) 627-9278

4. *Ciclon Negro, Inc., et al v. Texas Gulf Trawling Inc. et al.,* 1:95-CV-00133 (Bankruptcy S.D. Tex.); *Don Vicente, Inc. v. Zimco Marine Inc., et al.,* 1:96-CV-00018 (Bankruptcy S.D. Tex.); *Ciclon Negro Inc. v. Texas Gulf Trawling Inc., et al.,* 1:96-CV-00021 (S.D. Tex.); *Don Vicente Inc. v. Texas Gulf Trawling, et al.,* 1:96-CV-00022 (S.D. Tex.); and *In re Don Vicente Inc.*, 168 F.3d 209 (5th Cir. 1999).

My firm represented Marine Railway Inc., RCA Trawlers Inc., Texas Gulf Trawling Inc., and Zimco Marine Inc. (hereafter collectively referred to as the "clients"). I was co-lead counsel in the initial state court cause of action and the subsequent bankruptcy proceedings, and I was lead counsel in all of the subsequent federal appeals at the district court level and the Fifth Circuit. Our clients entered into a joint venture with Ciclon Negro Inc. and Don Vicente, Inc. The joint venture formed a Mexican corporation in Mexico and borrowed approximately $1 million from Texas Commerce Bank ("the bank") to commence the business related to the operation of shrimp boats. Each of our clients was required to deliver a $100,000 certificate of deposit as collateral to the bank. Ciclon Negro Inc. and Don Vicente Inc. granted a priority lien to the bank in two of the shrimp boats. After the business failed, the bank seized the boats, collected the clients' certificates of deposit, and required payment on the remainder of the note. Ciclon Negro Inc. and Don Vicente Inc. (hereafter collectively referred to as the "debtors") generally denied the debt and refused to deliver the two shrimp boats previously granted as collateral.

In late 1994, our clients filed suit against the debtors in the 103rd State District Court, and the bank intervened. In 1995, the debtors filed for bankruptcy before the United States Bankruptcy Court (Brownsville Division) under Chapter 11 reorganization, and they commenced an adversary proceeding in each respective Chapter 11 case disputing the proof of claim filed by our clients and the bank. The bankruptcy court

approved our clients' proof of claim in the amount of $300,000, and ruled in our clients' favor in each respective adversary proceeding via a final order in December 1995. In 1996, the debtors attempted to file their respective appeals from the adversary proceedings to the district court, but failed to timely file the appeals. After oral argument, the district court dismissed the appeals in May 1997. Only Don Vicente Inc. filed an appeal to the Fifth Circuit. After oral argument, the Fifth Circuit affirmed the district court's dismissal of the appeal in 1999. In 2000, the cases were sent back to the bankruptcy court to finalize the Chapter 11 reorganization in accordance with the appellate rulings. In addition, the miscellaneous state causes of action were remanded to state court. My representation of the clients ended in 2000, as I left the firm for the 357th State District bench in 2001.

Dates of Representation: 1994 – 2000

Bankruptcy Court: Judge Richard Schmidt

U.S. District Court Brownsville Division: Judge Filemon Vela

Fifth Circuit Panel: Judges Edith Jones, Emilio Garza, and Jerry Smith

Co-Counsel:
Tom Fleming
Fleming & Fleming PLLC
144 Landa Street, Suite 152
New Braunfels, TX 78130
(830) 627-9278

Appellate Counsel for Don Vicente Inc.:
Kelly K. McKinnis
Solo Practitioner
3423 West Alberta Road
Edinburg, TX 78539
(956) 686-7039

Counsel for Don Vicente Inc.:
Richard S. Hoffman
Law Offices of Richard S. Hoffman
611 South Congress Avenue, #210
Austin, TX 78704
(512) 322-9800

Counsel for Ciclon Negro Inc.:
Antonio Villeda
Law Office of Antonio Villeda
5414 North 10th Street

McAllen, TX 78504
(956) 631-9100

Counsel for Texas Commerce Bank as Successor in Interest to Texas Commerce Bank-Rio Grande Valley NA:
Shelby A. Jordan
Jordan Hyden Womble Culbreth & Holze PC
500 North Shoreline Boulevard, Suite 900
Corpus Christi, TX 78401
(361) 884-5678

Co-Counsel for Texas Commerce Bank as Successor In Interest to Texas Commerce Bank-Rio Grande Valley NA:
William Lewis Rentfro
Law Office of William Rentfro PC
302 East Queen Isabella Boulevard, Suite E
Port Isabel, TX 78578
(956) 943-2720

5. *Murra, et al v. The Crown Life Ins, et al.,* 7:95-CV-00293 (S.D. Tex.).

The plaintiffs filed suit against defendant Crown Life Insurance Co. for damages incurred resulting from the sale of insurance policies in Mexico. The annuities paid by said policies were based on floating interest rates; as said rates declined, the policies ended up being worthless. In addition to suing the company, the plaintiffs also sued several of the individual sales agents. My firm's client was one of the defendant sales agents. I was counsel for Mr. Cortez. Eventually, most of the individuals were nonsuited, including my client.

Dates of Representation: 1995 – 1998

U.S. Magistrate Court Brownsville Division: Judge Norman Black

Co-Counsel for Plaintiffs:

Guy Wade Caldwell
Barton, East & Caldwell PLLC
One Riverwalk Place, Suite 1825
700 North Saint Mary's Street
San Antonio, TX 78205
(210) 225-1655

James L. Branton
Branton Hall Rodriguez & Cruz PC
8100 Broadway Street

San Antonio, TX 78209
(210) 224-4474

Counsel for Defendants:

Counsel for R.W. Wilson International Inc.:
Gerald L. Benadum
Solo Practitioner
P.O. Box 2586
Corpus Christi, TX 78403
(361) 881-6078

Counsel for Arthur S. Hicks Inc.:
John E. Bevil
Solo Practitioner
445 North Seguin Avenue
New Braunfels, TX 78130
(830) 625-9117

Co-Counsel for The Crown Life Insurance Company:
Gregory F. Burch
Locke Lord LLP
2800 Chase Tower
600 Travis Street
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(713) 226-1183

David G. Cabrales
Roger Brian Cowie
Edwin R DeYoung
Locke Lord LLP
2200 Ross Avenue, Suite 2200
Dallas, TX 75201
(214) 740-8000

Counsel for E. Dohrenburg:
Michael S. Lee
The Lee Firm PC
615 North Upper Broadway, Suite 708
Corpus Christi, TX 78401
(361) 882-4444

Counsel for J. Schwarz:
Michael Mills
Atlas Hall LLP
818 Pecan Boulevard

McAllen, TX 78501
(956) 682-5501

6. *TK-USA Inc. v. Chiao Tung Bank*, 1:96-AP-02007 (Bankruptcy S.D. Tex.); *In re TK-USA Inc. v. Chiao Tung Bank*, 1:97-CV-00008 (S.D. Tex.); *In re TK-USA Inc. v. Chiao Tung Bank*, 192 F.3d 127 (5th Cir. 1999).

My firm represented Chiao Tung Bank ("Chiao"), a Taiwanese bank with U.S. offices in California, in this bankruptcy adversary proceeding, and the subsequent appellate proceedings. I was lead counsel for Chiao throughout, including appellate oral argument before the Fifth Circuit. TK-USA Inc. ("TK") was a Texas corporation that owned real estate and an in-bond manufacturing or maquila plant in Mexico. TK executed a commercial loan with Chiao and granted the real estate and plant in Mexico as collateral. In addition, the shareholder owners of TK individually guaranteed the note. TK subsequently defaulted and filed for Chapter 11 Bankruptcy. TK filed a bankruptcy adversary proceeding (lawsuit) disputing the enforcement of the note, the value of the collateral, and the proof of claim filed by Chiao. TK alleged the secured value of Chiao's claim should be the assessed higher dollar value of the collateral at the time the loan documentation was executed. Chiao countered that the correct value of the collateral was the fair market value at the time of default immediately prior to TK filing for bankruptcy. The bankruptcy court approved Chiao's valuation and proof of claim via a final judgment. The primary argument on appeal was TK's attempted application of the dirt for debt rule under reorganization, and TK's objection to the valuation of the real estate collateral entered by the bankruptcy court. In order to minimize or avoid individual guarantor liability of TK's shareholders, the higher the real estate amount credited to Chiao under the Chapter 11 reorganization, the less prospective liability exposure of the individual guarantors. The Fifth Circuit affirmed the bankruptcy court's real estate valuation in Chiao's favor.

Dates of Representation: 1996 – 1999

Bankruptcy Court: Judge Richard Schmidt

U.S. District Court Brownsville Division: Judge Hilda Tagle

Fifth Circuit Panel: Judges Edith Jones, Jacques Wiener, and F.A. Little (District Judge, Western District of Louisiana, sitting by designation)

Co-Counsel:
Tom Fleming
Fleming & Fleming PLLC
144 Landa Street, Suite 152
New Braunfels, TX 78130
(830) 627-9278

Counsel for TK-USA Inc.:
Michael Colvard
Martin & Drought PC
300 Convent Street, Suite 2500
San Antonio, TX 78205
(210) 227-7591

7. *USA v. Hernandez-Balderas*, 1:97-CR-00315-1 (S.D. Tex.).

My client, Mr. Hernandez-Balderas, was one of numerous illegal aliens captured by the U.S. Border Patrol. I was his court appointed attorney. In exchange for his testimony against the human smugglers, he was granted a plea bargain in which he was sentenced to probation and deported back to Mexico.

Date of Representation: 1997

U.S. District Court Brownsville Division: Judge Filemon Vela

Counsel for the United States:
Jody Young
U.S. Attorney's Office for the Southern District of Texas
600 East Harrison Street, Suite 201
Brownsville, TX 78520-7114
(956) 548-2554

8. *Pan American Maritime, Inc. v. Esco Marine, Inc. et al*, 1:04-CV-00188 (S.D. Tex.).

My client was Esco Marine Inc. The plaintiff filed suit claiming a maritime lien for work performed as a subcontractor in the scrapping of a vessel. The case settled before trial.

Date of Representation: 2004

U.S. District Court Brownsville Division: Judge Hilda Tagle

Co-counsel for Pan American Maritime, Inc.:
Lynne Chupp Finley
Finley & Associates
P.O. Box 860362
Plano, TX 75086
(972) 489-4304

Lynne C. Rentfro
Solo Practitioner
7610 North Stemmons Freeway, Suite 300

Dallas, TX 75247
(214) 634-6611

9. *USA v. Oropeza*, 1:07-CR-01018 (S.D. Tex.).

This was a criminal case against the Oropeza family. Mr. Oropeza was charged with drug smuggling and running a major drug enterprise. Mrs. Oropeza was a co-defendant charged exclusively with money laundering. I was lead counsel for Mrs. Oropeza. In exchange for her cooperation and testimony, I was able to negotiate a plea with minimal jail time. At the sentencing hearing, the judge sustained my objections to the presentence investigation report, which resulted in my client being entitled to a lower range of punishment.

Dates of Representation: 2007 – 2008

U.S. District Court Brownsville Division: Judge Andrew Hanen

Counsel for Co-defendant Oscar Oropeza:
Ernesto Gamez, Jr.
Law Offices of Ernesto Gamez, Jr. PC
777 East Harrison Street
Brownsville, TX 78520
(956) 541-3820

Counsel for the United States:
Oscar Ponce
U.S. Attorney's Office for the Southern District of Texas
600 East Harrison Street, Suite 201
Brownsville, TX 78520-7114
(956) 548-2554

10. *Mercedes Independent School District v. Carolyn Munoz*, 941 SW2d 215 (Tex. App.-Corpus Christi 1996).

I was lead counsel for Ms. Munoz, in both the underlying district court case and appellate argument. The case was a bench trial for breach of an employment contract with the school district. The case raised a jurisdictional question regarding whether Ms. Munoz failed to exhaust her administrative remedies pursuant to the terms of her contract. Of relevance to this question, it was undisputed that the school district failed to send a notice of termination pursuant to the contract. Thus, Ms. Munoz argued that the exhaustion of administrative remedies was not applicable when only issues of law remained, and that the school district was attempting to enforce the terms of a contract that it had breached. The district court denied the school district's jurisdictional motion, and rendered judgment in Ms. Munoz' favor. The appellate court reversed and remanded the decision. Ms. Munoz declined to pursue the case further.

Dates of Representation: 1994 – 1996

92nd State District Court: Judge Fernando Mancillas

13th Court of Appeals Panel: Justices C.J. Seerden, Linda Yanez, and J.J. Chavez

I have been unable to locate the case number or opposing counsel at the state district court level.

Co-Counsel:
Tom Fleming
Fleming & Fleming PLLC
144 Landa Street, Suite 152
New Braunfels, TX 78130
(830) 627-9278

Co-Counsel for Appellant Mercedes Independent School District:
Harolyn Denise Nance Pierce
Texas Charter Schools Association
700 Lavaca Street, Suite 930
Austin, TX 78701
(512) 584-8272

James Belton
Associate Judge, Child Protection Court
974 East Harrison Street, 1st Floor
Brownsville, TX 78520
(956) 574-8730

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

Since 2011, as the presiding judge of the Fifth Administrative Judicial Region, I administratively supervise every judge in the eleven counties commonly referred to as South Texas, and assist in the efficient management of every docket. In addition, upon receipt of a recusal motion from a referring judge, I appoint a different judge to hear said motion. I also am responsible for the appointment of active or visiting judges to courts that need assistance or request a different judge via a sua sponte recusal. I serve as a resource to our judges in terms of providing input, advice, or research.

From 2009 to 2011, I was appointed to serve as one of seven Directors to the Texas Youth Commission ("TYC"), the governmental entity that was in charge of the juvenile prison system for the entire state until it merged into the Texas Juvenile Justice Department in 2012. The TYC board provided oversight to the juvenile prisons, rehabilitation centers, the TYC budget, and TYC staff. During my tenure, TYC made major advances in facility security, and investigating complaints regarding potential staff violations, and making internal auditing and budgetary policies current.

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.

    At present, my sole retirement income will be derived from potential judicial retirement from the State of Texas and the County of Cameron. I have no other arrangements to be compensated in the future.

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

    No, I have no such plans.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

I am aware of no present potential conflict of interest. Hypothetically, I would recuse myself sua sponte from any case involving a family member, former client, or any other party required by law.

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

I would follow the recusal statutes and the Code of Conduct for United States Judges in resolving any potential conflict of interest.

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

As an active judge, I am prohibited from practicing law as an attorney, including pro bono work as an attorney. I have, however, continued participate in community service to aid the disadvantaged through my work as a board member of numerous non-profit organizations and commissions. From 2009 to 2011, I was a Director of the Texas Youth Commission, which managed the juvenile prison system of the state with the primary goal of rehabilitation. From 2007 to 2008, I was a Director of the Brownsville Community Foundation, which was formed to enhance the community for the citizens of Brownsville via the development of business, education, and natural resources. From 2003 to 2005, I agreed to serve as a Commissioner of the Texas Lottery Commission because all the net lottery profits are required to be deposited in the Texas Education Fund, the fund which finances every public school in the state. From 1999 to 2005, I was a Director of the Children's Museum of Brownsville, Inc. During my term, the museum, which was the first of its kind in Cameron County, was completed and it continues to serve as an invaluable resource to all the children in the county. From1998 to 2004, I was a Director for the United Way "Success by Six" Program, which was intended to develop and promote successful educational programs for our local youth under the age of six.

Consistent with local rules, I also volunteer routinely to hear "Pro Bono Divorce Court", a program organized by the Cameron County Bar Association which provides indigent parties the opportunity to finalize their divorce before a court of record.

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 10, 2013, I submitted an application to the Federal Judiciary Evaluation Committee (FJEC) convened by Senators John Cornyn and Ted Cruz. On December 13, 2013, I interviewed with the FJEC in Houston, Texas. On May 20, 2014, I interviewed separately with Senators Cornyn and Cruz in Washington D.C. Since May 17, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 23, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 18, 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
Olvera, Jose Rolando	United States District Court for the Southern District of TX	09/23/2014
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**
Nominee, U.S. District Judge	☑ Nomination Date 09/18/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 09/18/2014
7. Chambers or Office Address		
Hon. Rolando Olvera 445th State District Court 974 East Harrison Street Brownsville, TX 78520		

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 Olvera, Jose Rolando	Date of Report 09/23/2014

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 Texas/Salary	$140,000.00
2. 2014	Cameron County/Salary Supplement	$51,000.00
3. 2013	State of Texas/Salary	$125,000.00
4. 2013	Cameron County/Salary Supplement	$48,000.00
5. 2012	State of Texas/Salary	$125,000.00
6. 2012	Cameron County/Salary Supplement	$48,000.00
7.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2014	Brownsville Independent School District/Salary
2. 2014	Zavaleta Realty/Commission
3. 2013	Brownsville Independent School District/Salary
4. 2013	Zavaleta Realty/Commission
5.	
6.	

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.				

Name of Person Reporting	Date of Report
Olvera, Jose Rolando	09/23/2014

3.

4.

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Olvera, Jose Rolando	Date of Report 09/23/2014

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	Unsecured Credit Card Debt	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Olvera, Jose Rolando	09/23/2014

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.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

Name of Person Reporting	Date of Report
Olvera, Jose Rolando	09/23/2014

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Olvera, Jose Rolando	Date of Report 09/23/2014

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/ Jose Rolando Olvera

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	733	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		23	304
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		229	345
Real estate owned – personal residence		300	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		80	000				
Cash value-life insurance							
Other assets itemize:							
Judicial Retirement Sys. Of Texas (Plan II)		100	494				
TX County & District Retirement System		16	613				
Texas Municipal Retirement System		3	647	Total liabilities		252	649
				Net Worth		253	838
Total Assets		506	487	Total liabilities and net worth		506	487
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, JOSE ROLANDO OLVERA, JR., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

September 22, 2014
(DATE)

(NAME)

(NOTARY)

KAREN R. BALLARD
Notary Public, State of Texas
My Commission Expires
June 10, 2018

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jill N. Parrish. Prior to my marriage on October 26, 1988, I went by my maiden name, Jill Annette Niederhauser. I have sometimes been referred to as Jill Annette Parrish or Jill Niederhauser Parrish.

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

   United States District Judge for the District of Utah

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: Utah Supreme Court
   450 South State Street, Fifth Floor
   Salt Lake City, Utah 84114

   Residence: Bountiful, Utah

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

   1961; Ogden, Utah

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

   1982 – 1985, Yale Law School; J.D., 1985

   1979 – 1982, Weber State University; B.A. (*summa cum laude*), 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.

2003 – present
Utah Supreme Court
450 South State Street
Salt Lake City, Utah 84114
Justice

1995 – 2003
U.S. Attorney's Office
District of Utah
185 South State Street, Suite 400
Salt Lake City, Utah 84111
Assistant United States Attorney (1995 – 2003)
Financial Litigation Supervisor (1996 – 2003)

1986 – 1995, Summer 1985, Summer 1983
Parr Brown Gee & Loveless
(Formerly Kimball, Parr, Crockett & Waddoups)
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Shareholder (1990 – 1995)
Associate (1986 – 1990)
Summer Associate (Summer 1985, Summer 1983)

1985 – 1986
United States District Court for the District of Utah
351 South West Temple
Salt Lake City, Utah 84101
Law Clerk to Judge David K. Winder

July – August 1984
Ray, Quinney & Nebeker
36 South State Street, Suite 1400
Salt Lake City, Utah 84111
Summer Associate

June – July 1984
O'Melveny & Myers
400 South Hope Street
Los Angeles, California 90071
Summer Associate

Summer 1982
United States House of Representatives
200 D Street NW
Washington D.C. 20024
Intern to Representative James V. Hansen

Other affiliations (uncompensated):

1995 – 2008
Federal Bar Association, Utah Chapter
Board Member (1995 – 2008)
President (1999)
President-Elect (1998)
Secretary (1997)

2006 – 2008
Edmund J. Niederhauser Trust
From my private residence
(Trustee for father's trust)

2006 – 2008
Beulah P. Niederhauser Trust
From my private residence
(Trustee for mother's trust)

2006 – 2008
Estate of Edmund J. Niederhauser
From my private residence
(Personal Representative for my father's estate)

2006 – 2008
Estate of Beulah P. Niederhauser
From my private residence
(Personal Representative for my mother's estate)

2003 – 2006
North Canyon Swim & Tennis Club
3052 South Oakwood Drive
Bountiful, Utah 84010
Board Member and Secretary

1996 – 2006
OBS, Inc.
Secretary and Director
(Corporate entity for my husband's business)

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.

Yale Moot Court of Appeals, Member and Director, 1984 – 1985

First Place, Eastern Region, American Bar Association National Appellate Advocacy Competition, 1984 – 1985

Semi-finalist, Thurmon Arnold Oral Argument Competition, Yale Law School, 1983 – 1984

Semi-finalist, Cardozo Brief Writing Competition, Yale Law School, 1983 – 1984

Recipient, Phi Kappa Phi Fellowship for Graduate Study, 1982

Outstanding Graduate Award, Weber State University School of Humanities, 1982

Outstanding Academic Student Award, Weber State University School of Social Science, 1982

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

American Bar Association (1985 – 1994)

American Inns of Court, Sutherland Chapter
Master of the Bench (2002 – present)
Barrister (1989 – 2001)

Federal Bar Association, Utah Chapter (1995 – 2008)
Board Member (1995 – 2008)
State Court Liaison (2003 – 2008)
Government Lawyer Liaison (2000 – 2003)
President (1999)
President-Elect (1998)
Secretary (1997)
Membership Officer (1996)
Special Projects Board Member (1995)

Federalist Society, Utah Lawyers Division (1992)

National Association of Women Judges (Intermittently 2003 – present)

Salt Lake County Bar Association (2003 – present)

Utah State Bar (1985 – present)
- Appellate Practice Section (2004 – present)
- Unauthorized Practice of Law Committee (1992 – 1994)
- Professional Responsibility Committee (1986 – 1987)
- Young Lawyers Section Executive Committee (1985 – 1986)
- Women Lawyers of Utah (1985 – 1995, 2003 – present)

Utah State Courts (2003 – present)
- Board of Appellate Court Judges (2003 – present)
- Utah Judicial Council (2010 – present)
- Chairperson, Legislative Liaison Committee (2010 – present)
- Chairperson, Judicial Council Study Committee on Cameras in the Courtroom (2011 – 2012)
- Chairperson, Utah Supreme Court Professionalism Committee (2006 – 2011)
- Chairperson, Utah State Law Library Oversight Committee (2004 – present)
- Standing Committee on Court Technology (2005 – 2010)
- Chairperson, Utah State Law Library Study Committee (2003 – 2004)
- Judicial Performance Evaluation Committee (2003 – 2004)

10. **Bar and Court Admission**:

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

Utah, 1985

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 District of Utah, 1985 (inactive)
Utah Supreme Court, 1985
United States Court of Appeals for the Tenth Circuit, 1997
Supreme Court of the United States, 2000

There have been no lapses in membership. Upon my appointment to the Utah Supreme Court in 2003, I elected to take inactive status in the United States District Court for the District of Utah.

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.

Bountiful High School PTA (2007 – 2013)

Boulton Elementary School PTA (1997 – 2011)

Mueller Park Junior High School PTA (2003 – 2009, 2011 – 2014)

North Canyon Swim & Tennis Club, Bountiful, Utah (1996 – present)
Secretary and Board Member (2003 – 2006)

South Davis Junior High School PTA (2009 – 2012)

Woods Cross High School PTA (2012 – 2014)

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

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

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

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

Lessons from Kindergarten, UTAH B.J., Jan/Feb 2006. Copy supplied.

During my final year of undergraduate work at Weber State University (fall of

1981 through spring of 1982), I was the News Editor and a contributing reporter for THE SIGNPOST, the Weber State College campus newspaper. In this capacity, I authored a number of articles and editorials about campus events. While not all of these articles are still publically available, I have been able to locate copies of some of them, which are supplied.

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

Final Report: Judicial Council Study Committee on Technology Brought into the Courtroom, April 10, 2012. Copy supplied.

Report and Recommendations, Utah Supreme Court Study Committee – State Law Library, October 8, 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.

From September 2010 through the present, I have served as the Supreme Court's representative to the Utah Judicial Council. The Utah Judicial Council is the policy-making body for the Utah judiciary made up of representatives from all of the various court levels who are elected to serve three-year terms. The council has the constitutional authority to adopt uniform rules for the administration of all courts in the state. The council also sets standards for judicial performance, court facilities, support services and judicial and non-judicial staff levels. Council meetings are open to the public and minutes of its meetings are available on the webpage of the Utah State Courts. Minutes available at: https://www.utcourts.gov/admin/judcncl/minutes.asp.

February 5, 2010: I testified in a committee hearing before the Utah State Senate Law Enforcement & Criminal Justice Standing Committee with respect to Senate Bill 109, which would have changed the manner in which the Chief Justice of the Utah Supreme Court is selected. Recording supplied.

January 29, 2010: I testified in a committee hearing before the Utah State Senate Law Enforcement & Criminal Justice Standing Committee with respect to Senate Bill 109, which would have changed the manner in which the Chief Justice of the Utah Supreme Court is selected. Recording supplied.

October 24, 2008: I attended the monthly meeting of the Utah State Bar Board of

Bar Commissioners and discussed how the bar could increase the number of potential legislators who are also lawyers. Minutes supplied.

August 24, 2005: I appeared before the Utah Judicial Council in my capacity as Chairperson of the State Law Library Oversight Committee to request an increased budget appropriation for the State Law Library. Notes supplied.

February 26, 2003: I addressed the Utah State Senate following their confirmation of my nomination as a Justice on the Utah Supreme Court. Recording supplied.

February 24, 2003: I appeared before the Judicial Confirmation Committee of the Utah State Senate in connection with their vote on my nomination to the Utah Supreme Court. Recording supplied.

February 18, 2003: I testified before the Judicial Confirmation Committee of the Utah State Senate in connection with my nomination to the Utah Supreme Court. Recording supplied.

February 12, 2003: I appeared before the Judicial Confirmation Committee of the Utah State Senate in connection with my nomination to the Utah Supreme Court. 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.

I have listed all of the speeches and presentations that I can recall after searching through my files and the Internet, although there may be some that I have inadvertently omitted.

March 26, 2014: Speaker, University of Utah Law School Judicial Process Class, Salt Lake City, Utah. I gave a presentation on state constitutional interpretation. I have no notes, transcript or recording, but I would have given substantially the same presentation that I gave to a similar group on March 18, 2013, for which notes are supplied. The address of the S.J. Quinney College of Law at the University of Utah is 352 South 1400 East, Salt Lake City, Utah 84112.

March 24, 2014: Judge, Traynor Moot Court Competition Finals, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of

Law), Salt Lake City, Utah. I have no notes, transcript or recording. The address of the S.J. Quinney College of Law at the University of Utah is 352 South 1400 East, Salt Lake City, Utah 84112.

February 21, 2014: Speaker, BYU Pre-Law Students, Salt Lake City, Utah. I addressed a group of undergraduate students from Brigham Young University who were visiting the Utah State Capitol Building on the importance of fair and impartial courts. I have no notes, transcript or recording for this particular presentation, but it would have been substantially the same presentation that I gave to the Sugarhouse Rotary Club on February 10, 2011, for which notes are supplied.

January 17, 2014: Speaker, Salt Lake Chamber of Commerce Leadership Utah Program, Salt Lake City, Utah. I gave an overview of the Utah court system to a group of junior high and high school civics teachers. I have no notes, transcript or recording for this presentation, but I would have given substantially the same presentation that I gave to a similar group on February 22, 2013, for which notes are supplied.

July 18, 2013: Speaker, Ray, Quinney & Nebeker, Salt Lake City, Utah. I gave an informal luncheon presentation to the summer law clerks at the firm on professionalism and practice pointers. I have no notes, transcript or recording. The address of Ray, Quinney & Nebeker is 36 South State Street, Suite 1400, Salt Lake City, Utah 84111.

June 18, 2013: Speaker, The Huntsman Institute Seminar in Constitutional Government for Teachers, Salt Lake City, Utah. I gave an overview of the Utah court system to a group of junior high and high school civics teachers. I have no notes, transcript or recording for this particular presentation, but it would have been substantially the same presentation that I gave to a similar group on June 22, 2010, for which notes are supplied.

April 26, 2013: Commencement Speaker, J. Reuben Clark School of Law Graduation Ceremony, Provo, Utah. Remarks supplied.

April 18, 2013: Speaker, Utah State Bar New Lawyer Continuing Legal Education ("CLE"), Salt Lake City, Utah. I spoke on the importance of professionalism and civility for new lawyers. I have no notes, transcript or recording for this particular presentation, but it would have been substantially the same presentation that I gave to a similar group on October 20, 2010, for which notes are supplied.

March 18, 2013: Speaker, University of Utah Law School Judicial Process Class, Salt Lake City, Utah. I gave a presentation on state constitutional interpretation. Notes supplied.

February 22, 2013: Speaker, Salt Lake Chamber of Commerce Leadership Utah Program, Salt Lake City, Utah. I gave an overview of the Utah court system to a group of junior high and high school civics teachers. Notes supplied.

January 15, 2013: Panelist, State Constitutional Law, Utah State Bar Appellate Practice Section Luncheon, Salt Lake City, Utah. Remarks supplied.

December 11, 2012, Panelist, Appealapalooza, Salt Lake County Bar Association, Salt Lake City, Utah. I participated in a panel of appellate judges who discussed appellate practice tips. I have no notes, transcript or recording. The Salt Lake County Bar Association has no physical address.

November 15, 2012, Panelist, Judicial Mentoring Seminar, Women Lawyers of Utah, Salt Lake City, Utah. I described my professional background and the process I went through to become a justice of the Utah Supreme Court and responded to questions from the audience. I have no notes, transcript, or recording. The address for Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

June 19, 2012: Speaker, The Huntsman Institute Seminar in Constitutional Government for Teachers, Salt Lake City, Utah. I gave an overview of the Utah state court system to a group of junior high and high school civics teachers. I have no notes, transcript or recording for this particular presentation, but it would have been substantially the same presentation that I gave to a similar group on June 22, 2010, for which notes are supplied.

October 26, 2011: Speaker, Utah State Bar Admission Ceremony, Salt Lake City, Utah. I was the speaker at the ceremony where new lawyers are admitted to the bar. Remarks supplied.

October 13, 2011: Speaker, South Davis Junior High School, Bountiful, Utah. I gave a presentation to junior high school students as part of a series of lectures covering various career options. I have no notes, transcript or recording of this presentation, but it would have been similar to the presentation I gave to Mueller Park Junior High Students on February 9, 2005, for which notes are supplied. The address of South Davis Junior High School is 298 West 2600 South, Bountiful, Utah 84010.

April 14, 2011: Speaker, Utah State Bar New Lawyer CLE, Salt Lake City, Utah. I spoke on the importance of professionalism and civility for new lawyers. I have no notes, transcript or recording for this particular presentation, but it would have been substantially the same presentation that I gave to a similar group on October 20, 2010, for which notes are supplied.

March 18, 2011: Speaker, J. Rueben Clark School of Law, Provo Utah. I gave advice to first-year law students on professionalism and civility. I have no notes,

transcript or recording for this particular presentation, but it would have been substantially the same as the presentation I made to a similar group on March 20, 2008 for which the remarks are supplied.

March 10, 2011: Speaker, S.J. Quinney College of Law at the University of Utah Judicial Process Class, Salt Lake City, Utah. I gave a presentation on state constitutional law. Notes supplied.

February 25, 2011: Speaker, Salt Lake Chamber of Commerce Leadership Utah Program, Salt Lake City, Utah. I gave an overview of the Utah court system to a group of junior high and high school civics teachers. I have no notes, transcript or recording of this presentation, but it would have been substantially the same as the presentation I gave to a similar group on February 22, 2013, for which notes are supplied.

February 10, 2011: Speaker, Sugarhouse Rotary Club, Salt Lake City, Utah. I spoke on the importance of fair and impartial courts. Remarks supplied.

October 20, 2010: Speaker, New Lawyer CLE, Salt Lake City, Utah. I spoke on the importance of professionalism and civility for new lawyers. Remarks supplied.

June 22, 2010: Speaker, Huntsman Institute Seminar in Constitutional Government for Teachers, Salt Lake City, Utah. I gave an overview of the Utah court system to a group of junior high and high school civics teachers. Outline supplied.

April 21, 2010: Speaker, Investiture of Judge Stephen Roth to the Utah Court of Appeals, Salt Lake City, Utah. Remarks supplied.

February 12, 2010: Panelist, J. Reuben Clark Law Society Annual Seminar, Salt Lake City, Utah. I participated in a panel discussion regarding professionalism and civility in the practice of law. I have no notes, transcript or recording. The J. Reuben Clark Law Society is an organization comprised primarily of graduates of the J. Reuben Clark Law School with chapters in many states and foreign countries. The address of the J. Reuben Clark Law School is 341 East Campus Drive, Provo, Utah 84602.

November 19, 2009: Speaker, Utah State Bar Appellate Practice Section luncheon, Salt Lake City, Utah. I spoke on the topic of civility and professionalism. Remarks supplied.

October 29, 2009: Speaker, Utah State Bar New Lawyer CLE, Salt Lake City, Utah. I spoke on the importance of professionalism and civility for new lawyers. I have no notes, transcript or recording for this particular presentation, but it would have been substantially the same presentation that I gave to a similar group

on October 20, 2010, for which notes are supplied.

October 15, 2009: Speaker, Following the Organization Rules for Briefs: Gaining Credibility with the Court from the very Beginning, Utah State Bar Legal Writing Seminar, Salt Lake City, Utah. Remarks supplied.

August 4, 2009: Speaker, Huntsman Institute Seminar in Constitutional Government for Teachers, Salt Lake City, Utah. I gave an overview of the Utah state court system to a group of junior high and high school civics teachers. I have no notes, transcript or recording for this presentation, but it would have been substantially the same as the presentation I made to a similar group on June 22, 2010, for which notes are supplied.

March 25, 2009: Judge, Traynor Moot Court Competition Finals, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law), Salt Lake City, Utah. I have no notes, transcript or recording of this event. The address of the S.J. Quinney College of Law at the University of Utah is 352 South 1400 East, Salt Lake City, Utah 84112.

March 19, 2009: Speaker, J. Rueben Clark School of Law, Provo Utah. I gave advice to first-year law students as they headed out for their first jobs in the legal profession. I have no notes, transcript or recording for this presentation, but it would have been substantially the same as the one given to a similar group on March 20, 2008, for which notes are supplied.

March 6, 2009: Speaker, Bountiful Elementary School, Bountiful, Utah. I led a discussion with a group of fourth graders about the rule of law and the purpose of our court system. I have no notes, transcript or recording of this presentation, but it would have been similar to the one given to a group of elementary students on May 16, 2008, for which notes are supplied.

October 27, 2008: Panelist, Appellate Process Class, S.J. Quinney College of Law at the University of Utah School (formerly University of Utah College of Law), Salt Lake City, Utah. I participated on a panel of practitioners and other judges and gave practice tips to law students. I have no notes, transcript or recording of this presentation. The address of the S.J. Quinney College of Law at the University of Utah is 332 South 1400 East, Salt Lake City, Utah 84112.

October 24, 2008: Judge, J. Reuben Clark Law School Moot Court Finals, Provo, Utah. I have no notes, transcripts or recording of this presentation. The address of the J. Reuben Clark Law School is 341 East Campus Drive, Provo, Utah 84602.

June 6, 2008: Speaker, Utah State Bar New Lawyer CLE, Salt Lake City, Utah. I spoke on the importance of professionalism and civility for new lawyers. Remarks supplied.

May 22, 2008: Panelist, Utah District Judges Conference, Midway, Utah. I participated on a panel regarding what trial judges should know about the appellate process. Notes supplied.

May 16, 2008: Speaker, Boulton Elementary School, Bountiful, Utah. I spoke to a fifth grade class regarding the importance of the rule of law and the structure of the Utah state court system. Notes supplied.

April 2, 2008: Speaker, Rex E. Lee American Inn of Court, Brigham City, Utah. I have no notes, transcripts or recording for this presentation. There is no physical address for the Rex E. Lee American Inn of Court.

March 20, 2008: Speaker, J. Rueben Clark School of Law, Provo Utah. I gave advice to first-year law students on professionalism and civility. Remarks supplied.

January 16, 2008: Speaker, Utah State Bar Ethics School, Salt Lake City, Utah. I spoke on the topic of professionalism and civility. Remarks supplied.

December 7, 2007: Panelist, Utah State Bar Lawyers Helping Lawyers CLE Event, Salt Lake City, Utah. I participated in a panel discussion on the topics of professionalism and civility for lawyers. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

November 2, 2007: Speaker, Utah State Bar New Lawyer CLE, Salt Lake City, Utah. I spoke on the importance of professionalism and civility for new lawyers. Remarks supplied.

February 7, 2007: Panelist, Community Peace Initiative, Salt Lake City, Utah. I have no notes, transcript or recording. I cannot recall the sponsor of the event and cannot locate any contact information for the Community Peace Initiative in Utah.

November 10, 2006: Speaker, Utah State Bar New Lawyer CLE, Salt Lake City, Utah. I spoke on the importance of professionalism and civility for new lawyers. Remarks supplied.

November 9, 2006: Panelist, Utah State Bar, "Clarence Darrow: Crimes, Causes and the Courtroom," Salt Lake City, Utah. Notes supplied.

October 26, 2006: Speaker, Utah State Bar Leadership Conference, Salt Lake City, Utah. I spoke on the professionalism and civility initiative being implemented by the Utah Supreme Court. Remarks supplied.

September 14, 2006: Speaker, Utah Judicial Conference, Snowbird, Utah. I

spoke on how Utah judges could help implement the Utah Supreme Court's Standards of professionalism & civility. Remarks supplied.

June 23, 2006: Speaker, Utah State Bar New Lawyer CLE, Salt Lake City, Utah. I spoke on the importance of professionalism and civility for new lawyers. Remarks supplied.

March 24, 2006: Panelist, 11th Annual CLE & Ski, Park City Bar Association, Park City, Utah. Handout and notes supplied.

March 15, 2006: Sutherland Inn of Court, Salt Lake City, Utah. I participated in a mock argument made as part of an educational presentation to an Inn of Court group. Notes supplied.

December 9, 2005: Speaker, conference sponsored by the Association of Trial Lawyers of America, Salt Lake City, Utah. I spoke on the topic of professionalism. Remarks supplied.

November 3, 2005: Remarks on appellate advocacy. I cannot recall the group to which I gave this presentation. Notes supplied.

October 27, 2005: Panelist, J. Reuben Clark Law School, Provo, Utah. I participated in a panel discussion with a group of women judges about their career paths and provided advice to law students interested in pursuing a career as a judge. Notes supplied.

October 12, 2005: Speaker, Utah State Bar Admission Ceremony, Salt Lake City, Utah. I was the speaker at the ceremony where new lawyers are admitted to the bar. Remarks supplied.

September 22, 2005: Speaker, Rex E. Lee Inn of Court, Brigham City, Utah. I provided appellate practice pointers. Remarks supplied.

June 28, 2005: Speaker, Utah Defense Lawyers Association, Salt Lake City, Utah. I made a presentation updating the lawyers on current issues relating to the Utah Supreme Court and providing appellate practice tips. Remarks supplied.

April 8, 2005: Judge, Traynor Moot Court Competition Finals, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law), Salt Lake City, Utah. I have no notes, transcript or recording. The address of the S.J. Quinney College of Law at the University of Utah is 352 South 1400 East, Salt Lake City, Utah 84112.

February 9, 2005: Speaker, Mueller Park Junior High School Career Fair, Bountiful, Utah. I made a presentation to students about the court system and the profession of judging. Notes supplied.

November 17, 2004: Speaker, Federal Bar Association Annual Awards Dinner, Salt Lake City, Utah. I introduced Carlie Christensen who was being recognized by the organization as the government lawyer of the year. Remarks supplied.

May 14, 2004: Speaker, Utah State Bar Family Law Section, Salt Lake City, Utah. I gave a presentation on professionalism and civility. Notes supplied.

April 1, 2004: Judge, Traynor Moot Court Competition Finals, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law), Salt Lake City, Utah. I have no notes, transcript or recording. The address of the S.J. Quinney College of Law at the University of Utah is 352 South 1400 East, Salt Lake City, Utah 84112.

January 30, 2004: Judge, J. Reuben Clark Law School Moot Court Competition Finals, Provo, Utah. I have no notes, transcript or recording. The address of the J. Reuben Clark Law School is 341 East Campus Drive, Provo, Utah 84602.

October 25, 2003: Panelist, Women Lawyers of Utah Annual Retreat, Deer Valley, Utah. I participated in a panel discussion on the topic of how to balance a career and family. I have no notes, transcript or recording. The address of the Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

August 14, 2003: Panelist, Utah State Courts, Salt Lake City, Utah. I participated in a presentation to a group of visiting Chinese appellate judges regarding the structure and function of the Utah State Court system. Notes supplied.

May 22, 2003: Panelist, Salt Lake City, Utah. I participated in a panel discussion on the topic of the judicial selection process in Utah. I cannot recall the name of the organization that sponsored the event and I have no notes, transcript or recording. However, I generally recall discussing my then recent experience in being nominated and confirmed to the Utah Supreme Court.

May 3, 2003: Presenter, Crystal Crest Awards, Weber State University, Ogden, Utah. I presented awards to students who were being honored. I have no notes, transcript or recording, but press coverage is supplied. The address of Weber State University is 3848 Harrison Boulevard, Ogden, Utah 84408.

April 22, 2003: I gave remarks on the occasion of my investiture ceremony at the Utah Supreme Court, Salt Lake City, Utah. Remarks supplied.

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

October 1, 2010: I was interviewed by a university student whose undergraduate communications class had been given the task of interviewing Utah judges for the purpose of preparing and posting Wikipedia articles about the Utah judiciary. It is my understanding that at least some of what appears in the Wikipedia page on me was the result of that interview. I have no notes or transcript of the interview and do not recall the name of the student, but a copy of my Wikipedia page is supplied.

Dan Weist, *Bill Would Allow Governor to Name Chief Justice of Utah Supreme Court*, OGDEN STANDARD EXAMINER, February 6, 2010. Copy supplied.

Pat Reavy, *Utah Legislature: Supreme Court Justices Fight Bill on Picking Their Chief*, DESERET MORNING NEWS, February 5, 2010. Copy supplied.

Stephen Hunt, *Utah High Court Officials Opposing Bill Take Case To Media,* THE SALT LAKE TRIBUNE, February 3, 2010. Copy supplied.

Pamela Manson, *Respected Utah Federal Judge David Winder Dies*, THE SALT LAKE TRIBUNE, May 20, 2009. Copy supplied.

Jill Schachner Chanen, *Guiding Principals, A Look Inside Some Inspired Mentor Relationship Shows How These Pairings Build Carreers and Confidence*, ABA JOURNAL, June 2005. Copy supplied.

Zachary Todd, *Parrish Enjoys Supreme Court Teamwork,* DAVIS COUNTY CLIPPER, March 15, 2005. Copy supplied.

Elizabeth Neff, *New Justices Start Track Record With Tough Decisions,* THE SALT LAKE TRIBUNE, July 18, 2004. Copy supplied.

Steen Ross Thaln, *Senate Confirmed Justices Find Differences In Court Seating Is Not Indicative Of Court Standing,* INTERMOUNTAIN COMMERCIAL RECORD, June 18, 2004. Copy supplied.

Robert O. Rice, *Judicial Profile Justice Jill N. Parrish,* BAR & BENCH, Salt Lake County Bar Association, Winter 2004. Copy supplied.

Renee Turner, *Here Come The Judges, Ronald Nehring and Jill Parrish,* UTAH SPIRIT, May 2003. Copy supplied.

Barbara Bernstein, *Writing A New Chapter In Life*, VISTA, Spring 2003. Copy supplied.

Renee Turner, *Davis Mom, Lawyer Now On Supreme Court,* DAVIS COUNTY CLIPPER, April 24, 2003. Copy supplied.

D. Louise Brown, *WSU Alumna Appointed To Utah State Supreme* Court, THE SIGNPOST, March 26, 2003. Copy supplied.

Renee Turner, *Bountiful Resident To Join Utah's Top* Court, DAVIS COUNTY CLIPPER, February 28, 2003. Copy supplied.

Lisa Riley Roche, *Senate Panel Gives Nods to 2 Justice Choices*, DESERET MORNING NEWS, February 25, 2003. Copy supplied.

Catherine S. Blake, *Ogden Native Nominated For Utah Supreme* Court, ASSOCIATED PRESS, February 22, 2003. Copy supplied.

Norma Harrison, *2 Jurists Praised By Fellow Utahans,* DESERET MORNING NEWS, February 10, 2003. Copy supplied.

January 25, 2003: I gave brief remarks at a press conference conducted by Governor Michael Leavitt on the occasion of my nomination to the Utah Supreme Court. I have no notes, transcript or recording, but representative press coverage is supplied.

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

Since 2003, I have served as a justice of the Utah Supreme Court. After my name was forwarded as a finalist by a nonpartisan nominating commission, Governor Michael Leavitt appointed me to the Utah Supreme Court in January 2003, and I was confirmed by the Utah State Senate in February 2003. In 2006, I was retained for a ten-year term in a required periodic, nonpartisan retention election.

The Utah Supreme Court is comprised of five justices. It is the state's court of last resort. It hears appeals from capital and first degree felony cases and all district court civil cases, other than domestic relations cases. The Supreme Court also has jurisdiction over judgments of the Utah Court of Appeals, appeals from various state agencies, proceedings of the Judicial Conduct Commission, lawyer discipline and constitutional and election questions. The Utah Supreme Court has general administrative authority over all Utah courts, including authority to develop and monitor rules for appellate practice and district court procedures. The court develops and monitors the code of professional responsibility and the canons of judicial ethics and administers discipline to attorneys and judges.

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

Because I have been neither a trial judge nor the Chief Justice of the Utah Supreme Court, I have not presided over any cases. Although I have not presided

over any cases that have gone to verdict, I have heard approximately 900 cases that resulted in a written opinion from the Utah Supreme Court.

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	0%
civil proceedings:	80%
criminal proceedings:	20%

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).

I have not served as the chief justice of the Utah Supreme Court and so have not technically presided over any cases. Following are 10 of the most significant cases in which I authored opinions.

1. *State v. Mooney*, 98 P.3d 420 (Utah 2004)

The State of Utah charged members of the Oklevueha Native American Church with engaging in a criminal enterprise and engaging in a pattern of unlawful activity relating to the possession and distribution of peyote to members for use in religious services. The members moved to dismiss the charges, arguing that a federal exemption allowed the use and distribution of peyote for "bona fide religious ceremonies" and that any prosecution would violate the members' First Amendment rights to freely exercise their religion. The trial court held that the members were not entitled to the protection of any exemption for the religious use of peyote because they were not members of any federally recognized Native American tribe. The Utah Supreme Court reversed, holding that the federal exemption was not restricted to members of federally recognized tribes and that any other interpretation would run afoul of members' constitutional rights.

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For Appellee State of Utah:
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2. *American Bush v. City of South Salt Lake*, 140 P.3d 1235 (Utah 2006)

Owners of sexually oriented businesses challenged a city ordinance barring any employee of such businesses from appearing "in a state of nudity before a patron." The ordinance had the effect of eliminating the category of "nude dancing establishments" from the city's licensing scheme. The business owners moved to enjoin the city's enforcement of the new ordinance, arguing that article I, section 15 of the Utah Constitution protected nude dancing as a form of expressive speech activity and that the institution of the new ordinance that effectively eliminated the business owners' licenses constituted a "taking" in violation of article I, section 7 of the Utah Constitution. The Utah Supreme Court held that the Utah Constitution does not provide greater protection for nude dancing than does the U.S. Constitution and upheld the ordinance. The court further held that the ordinance did not constitute a "taking" under the Utah Constitution.

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Scott D. Bergthold
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3. *University of Utah v. Shurtleff*, 144 P.3d 1109 (Utah 2006)

The University of Utah had a longstanding policy prohibiting the possession of firearms on campus. In 2004, the Utah Legislature prohibited state and local entities from enacting or enforcing rules or policies that inhibit or restrict the use or possession of firearms on public or private property. The University sought a declaration that article X, section 4 of the Utah Constitution guaranteed it institutional autonomy over firearms regulation, thereby allowing it to continue to enforce its firearms policy in spite of any contrary Utah law. The Utah Supreme Court held that the plain language of article X, section 4, did not grant the University the authority to enact firearms policies in contravention of Utah statutory law. Although article X, section 4 grants the University broad powers, after considering the relevant history, context, and prior case law, the court concluded that the University is not completely autonomous and is subject to legislative oversight.

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4. *Colosimo v. Roman Catholic Bishop of Salt Lake City*, 156 P.3d 806 (Utah 2007)

In 2003, brothers R. and C. Colosimo brought suit against Judge Memorial High School, the Salt Lake Diocese, the Oblates of St. Francis de Sales, the Archdiocese of San Francisco, and Mr. Rapp, a Catholic priest, member of the Oblates and former teacher at the school. The brothers alleged that Mr. Rapp had sexually abused them repeatedly from approximately 1970 to 1975. The defendants brought a motion to dismiss on the grounds that the statute of limitations barred the brothers' claims. The brothers opposed the motion to dismiss, arguing that the discovery rule tolled the statute of limitations. Reviewing Utah's discovery rule, the Utah Supreme Court held that the brothers' claims were barred by the statute of limitations because they had actual knowledge of the abuse and of Mr. Rapp's relationship to the other defendants from the beginning, but nonetheless failed to investigate their claims during the limitations period.

For Plaintiffs:
Larry R. Keller
(Formerly of Cohne, Rappaport & Segal, P.C.)
(Retired)

Felise L. Thorpe
(Formerly of Cohne, Rappaport & Segal, P.C.)
Current business contact information unavailable

For Judge Memorial and Roman Catholic Bishop:

Matthew McNulty, III
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For Archdiocese of San Francisco:
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For Oblates of Saint Francis de Sales:
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5. *Smith v. Price Development Co.*, 125 P.3d 945 (Utah 2005)

The 1989 version of Utah's split recovery statute, Utah Code section 78-18-1(3), gave the State of Utah an interest in certain punitive damage awards. In a case alleging breach of contract, breach of fiduciary duty, and conversion brought against a general partner, limited partners (the Smiths) obtained a substantial punitive damages award. The State claimed a share of the Smiths' award under the split recovery statute. The Smiths brought a constitutional challenge to the split recovery statute, arguing that the statute violated article 1, section 22 of the Utah Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. The district court ruled in favor of the Smiths. On appeal, the Utah Supreme Court held that the 1989 version of the split recovery statute did not give the state a vested interest in the Smiths' punitive damages award and therefore resulted in an unconstitutional taking of the Smiths' property because it permitted the state to appropriate a portion of the punitive damages award without providing just compensation.

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6. *Helf v. Chevron*, 203 P.3d 962 (Utah 2009)

Ms. Helf sustained serious injuries while working at Chevron's Salt Lake City Refinery. Ms. Helf's supervisors directed her to neutralize toxic sludge in an open-air pit through a chemical reaction. Her supervisors had directed another Chevron employee to initiate an identical reaction in the same pit just hours prior to her injury. Although that attempt had resulted in a large purple cloud of toxic gases that set off chemical alarms throughout the facility, Ms. Helf's supervisors neither warned her about the previous incident nor instructed her to don any safety gear. As a result, Ms. Helf suffered a permanent seizure disorder. She sued Chevron for damages, arguing that her injuries fell within the intentional injury exception to the Workers' Compensation Act. The district court disagreed and dismissed her complaint. The Utah Supreme Court reversed. While it reaffirmed the "intent to injure" standard as the test for assessing whether an employee's claims are barred by the Workers' Compensation Act, it clarified that the test does not require that an employer actually have a motive to injure its employee. Rather, it requires only that the employer knew or expected that its actions would cause injury. Because Ms. Helf alleged that her supervisors knew or expected that she would be injured by re-initiating the neutralization process, it reversed the dismissal and remanded her claims to the trial court for further proceedings.

For Plaintiff Helf:

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For Defendant Chevron:
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Stephen R. Waldron
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Susan E. Baird
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7. *State ex rel. Z.C.*, 165 P.3d 1206 (Utah 2007)

The State brought delinquency actions for sexual abuse of a child against a 13-year-old girl, Z.C., and a 12-year-old boy who engaged in mutually consensual sexual intercourse. Z.C. brought a motion to dismiss the action, which the juvenile court denied. On appeal, the Utah Supreme Court interpreted the sexual-abuse-of-a-child statute and reasoned that it would be absurd to conclude that the legislature intended to punish both children for child sex abuse because they engaged in consensual sexual activity. Relying on the absurd results doctrine, the court concluded that the legislature could not have intended the statute to be applied in such a context. The court therefore reversed the juvenile court and ordered it to vacate Z.C.'s delinquency adjudication.

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Mark R. DeCaria
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Second Judicial District Court
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8. *State v. Gurule*, 321 P.3d 1039 (Utah 2013)

After pleading guilty to possession of a controlled substance in a drug-free zone, Mr. Gurule was sentenced to a term of incarceration of five years to life. Mr. Gurule had reserved his right to appeal the district court's denial of his motion to suppress evidence obtained through a search of his vehicle following a traffic stop. Officers stopped Mr. Gurule's vehicle for a minor traffic infraction, asked Mr. Gurule to exit the vehicle, frisked Mr. Gurule, and conducted a plain-view search of the vehicle. Neither the frisk nor the plain-view search revealed any weapons or contraband. Despite their failure to discover anything suspicious during these initial searches, the officers continued to detain Mr. Gurule and called for a canine unit, but none was available. One of the officers then contacted Mr. Gurule's parole officer, who requested that the officers perform a search of the vehicle pursuant to Mr. Gurule's parole agreement. During the subsequent search, the officers discovered methamphetamine and drug paraphernalia inside the driver's side door of the vehicle. The officers arrested Mr. Gurule and again contacted Mr. Gurule's parole agent to inform him of the situation. The parole agent then requested police assistance to conduct a parole search of Mr. Gurule's home. The search revealed digital surveillance equipment, a digital scale, and a small amount of marijuana. Mr. Gurule filed a motion to suppress all evidence obtained in the search of his vehicle and home, which the district court denied. On appeal, the Utah Supreme Court reversed. The court held that, though the officers were justified in initially stopping Mr. Gurule for the traffic infraction and in conducting a protective frisk and plain-view search, they lacked reasonable suspicion to extend the duration of the stop.

For Appellant Gurule:
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For Appellee State of Utah:
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9. *Weber County v. Ogden Trece*, 321 P.3d 1067 (Utah 2013)

Weber County obtained a permanent injunction against Ogden Trece, a street gang, under Utah Code section 76-10-806, which permits a county attorney to take action to abate a public nuisance. The statutory definition of public nuisance includes a criminal street gang. The injunction prohibited Ogden Trece members from associating with one another; confronting, intimidating, annoying, harassing, threatening, challenging, provoking, or assaulting any person known to be a witness to gang activity; possessing a firearm in public or in any publicly accessible place; or violating an 11 p.m. to 5 a.m. curfew. The injunction applied to a 25 square mile safety zone encompassing nearly the entire city of Ogden. Three alleged members of the gang who were served with the injunction brought suit, arguing that the injunction was not properly served on the gang and that the injunction violated the members' procedural and substantive due process rights. The Utah Supreme Court held that service on Ogden Trece, as an unincorporated association, was improper and that the injunction was therefore improperly entered.

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10. *State v. Hernandez*, 268 P.3d 822 (Utah 2011).

Mr. Hernandez was charged with four class A misdemeanors: negligent homicide, obstruction of justice, unlawful sale/supply of alcohol to minors, and possession of drug paraphernalia. The district court denied his request for a preliminary hearing, concluding that he was not entitled to one. On appeal, Mr. Hernandez argued that article I, section 13 of the Utah Constitution guaranteed him the right to a preliminary hearing for class A misdemeanors. The Utah Supreme Court held that article I, section 13 of the Utah Constitution guarantees the right to a preliminary hearing for all "indictable offenses," including class A misdemeanors, and remanded for a preliminary hearing.

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For Appellee State of Utah:
Christine F. Soltis
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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. *Munson v. Chamberlain*, 173 P.3d 848 (Utah 2007).

For Appellant Munson:
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For Appellee Chamberlain:
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2. *Jensen ex rel. Jensen v. Cunningham*, 250 P.3d 465 (Utah 2011).

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For Appellee Cunningham:
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3. *Mecham v. Frazier*, 193 P.3d 630 (Utah 2008).

For Plaintiff Mecham:
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(801) 852-2333

For Defendant Frazier:
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4. *State ex rel. D.A. v. State*, 222 P.3d 1172 (Utah 2009).

For Appellant D.A.:
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For Guardian ad Litem:
Kelly J. Ryan
Law Offices of Kelly J. Ryan
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5. *Cabaness v. Thomas*, 232 P.3d 486 (Utah 2010).

For Appellant Cabaness:
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For Appellee Bountiful City:
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Bountiful City
790 South 100 East
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6. *In re Adoption of Baby E.Z.*, 266 P.3d 702 (Utah 2011)

For Appellant J.M.W. (biological father):
Joshua K. Peterman
Cohne, Rappaport & Segal, P.C.
257 East 200 South, Suite 700
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For Appellee T.I.Z. and C.M.Z. (adoptive parents):
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60 East South Temple
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7. *Whitney v. Division of Juvenile Justice Services*, 274 P.3d 906 (Utah 2012).

For Plaintiff Whitney:
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For Defendant Division of Juvenile Justice Services:
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8. *In re Reinhart*, 291 P.3d 228 (Utah 2012).

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Charles L. Perschon
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Durham Jones & Pinegar
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9. *LeBeau v. State*, 2014 UT 39, __ P.3d __ (2114).

For Appellant LeBeau:
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(801) 366-0260

10. *State v. Worwood,* 164 P.3d 397 (Utah 2007).

For Appellant Worwood:
Jennifer Gowans
Jennifer Gowans, P.C.
3301 North University Avenue
Provo, Utah 84604
(801) 426-8200

For Appellee State of Utah:
Judge J. Frederick Voros, Jr.
(Formerly of the Utah Attorney General's Office)
Utah Court of Appeals
Matheson Courthouse
450 South Main Street
Salt Lake City, Utah 84111
(801) 578-3900

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

Certiorari Granted:

Brigham City v. Stuart, 122 P.3d 506 (Utah 2005), *cert granted,* 546 U.S. 1085.

Certiorari Denied:

Smith v. Fairfax Realty, Inc., 82 P.3d 1064 (Utah 2003), *cert. denied*, 541 U.S. 960.

State Farm Mut. Auto. Ins. Co. v. Campbell, 98 P.3d 409 (Utah 2004), *cert. denied*, 543 U.S. 874.

Bernat v. Allphin, 106 P.3d 707 (Utah 2005), *cert. denied*, 545 U.S. 1104.

State v. Allen, 108 P.3d 730 (Utah 2005), *cert. denied*, 546 U.S. 832.

State v. Graham, 143 P.3d 268 (Utah 2006), *cert. denied*, 549 U.S. 1115.

State v. Holm, 137 P.3d 726 (Utah 2006), *cert. denied*, 549 U.S. 1252.

State v. Haltom, 156 P.3d 792 (Utah 2007), *cert. denied*, 552 U.S. 817.

Utah Dep't of Human Services v. Hughes, 156 P.3d 820 (Utah 2007), *cert. denied*, 552 U.S. 826.

State v. von Ferguson, 169 F.3d 423 (Utah 2007), *cert. denied*, 552 U.S. 940.

State v. Reber, 171 P.3d 406 (Utah 2007), *cert. denied*, 552 U.S. 990.

State v. Barzee, 177 P.3d 48 (Utah 2007), *cert. denied*, 553 U.S. 1056.

Lafferty v. State, 175 P.3d 530 (Utah 2007), *cert. denied*, 555 U.S. 830.

Madsen v. Wash. Mut. Bank FSB, 199 P.3d 898 (Utah 2008), *cert. denied*, 556 U.S. 1282.

State v. Cahoon, 203 P.3d 957 (Utah 2009), *cert. denied*, 558 U.S. 819.

BushCo v. Utah State Tax Comm'n, 225 P.3d 153 (Utah 2009), *cert. denied*, 131 S. Ct. 455.

State v. Gardner, 234 P.3d 1104 (Utah 2010), *cert. denied*, 560 U.S. 981.

Gardner v. State, 234 P.3d 1115 (Utah 2010), *cert. denied*, 560 U.S. 981.

Peak Alarm Co. v. Salt Lake City Corp., 243 P.3d 1221 (Utah 2010), *cert. denied*, 131 S. Ct. 660.

Johnson v. Johnson, 234 P.3d 1100 (Utah 2010), *cert. denied*, 131 S. Ct. 656.

State v. Ott, 247 P.3d 344 (Utah 2010), *cert. denied*, 131 S. Ct. 1472.

In re Adoption of Baby E.Z., 266 P.3d 702 (Utah 2011), *cert. denied*, 132 S. Ct. 1743.

Archuleta v. Galetka, 267 P.3d 232 (Utah 2011), *cert. denied*, 133 S. Ct. 112.

Taylor v. State, 270 P.3d 471 (Utah 2012), *cert. denied*, 133 S. Ct. 181.

State v. Greenwood, 297 P.3d 556 (Utah 2012), *cert. denied*, 133 S. Ct. 1257.

State v. Butt, 284 P.3d 605 (Utah 2012), *cert. denied*, 133 S. Ct. 1456.

State v. Maestas, 299 P.3d 892 (Utah 2012), *cert. denied*, 133 S. Ct. 1634.

Salt Lake City Corp. v. Jordan River Restoration Network, 299 P.3d 990 (Utah 2012), *cert. denied*, 134 S. Ct. 94.

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.

Brigham City v. Stuart, 122 P.3d 506 (Utah 2005), *cert. granted,* 546 U.S. 1085 (2006), *rev'd.*, 547 U.S. 398 (2006).

Police responded to complaints of a loud party and observed an ongoing altercation through the window of a home. After unsuccessfully attempting to get the attention of the participants, police entered without a warrant. The participants were subsequently prosecuted. They successfully sought to suppress the evidence obtained as a result of the warrantless entry. The question presented on appeal was whether the ongoing altercation constituted an exigent circumstance that relieved law enforcement from the requirement of obtaining a search warrant. A majority of the Utah Supreme Court held that it did not. Although I was not the author of the majority opinion, I joined it. The United States Supreme Court reversed. It held that the officers were justified in entering the home without a warrant because the situation satisfied the exigent circumstances exception to the warrant requirement.

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

As a justice of the Utah Supreme Court, I have not issued any unpublished opinions. The Utah Supreme Court publishes all of its work.

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.

The Utah Supreme Court routinely issues decisions on state and federal constitutional matters, including the right to counsel, the right to be free from unreasonable searches and seizures, the right against self-incrimination, the right to allocution, the right to due process, and the right not to be placed in jeopardy twice for the same crime. The following cases are representative examples of cases I authored that present federal or state constitutional issues, although the list is not exhaustive.

Cases presenting federal constitutional issues:

State v. Green, 99 P.3d 820 (Utah 2004).

Brigham Young Univ. v. Tremco Consultants, Inc., 110 P.3d 678 (Utah 2005).

Smith v. Price Dev. Co., 125 P.3d 945 (Utah 2005).

State v. Worwood, 164 P.3d 397 (Utah 2007).

State v. Gettling, 229 P.3d 647 (Utah 2010).

State v. Baker, 229 P.3d 650 (Utah 2010).

State v. Candedo, 232 P.3d 1008 (Utah 2010).

In re Adoption of Baby E.Z., 266 P.3d 702 (Utah 2011).

Donjuan v. McDermott, 266 P.3d 839 (Utah 2011).

Salt Lake City Corp. v. Jordan River Restoration Network, 299 P.3d 990 (Utah 2012).

Cases presenting state constitutional issues:

Jackson v. Marrs, 100 P.3d 1211 (Utah 2004).

State v. Willis, 100 P.3d 1218 (Utah 2004).

Tindley v. Salt Lake City Sch. Dist., 116 P.3d 295 (Utah 2005).

Houghton v. Dep't of Health, 125 P.3d 860 (Utah 2005).

West. Jordan City v. Goodman, 135 P.3d 874 (Utah 2006).

Salt Lake City v. Newman, 148 P.3d 931 (Utah 2006).

Moss v. Pete Sauzo Utah Athletic Comm'n, 175 P.3d 1042 (Utah 2007).

Medel v. State, 184 P.3d 1226 (Utah 2008).

State v. Low, 192 P.3d 867 (Utah 2008).

Winward v. State, 293 P.3d 259 (Utah 2012).

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general

description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

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

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

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

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

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

After automatically recusing any justices who have an apparent conflict, the clerk of the court circulates a preliminary calendar of upcoming cases identifying the parties and counsel for each case. Copies of the briefs for each case are also circulated. Before the cases are set for oral argument, I perform my own review to be certain that I do not have an actual or perceived conflict with any of the persons or entities involved. On a few occasions, I have initiated a sua sponte recusal due to the involvement of a person or entity overlooked by the clerk of the court, not included on my recusal list, or because I had personal knowledge of the case. On a few occasions, I have discovered a ground for recusal after a case has been calendared. When this has occurred, I have notified the clerk of the court who has removed me from the panel and obtained a replacement judge from the court of appeals or the district court to sit in my place by designation. The court does not keep records of our voluntary recusals. During my tenure on the court, I do not recall any party or attorney requesting 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 public office other than judicial office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

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

I have never held an office in or rendered services to any political party or election committee. I have never played a role in a political campaign.

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

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

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

From 1985 to 1986, I served as a law clerk to Judge David K. Winder, United States District Court Judge for the District of Utah.

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

I have never practiced law alone.

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

1986 – 1995
Parr, Brown Gee & Loveless
101 South 200 East, #700
Salt Lake City, Utah 84111
Associate (1986 – 1990)
Shareholder (1990 – 1995)

1995 – 2003
U.S. Attorney's Office for the District of Utah
185 South State Street, Suite 400
Salt Lake City, Utah 84111
Assistant United States Attorney (1995 – 2003)
Financial Litigation Supervisor (1996 – 2003)

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

I have 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.

From 1986 through 1995, I was in private practice at the Salt Lake City law firm of Parr, Brown, Gee & Loveless, where I was a member of the litigation department. During this period, I represented both plaintiffs and defendants in state and federal courts in Utah and other jurisdictions. I also appeared before various administrative agencies. I handled cases in the areas of antitrust, general contract law, real property, insurer liability, mechanics liens, negligence, fraud, fiduciary duty, personal injury, distributorship and franchise agreements, wrongful termination, employment discrimination and other types of commercial litigation.

From 1995 through 2003, I served as an Assistant United States Attorney for the District of Utah. I was assigned to the Civil Division where my time was divided among defending lawsuits on behalf of the United States and its agencies, initiating affirmative civil enforcement actions where the United States was the plaintiff, and supervising cases handled by Special Assistant United States Attorneys. In the vast majority of my cases at the U.S. Attorney's Office, I acted as sole counsel for the United States. I also had the responsibility of supervising the Financial Litigation Unit, a group of paralegals and debt collection agents which handled the collection of all criminal fines and restitution owed to the United States, as well as all civil judgments obtained by the United States. In this capacity, I became familiar with federal collection work, including supplemental proceedings, prejudgment and post-judgment remedies and enforced collection procedures.

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

During my private practice years (1986 through 1995), I represented corporate and industrial clients. Representative clients during this period include the following: Getty Oil Company, Texaco, Inc., Bonneville International Corporation, ALTA Health Strategies, Domino's Pizza, Inc., and Haworth, Inc. In addition, I represented companies involved in real estate development and financing, including The Boyer Company and

Crossroad Mall Associates. I also handled litigation involving real property issues for title insurance companies, including Associated Title and First American Title Insurance Company. Finally, I represented the Colorado River Energy Distributor's Association, a trade group consisting of municipalities that purchase electrical power from the Western Area Power Association, a federal agency.

During my time as an Assistant United States Attorney (1995 through 2003), I exclusively represented the United States of America and its agencies, including the United States Postal Service, the Veterans Administration, the Department of the Interior and the various military branches. My practice during this period was almost exclusively in the federal district court for the District of Utah where I handled a variety of defensive litigation and some affirmative civil enforcement 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.

After I finished my judicial clerkship and began private practice, virtually all of my practice was in litigation. I appeared in court frequently. About fifty percent of my practice was in federal court, forty percent was in state court, and about ten percent of my practice was before various state and federal agencies. After joining the U.S. Attorney's Office, I continued to spend virtually all of my time on litigation and I appeared in court even more frequently. At that point, my practice was almost exclusively in federal court. The following estimates as to the nature of my practice are an attempt to combine the experience I had in private practice with that I had while in government service (not including my time on the Utah Supreme Court).

i. Indicate the percentage of your practice in:
   1. federal courts: 75%
   2. state courts of record: 20%
   3. other courts: 0%
   4. administrative agencies: 5%

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.

To the best of my recollection, I have tried eight cases to verdict. I was sole or

lead counsel in three of those cases. In the others, I was either co-counsel or associate counsel.

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

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

I have 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.

I do not have access to any of the case files on matters that I handled either during my private practice or during my time at the U.S. Attorney's Office for the District of Utah. My former law firm instituted a document retention policy subsequent to my departure from the firm that has resulted in the loss of my private practice files. Under the policies of the United States Department of Justice, I also no longer have access to the privileged case files for the matters that I handled while I was an AUSA. The following list of litigation matters is based on my best recollection, a search of available databases, and review of what few records I have in my possession. As a result, this list is not exhaustive and some requested information is not available.

1. *Dahl v. United States,* Case No. 2:01-cv-00551, United States District Court, District of Utah (Judge Dee Benson).

From 2001 through 2003, I defended the United States in an action involving constitutional and common law tort claims arising from a shooting by law enforcement officers. Mr. Dahl was shot by DEA agents when he drove his

vehicle in the direction of one of the officers. He was later arrested by officers from the Salt Lake City Police Department. Mr. Dahl filed suit against the United States and Salt Lake City, alleging that the shooting was unjustified and that officers used excessive force during the arrest. Shortly before my appointment to the Utah Supreme Court, I filed and argued a motion to dismiss on behalf of the United States, arguing that the court lacked subject matter jurisdiction over the claims. The motion was granted in part. The remainder of the case was subsequently resolved in favor of the United States following a bench trial.

For Plaintiff Dahl:

David S. Pace
Pace Law Firm
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Salt Lake City, Utah 84047
(801) 355-9700

2. *Dallafior v. USA,* 2:97-cv-00180, United States District Court, District of Utah (Judge Dale A. Kimball).

Beginning in 1997, I defended the United States in a wrongful death action arising from a fatal vehicle accident at the Dugway Army base. Plaintiffs asserted that the road where the accident occurred became unreasonably slippery when the Army applied a defective asphalt coating to its surface. The United States asserted cross-claims against the road contractor and the manufacturer of the allegedly hazardous asphalt coating. Following extensive discovery, expert witness disclosures, and the filing of motions to dismiss and for summary judgment, the case was settled.

For Plaintiff Gloria Dallafior:

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Burbidge, Mitchell & Gross
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(801) 355-6677

For Defendant Asphalt Systems:

Tim Dalton Dunn
Dunn & Dunn, P.C.
505 East 200 South, 2nd Floor
Salt Lake City, Utah 84102
(801) 521-6677

For Defendant Bolinder Companies, Inc.:

S. Baird Morgan
Richards, Brandt, Miller, Nelson
299 South Main Street, 15th Floor
Salt Lake City, Utah 84110
(801) 326-3656

3. *Southern Utah Wilderness Alliance v. Bureau of Land Management,* Case No. 2:96-cv-836, United States District Court, District of Utah (Judge Tena Campbell), 147 F. Supp.2d 1130 (D. Utah 2001).

From 1996 through the time of my appointment to the Utah Supreme Court, I represented the United States in a consolidated action involving environmental and property issues arising under various federal statutes, including claims by several Utah counties to quiet title to various roads under Revised Statute 2477. The United States claimed that the counties had failed to satisfy the requirements for creating a road through use and that they had therefore trespassed on federal property when they graded and widened various roads located in federal wilderness areas. A significant portion of the case was resolved in favor of the United States on summary judgment. An interlocutory appeal as to those issues was pending in the United States Court of Appeals for the Tenth Circuit at the time of my appointment to the Utah Supreme Court.

For Plaintiff Southern Utah Wilderness Alliance:

Heidi J. McIntosh
(Formerly of the Southern Utah Wilderness Alliance)
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For Defendant Garfield County:

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Stephen H. Urquhart, P.C.
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Saint George, Utah, 84771
(435) 272-4474

Co-Counsel:

Jeannette Swent
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185 South State Street, Suite 400

Salt Lake City, Utah 84111
(801) 524-5682

4. *Gull v. Runyon,* Case No. 2:95-cv-00957, United States District Court, District of Utah (Judge Dale A. Kimball).

In 1995, I represented the Postmaster General in an employment discrimination lawsuit filed by Ms. Gull, an employee of the United States Postal Service. Following significant discovery, I filed a motion for summary judgment on behalf of the Postal Service. While the motion was awaiting argument, the parties participated in a mediation arranged pursuant to the court's alternative dispute resolution program and agreed to settle the case. When Ms. Gull later changed her mind and refused to execute the settlement documents, the United States filed a motion to enforce the settlement agreement, which was granted.

For Plaintff Gull:

David J. Holdsworth
Law Offices of David J. Holdsworth
9125 South Monroe Plaza Way, Suite C
Sandy, Utah 84070
(801) 352-7701

5. *Gadd v. United States,* Case No. 2:94-cv-00527, United States District Court, District of Utah (Judge David Sam).

From 1994 through 1997, I was lead counsel in a personal injury case brought by Ms. Gadd against the United States under the Federal Tort Claims Act. She also asserted claims against the State of Utah Division of Wildlife Resources. The claims arose from injuries she suffered when attacked by a black bear while she was camping in a campground operated by the United States Forest Service. Following extensive discovery and expert witness work, we filed a motion for summary judgment on behalf of the United States, which was granted. The case was thereafter dismissed.

For Plaintiff:

Tad D. Draper
The Law Offices of Tad D. Draper, P.C.
12401 South 450 East, Unit B2
Draper, Utah 84020
(801) 533-1700

For Defendant State of Utah:

Dan R. Larsen
(Formerly of the Utah Attorney General's Office)
Dorsey & Whitney
136 South Main Street, Suite 100
Salt Lake City, Utah 84101
(801) 933-8957

6. *Hammett v. United States,* Case No. 2:94-cv-01192, United States District Court, District of Utah (Judge J. Thomas Greene).

Ms. Hammett fell and hit her head after encountering an allegedly dangerous condition on a construction site at the Veterans Administration Hospital. She suffered serious and permanent brain damage and filed a personal injury action against the United States under the Federal Tort Claims Act. I defended the United States in a lawsuit that was filed in 1994. Following extensive fact and expert discovery, the case was settled.

For Plaintiff:

Erik M. Ward
Gridley Ward & Hamilton
635 25th Street
Ogden, Utah 84401
(801) 621-3317

7. *Beehive Pizza Inc. v. Domino's Pizza, Inc.*, United States District Court, District of Utah, Case No. 2:92-cv-00613 (Judge J. Thomas Greene) and *Domino's Pizza, Inc. v. Beehive Pizza, Inc.,* United States District Court, District of Utah, Case No. 2:94-cv-00650 (Judge J. Thomas Greene).

From 1992 through 1995, I was co-counsel for Domino's Pizza in a lawsuit brought by a Domino's franchisee asserting claims against Domino's for breach of the franchise agreement. I also represented Domino's in a related and subsequently consolidated lawsuit that it brought against its franchisee in 1994. I was involved in these cases from their inception through a two-week bench trial in the first case that took place in September of 1994. The district court ruled in favor of my client as to the issues tried in the first case, but I left private practice to join the U.S. Attorney's Office before both cases were finally concluded.

For Beehive Pizza, Inc.:

Robert D. Moore
(Deceased)

Alan L. Sullivan
Snell & Wilmer
15 West South Temple, #1200
Gateway Tower West
Salt Lake City, Utah 84101
(801) 257-1900

Co-Counsel:

Judge Dale A. Kimball
(Formerly of Parr, Brown, Gee & Loveless)
United States District Court for the District of Utah
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(801) 425-6100

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

I acted as co-counsel in defending Haworth against a complaint filed by Beck's Office Furniture alleging claims of breach of a dealership agreement. I was involved in the case from its inception in 1990 through the initial stages of the appeal. I was second chair for a two-week jury trial that took place in 1994. The jury brought back a verdict against Haworth, and we appealed. I left private practice and joined the U.S. Attorney's Office before the appeal was argued.

For Beck's Office Furniture:

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Eisenberg & Gilchrist
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Co-Counsel:

Judge Clark Waddoups
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(801) 425-6600

Terry E. Welch
Parr, Brown, Gee & Loveless

101 South 200 East, #700
Salt Lake City, Utah
(801) 532-7840

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

From 1986 through 1995, I was associate defense counsel in a case filed by Gold Standard against American Barrick Resources Corporation and Getty Oil Company. We represented Getty Oil, which had subsequently been acquired by Texaco, Inc. Gold Standard asserted claims against Getty Oil for breach of contract, breach of fiduciary duty and fraud. I was intimately involved in the case from the preparation of the answer to the initial complaint through the writing of the appellate briefs. I prepared pleadings, reviewed documents, interviewed witnesses, conducted and defended depositions, retained and worked with expert witnesses, briefed and argued discovery and dispositive motions, participated in jury selection, prepared jury instructions, and examined witnesses during trial. We were successful in securing the dismissal of the majority of the claims on summary judgment. We tried the remaining claims to a jury over a six-week period of time. Following the close of Gold Standard's case, we filed a motion for a directed verdict, which the trial court took under advisement. At the conclusion of the trial, the jury returned a $404 million verdict against our client. We moved for judgment notwithstanding the verdict and for a new trial. The trial court subsequently granted our motion for a directed verdict in favor of Getty Oil Company and, alternatively, granted our motion for a new trial. Gold Standard appealed the matter to the Utah Supreme Court, which affirmed the summary judgment and directed verdict in favor of Getty Oil Company.

For Gold Standard:

Judge Deno G. Himonas
(Formerly of Jones, Waldo, Holbrook & McDonough)
Third District Court
450 South Main Street
Salt Lake City, Utah 84111
(801) 238-7501

For American Barrick Resources Corp.:

Francis M. Wikstrom
Parsons, Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
(801) 532-1234

Co-Counsel:

Stephen G. Crockett
(Retired)

Robert S. Clark
Parr, Brown, Gee & Loveless
101 South 200 East, #700
Salt Lake City, Utah
(801) 532-7840

Judge Carolyn B. McHugh
(Formerly of Parr, Brown, Gee & Loveless)
United States Court of Appeals for the Tenth Circuit
125 South State Street
Salt Lake City, Utah 84138
(801) 401-8157

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

10. *Salt Lake City v. Western Area Power Administration,* United States District Court for the District of Utah, Case Number C86-1000G, Judge J. Thomas Greene, 1988 Westlaw 167244 (D. Utah, 1988) *aff'd*, 926 F.2d 974 (10th Cir. 1991).

Utah Power & Light Company and its subscribers, including Salt Lake City, brought suit against the Western Area Power Administration (WAPA) and the Department of Energy challenging WAPA's refusal to allocate to them electrical power produced by federal hydro-generation facilities on the Colorado River. I was counsel for intervenor Colorado River Energy Distributor's Association (CREDA), a trade group comprised of municipalities that had received allocations of the electrical power at issue. Salt Lake City also brought claims under the National Environmental Policy Act (NEPA), alleging that WAPA's administration of the generation facilities at Flaming Gorge and Glen Canyon violated NEPA. The district court granted summary judgment in favor of the defendants and intervenor on the challenges to WAPA's promulgation of the marketing and allocation criteria, but denied summary judgment on the challenges to WAPA's compliance with NEPA. After that decision was upheld on appeal, the parties settled the remaining claims. I participated in the case from the outset in 1986 through the appeal and the settlement in 1991, including document

review, depositions, briefing and argument at the summary judgment stage and preparation of the appellate briefs.

Counsel for Plaintiffs Salt Lake City and Rocky Mountain Power Association:

William B. Bohling
(Formerly of Jones, Waldo, Holbrook & McDonough)
Bohling Mediation, LLC
953 South 1100 East
Salt Lake City, Utah 84111
(801) 943-3730

For Western Area Power Administration and United States Department of Energy:

Max Vassanelli
(Retired)

Judge Glen Dawson
(Formerly of the U.S. Attorney's Office, District of Utah)
Second District Court
805 South Main Street
Bountiful, Utah 84010
(801) 397-7028

Co-Counsel:

Judge Dale A. Kimball
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Salt Lake City, Utah 84101
(801) 363-6363

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While I was in private practice, I was active in bar activities and served as an officer in the Young Lawyers Division of the Utah Bar and on the Committee for the Unauthorized Practice of Law and the Professional Responsibility Committee. After joining the U.S. Attorney's Office, I became involved with the Federal Bar Association. I was an officer of the Utah Chapter of that organization from1995 through 2004 and served as its President during 1999.

In addition to my case responsibilities while serving on the Utah Supreme Court, I have had the opportunity to become involved in a number of administrative matters, as well as matters relating to court administration and the improvement of our justice system.

In addition to hearing appeals, the Utah Supreme Court has the responsibility for promulgating all of the rules applicable in the Utah courts, including the rules of civil, juvenile and criminal procedure and the rules of evidence. I have had the opportunity to participate in revisions to these rules after considering input from various advisory committees. One significant change recently promulgated by the court was designed to streamline the discovery process in smaller cases by imposing a proportionality standard on discovery.

I also have had the opportunity to work on a number of projects designed to improve the administration of justice. Shortly after my appointment to the court, I undertook the task of heading a study committee charged with the responsibility of examining the Utah State Law Library and making suggestions for its improvement. Once the study was complete, I became Chair of the Utah State Law Library Oversight Committee. For approximately five years, I served as the Chair of the Utah Supreme Court Committee on Civility and Professionalism, where we implemented educational and other initiatives designed to increase the civility and professionalism of Utah lawyers.

Since 2010, I have had the opportunity to serve as the Utah Supreme Court representative on the Utah Judicial Council. The Utah Judicial Council is the policy-making body for the Utah judiciary. Its membership consists of representatives from each of the various court levels who are elected to serve three-year terms. The council has the constitutional authority to adopt uniform rules for the administration of all courts in the state. The council also sets standards for judicial performance, court facilities, support services and judicial and non-judicial staff levels. Since 2010, I have also served as the Chair of the Liaison Committee, a standing committee of the Utah Judicial Council that is responsible for reviewing all bills introduced in the Utah legislature to ascertain whether they affect the courts and/or the administration of justice and to determine whether the Utah courts should take an official position in the legislature on such proposed legislation.

During 2011, I was selected to chair a study committee that was created by the Judicial Council and that was charged with examining the use of technology in Utah courtrooms. This study committee considered whether Utah courts should amend their rules to allow

video cameras in state courts. As a result of the committee's work, the Judicial Council adopted a new rule that, for the first time, allowed the media to bring cameras in Utah courtrooms.

I have never performed any lobbying activities on behalf of clients.

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

    I have not taught any courses.

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

    I am not entitled to any deferred income, stock options, uncompleted contracts, or future benefits from previous business arrangements. I became vested in the Utah Judicial Retirement system after six years of judicial service. This entitles me to receive a pension upon reaching retirement age, which will be calculated based on my years of service and the average of my three highest years of salary.

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

    I have no such plans, commitment or agreements.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

At this time, I do not anticipate any conflicts of interest from family members. Although my husband is an attorney, he does not litigate. His practice is confined to real estate transactions. The only category of litigation that might present a conflict would be habeas cases in which I sat on the Utah Supreme Court, from which I would recuse myself.

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

If confirmed, I would carefully follow 28 U.S. C. 455 and Canon 3 of the code of Conduct for United States Judges. I also would engage in prompt and immediate review of the parties, their affiliates, and the issues presented by any matter assigned to me so that I could make a prompt, informed decision regarding the need for 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.

While employed at Parr, Brown, Gee & Loveless, I donated my time to several pro bono divorce cases. I also defended a few simple criminal matters on a pro bono basis. When I left private practice to join the U.S. Attorney's Office, Department of Justice policy prohibited me from representing individual clients on a pro bono basis. As a result, I focused my community efforts on the Utah Chapter of the Federal Bar Association. I served as an officer of that chapter for many years, including serving a term as its president.

Since my appointment to the Utah Supreme Court, I have been prohibited by the Utah Code of Judicial Conduct from representing individual clients. As a result, I have focused my efforts on improving the legal system and the administration of justice through my work on court committees, including the Professionalism and Civility Committee and the Utah Judicial Council. In addition, I have served as Chair of the Utah State Law Library Oversight Committee since 2004. During this time, the Utah State Law Library has been active in assisting pro se litigants and others in need of procedural or research help with their legal problems. Finally, I have routinely donated my time to legal education. I have regularly made presentations to law school classes, assisted with

high school mock trials, judged moot court and trial advocacy competitions and provided internship opportunities to at least two externs each semester.

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 November 8, 2013, I submitted a cover letter and resume to Senator Orrin G. Hatch, expressing my interest in one of the two upcoming judicial vacancies for the United States District Court for the District of Utah. Around that same time, I had a telephone conversation with Senator Michael Lee to discuss my interest in the position. Senator Lee followed up on that conversation in another telephone call several months later. On June 6, 2014, I interviewed with Senator Hatch and a member of his staff in Salt Lake City, Utah. On June 27, 2014, I received a telephone call from a member of Senator Hatch's staff to inform me that Senator Hatch and Senator Lee had forwarded my name to the White House for consideration. Since June 30, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 7, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 18, 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
Parrish, Jill N.	U.S. District Court, District of Utah	09/18/2014
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**
Nominee, U.S. District Judge	☑ Nomination Date 09/18/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 09/18/2014
7. Chambers or Office Address		
Utah Supreme Court 450 South Main Street, 5th Floor Salt Lake City, Utah 84111		

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 Parrish, Jill N.	Date of Report 09/18/2014

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 Utah, Judicial Salary (Gross 1/1/2014 - 9/12/2014))	$108,799.95
2. 2013	State of Utah, Judicial Salary (Gross)	$147,562.00
3. 2013	State of Utah, Judicial Salary (Gross)	$146,063.00
4. 2014	Compensation from Nielsen Audio for participating in media survey	$455.00
5. 2013	Compensation from Nielsen Audio for participating in media survey	$230.00

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. 2014	Income from solo law practice (Blake Parrish, P.C.)
2. 2013	Income from solo law practice (Blake Parrish, P.C.)
3. 2014	Compensation from Nielsen Audio for participation in media survey
4. 2013	Compensation from Nielsen Audio for participation in media survey

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 Parrish, Jill N.	Date of Report 09/18/2014

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
Parrish, Jill N.	09/18/2014

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. Spouse's Partnership Interest in Rock Springs Apartment Investors, LLC	F	Distribution	N	W	Exempt				
2. Spouse's Partnership Interest in Mill Pond Partners, LLC	A	Distribution	M	W					
3. Spouse's Partnership Interest in Casper Apartment Partners, LLC	F	Distribution	N	W					
4. American Beacon Small Cap Value Fund		None	L	T					
5. Amerian Funds EuroPacific Growth Fund		None	K	T					
6. American Funds Washington Mutual Investors Fund	A	Dividend	L	T					
7. Barrick Gold Corporation Stock	A	Dividend	J	T					
8. BlackRock Equity Dividend Fund	A	Dividend	K	T					
9. Chase Bank Accounts	A	Interest	K	T					
10. Columbia Acorn International Fund	A	Dividend	K	T					
11. Franklin Mutual Global Discovery Fund		None	K	T					
12. Harbor Capital Appreciation Fund		None	K	T					
13. Health Equity Health Savings Account		None	J	T					
14. Invesco Stable Value Fund		None	J	T					
15. JP Morgan Investor Growth Fund	A	Dividend	J	T					
16. JP Morgan Large Cap Growth Fund		None	K	T					
17. Lincoln Financial Group Fixed Annuity	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	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Parrish, Jill N.	09/18/2014

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. MainStay Large Cap Growth Fund		None	J	T					
19. MFS Value Fund	A	Dividend	J	T					
20. Nationwide Flexible Premium Variable Life Policy (Money Market Fund)	A	Interest	K	T					
21. Oppenheimer Developing Markets Fund		None	K	T					
22. PIMCO Total Return Fund	A	Dividend	L	T					
23. Pioneer Oak Ridge Small Cap Growth Fund		None	M	T					
24. Utah Retirement System Balanced Fund		None	M	T					
25. Utah Retirement System Medium Horizon Fund		None	M	T					
26. Vanguard 500 Index Fund	A	Dividend	L	T					
27. Vanguard Institutional Index Fund	A	Dividend	L	T					
28. Wasatch Funds Small Cap Growth Mutual Fund	D	Dividend	M	T					
29. Zions Bank Accounts	A	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

Name of Person Reporting	Date of Report
Parrish, Jill N.	09/18/2014

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Parrish, Jill N.	Date of Report 09/18/2014

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 N. Parrish

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		123	225	Notes payable to banks-secured (auto)		8	616
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		869	850	Notes payable to relatives			
Unlisted securities – see schedule	1	075	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		460	615
Real estate owned – see schedule	1	370	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		216	170				
Cash value-life insurance		48	668				
Other assets itemize:							
Thrift Savings Plan		207	864				
				Total liabilities		469	231
				Net Worth	3	442	046
Total Assets	3	911	277	Total liabilities and net worth	3	911	277
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 Beacon Small Cap Value Fund	$ 57,768
American Funds American Balanced F1	171
American Funds EuroPacific Growth Fund	32,419
American Funds Washington Mutual Investors Fund	52,575
Barrick Gold Corp. stock	7,547
BlackRock Equity Dividend Fund	45,821
Clearbridge Small Cap Growth A	184
Columbia Acorn International Fund	22,175
Fidelity Advisor Materials T	180
Franklin Mutual Global Discovery Fund	32,409
First Eagle Fund of America CL A	172
Harbor Capital Appreciation Fund	19,266
Invesco Diversified Dividend Investor	170
Invesco Stable Value Fund	24
Ivy Core Equity Y	172
JP Morgan Investor Growth Fund	2,618
JPMorgan Large Cap Growth Fund	50,152
Lincoln Financial Group Fixed Annuity	6,871
MainStay Large Cap Growth Fund	43
MFS Value Fund	10,391
Oppenheimer Developing Markets Fund	19,490
Pimco Foreig Bond (USD Hedged) D	171
PIMCO Total Return Fund	28,728
Pioneer Oak Ridge Small Cap Growth Fund	77,215
Utah Retirement System Balanced Fund	128,037
Utah Retirement System Medium Horizon Fund	112,172
Vanguard 500 Index Fund	54,472
Vanguard Institutional Index Fund	9,689
Wasatch Funds Small Cap Growth Mutual Fund	98,748
Total Listed Securities	$869,850

Unlisted Securities	
Rock Springs Apartment Investors, LLC	$ 500,000
Casper Apartment Investors, LLC	400,000
Mill Pond Partners, LLC	175,000
Total Unlisted Securities	$ 1,075,000

Real Estate Owned	
Personal residence	$ 1,100,000
Family property	155,000
Vacation property	90,500
Undeveloped lot	25,000
Total Real Estate Owned	$ 1,370,500

Real Estate Mortgages Payable	
Personal residence	$ 348,444
Family property	112,171
Total Real Estate Mortgages Payable	$ 460,615

AFFIDAVIT

I, Jill N. Parrish, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Sept. 23, 2014
(DATE)

Jill N. Parrish
(NAME)

Notary Public
Joan B Keller
Commission # 669593
My commission expires:
August 27, 2017
State of Utah

(NOTARY)

Statement Of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
Hearing On Nominations
January 21, 2015

I am encouraged that the first hearing of the Senate Judiciary Committee under the helm of Chairman Grassley is on judicial nominations. I look forward to working with him throughout the 114th Congress to fill vacancies on our federal courts to ensure that our co-equal branch of government is working at full strength.

I am also eager for this Committee to begin consideration of the nomination of Loretta Lynch to serve as our next Attorney General. Late in the George W. Bush administration, when I served as chairman of this Committee, we were able to confirm the nomination of Michael Mukasey to serve as Attorney General in little more than seven weeks from the date his nomination was announced. Like Ms. Lynch, Mr. Mukasey had been confirmed by the Senate before and I made sure he received swift and fair consideration by this Committee and by the full Senate. More than 10 weeks have now passed since Ms. Lynch's nomination last November. I have every confidence that Chairman Grassley will work hard to ensure her nomination is considered quickly and fairly in the upcoming weeks.

Admittedly, I would like to have proceeded this week to a hearing on the nominee for our Nation's top law enforcement officer, instead of holding a repeat hearing for two non-controversial executive nominees and for four judicial nominees whom we could have considered last year if their home state Republican Senators had agreed. Two of the Texas nominees— Judge Alfred Bennett and Judge Jose Rolando Olvera, Jr.—are nominated to fill judicial emergency vacancies. The third Texas nominee, Judge George C. Hanks, Jr., is nominated to fill a vacancy that has been open for more than seven months and the Utah nominee, Justice Jill N. Parrish, will fill a vacancy that has been open for more than a year. I am pleased that both Texas and both Utah Senators have now consented and these nominees are finally getting a hearing today. All four of the judicial nominees before us today have strong qualifications along with the support of their Republican home state senators.

Today the Committee, for a second time, will hear from two executive nominees who appeared before this Committee six weeks ago: Michelle Lee, who has been nominated to be Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; and Daniel Marti, who has been nominated to serve as Intellectual Property Enforcement Coordinator. Both Michelle Lee and Daniel Marti are widely supported by stakeholders across the political spectrum.

Traditionally, when a nominee has had a hearing before this Committee but is not confirmed before the end of the Congress, new members in the next Congress submit written questions or meet with the nominees in private, rather than requiring them to reappear before the full Committee for a second time. In my 40 years in the Senate, I cannot remember a single time that a second hearing was held by this Committee on uncontroversial nominees.

The position of PTO Director has now been vacant for two years, and the IP Enforcement Coordinator—a position created by this Committee—has been vacant for 18 months. Chairman Grassley joined me in calling on the President to swiftly fill the IPEC vacancy over 8 months ago, and Senator Hatch last summer called on the Administration to swiftly fill the PTO Director vacancy.

I look forward to the questions of our three new members, and hope that following this unprecedented second hearing, the Committee can move forward and report these well-qualified nominees without further delay.

I welcome all of the nominees here today.

# # # # #

QUESTIONS SUBMITTED TO HON. ALFRED H. BENNETT, HON. GEORGE C. HANKS, JR., HON. JOSE ROLANDO OLVERA, JR., AND HON. JILL N. PARRISH BY SENATOR CRUZ

Questions for Judicial Nominees
Senator Ted Cruz

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

4. Which sitting Supreme Court Justice do you most want to emulate?

5. 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, other)?

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

9. What is your favorite Supreme Court decision in the past 10 years, and why?

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Congressional Power

12. 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).

13. Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

14. What limits, if any, does the Constitution place on Congress's ability to condition the receipt and use by states of federal funds?

15. Is Chief Justice Roberts' decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Presidential Power

16. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Individual Rights

18. When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

19. When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

20. 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).

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

SENATOR LINDSEY O. GRAHAM
JANUARY 27, 2015
U.S. SENATE COMMITTEE ON THE JUDICIARY
RE: MICHELLE LEE'S NOMINATION AS DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE ("USPTO")

QUESTIONS FOR THE RECORD FOR MS. MICHELLE K. LEE:

1. The America Invents Act, signed into law in 2011, required the establishment of USPTO satellite offices, which bring many of the USPTO's services to regional locations. In your opinion, have the USPTO satellite offices been a success? If so, what has made them successful?
2. What criteria does the USPTO consider when deciding where to place one of these satellite offices? Is geographic diversity one of the criteria the USPTO should consider?
3. The USPTO has placed, or plans to place, satellite offices in the Northeast, the Midwest, Texas, the Mountain West, and the West Coast. One notable omission is the Southeast, where the manufacturing and innovation economies are blossoming. Does the USPTO have any plans to locate a satellite office in the Southeast in the near future? If so, has the USPTO considered any particular locations in the southeast?

Senator Grassley, Chairman
Questions for the Record

Alfred Bennett,
Nominee, U.S. District Judge for the Southern District of Texas

1. When you were running for state judge, you said the following: "I look forward to running a strong and winning campaign which will result in a new era of Democratic judges at the Harris County Courthouse."

   a. In your view, what's the difference between a Republican and Democratic judge?

   b. You've also said that you "love being a Democrat." What assurances can you give future litigants who would come before you that you would hear each case fairly, regardless of the political views of any individual before you?

2. A newspaper article described you as "pro-choice." What are the legal restrictions on abortions that you would be bound by, as a judge?

3. According to your questionnaire, you have very little criminal law experience, both as an attorney and as a judge. Since you've been nominated, what steps have you taken to familiarize yourself with criminal law?

4. What mistakes have you made as a state court judge that will be helpful to you as you transition to federal judge?

5. What is the most important attribute of a judge, and do you possess it?

6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

7. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

8. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

11. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

12. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

13. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

14. If confirmed, how do you intend to manage your caseload?

15. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

16. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

17. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?

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

George Carol Hanks, Jr.,
Nominee, U.S. District Judge for the Southern District of Texas

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?

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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.

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    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

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, Chairman
Questions for the Record

Michelle Lee,
Nominee, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

1. You've stated that "[w]e need to fix the problem of abusive patent litigation, but we need to do so without diminishing the rights of legitimate patent holders."

    a. Can you describe specifically what such a reform would look like?

    b. What are the rights of legitimate patent holders that might be threatened by efforts to curb abusive patent litigation?

    c. How, specifically, do you think the right balance could be struck?

2. What do you believe is the most pressing patent reform that could be accomplished legislatively? Administratively?

3. You've stated that "[c]reating a world-class quality patent system means that we need to keep all options on the table—big and small, before examination, during examination, and post-examination[.]" What are some specific reforms you have in mind for each stage of the patent examination process that would improve the quality of patents?

4. According to a recent report in Retraction Watch, the Patent and Trademark Office (PTO) currently employs Dr. Bijan Ahvazi, who previously had worked at a division of the National Institutes of Health (NIH). While at NIH, Dr. Ahvazi faked findings in three different papers. In October 2014, the Office of Research Integrity banned Dr. Ahvazi from participating in Public Health Service related research without supervision for two years. According to the news report, Dr. Ahvazi continues to be employed by PTO as a patent examiner, and made over $126,000 in 2013.

    a. Is it true that Dr. Ahvazi continues to be employed by PTO?

    b. If so, if you are confirmed, will you continue to allow Dr. Ahvazi to review patents, despite his research misconduct? Why or why not?

    c. What actions would you take to make sure that there is no fraudulent activity by patent examiners at PTO?

    d. Do you believe that hiring someone with a history of fraud like Dr. Ahvazi's indicates a fundamental flaw in PTO's hiring practices? If so, what steps would you take to investigate the issue and take corrective action? If not, why not?

Senator Grassley, Chairman
Questions for the Record

Daniel Marti,
Nominee, Intellectual Property Enforcement Coordinator

1. How can the private sector better assist government efforts to crack down on intellectual property crimes?

2. What is your plan for improving international outreach on intellectual property crime matters?

3. Your predecessor encouraged Internet stakeholders, such as content companies, advertising networks, payment processors and search engines, to enter into voluntary initiatives to combat the distribution of pirated content over the Internet. What are your thoughts on the progress to date? Do you plan to advance these efforts? If so, how?

4. How will your background working on intellectual property issues in private practice help you in the role of the Intellectual Property Enforcement Coordinator?

5. What do you see to be the greatest threats to U.S. intellectual property both here and abroad? What do you plan to do about them?

6. Trade secret theft can do significant harm to companies, the U.S. economy and our national security. What more can the U.S. government do to protect valuable trade secrets of American companies as they compete in the global marketplace?

Senator Grassley
Questions for the Record

Jose Rolando Olvera, Jr.,
Nominee, U.S. District Judge for the Southern District of Texas

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?

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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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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. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?

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    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

15. Please describe with particularity the process by which these questions were answered.

16. Do these answers reflect your true and personal views?

QUESTIONS SUBMITTED TO HON. JILL N. PARRISH BY SENATOR GRASSLEY

Questions for the Record

Jill N. Parrish,
Nominee, U.S. District Judge for the District of Utah

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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    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

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15. Please describe with particularity the process by which these questions were answered.

16. Do these answers reflect your true and personal views?

Questions for the Record
Michelle K. Lee
Nominee for Under Secretary of Commerce
for Intellectual Property and
Director of the U.S. Patent and Trademark Office

Questions Posed by Senator Orrin G. Hatch

1. When you appeared before this committee in December, you said, "There continues to be a problem with abusive patent litigation and I believe there can and should be further legislative improvements."

   Do you still agree that Congress should pursue patent troll legislation?

2. Section 285 of the Patent Act was Congress's attempt to deter bad behavior in patent litigation. Yes or no, do you agree that Section 285 has failed to achieve its objective?

3. Yes or no, do you believe that Section 285 needs to be amended to deter abusive and meritless litigation?

4. Yes or no, do you agree the Supreme Court's cases in *Highmark* and *Octane Fitness* do nothing to ensure the recovery of fee awards from insolvent shell corporations?

5. Understandably, the USPTO is focused on reducing the backlog and pendency of its patent applications. If confirmed, what will you do to ensure that patent examinations are of the highest quality? Obviously, the issuance of high quality patents would greatly minimize exposure to abusive litigation practices by trolls.

6. From your earlier answers on the Sensitive Application Warning System (SAWS), I understand that applicants are not "generally" notified when an application is placed in the SAWS program. Are there circumstances under which an applicant is notified that their application is in the SAWS program? If so, what are those circumstances?

7. I understand that interested parties have submitted Freedom of Information Act (FOIA) requests for a list of applications that have been flagged for the SAWS program and that these requests have been denied under FOIA exemption (b)(5). Do you agree that information relating to the applications included in the SAWS program should remain hidden from the public and the applicants? If so, why?

8. In your earlier answers on the SAWS program, you stated that an application in the program "undergoes the same types of examination procedures as any other patent application, and is held to the same substantive patentability standards." You also indicated that the SAWS program acts as "an additional quality assurance check." If applications in the SAWS program undergo the same examination procedures and are held to the same patentability standards, how are they treated differently than applications not in the SAWS program?

9. When can this Committee and stakeholders expect the interim guidance on subject matter eligibility to be updated, including with software claim examples? Please be as specific as possible.

10. I have heard from stakeholders who are concerned that the interim guidance on subject matter eligibility does not provide enough direction to examiners on evaluating what is an "abstract idea," particularly as it relates to software. When the interim guidance is updated, will it include more direction and examples to assist examiners in this evaluation?

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David Vitter
U.S. Senate Judiciary Committee
Questions for the Record
January 27, 2015

Michelle K. Lee, to be Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office:

1. In your July 2014 testimony before the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet, you stated "the USPTO believes that additional legislative changes to build upon the AIA are needed to further enhance patent quality and to lessen abuses in the system." In comments at the Chamber of Commerce's Global IP Center conference in November 2014, you said that "the challenge and the promise" for the USPTO "is that we continue to make sure our IP system is balanced and impactful and incentivizing innovation."
   Moreover, during your December confirmation hearing you acknowledge that the legal landscape surrounding patents—including judicial and administrative developments such as the *Alice* and *Octane Fitness* Supreme Court decisions and the USPTO's ongoing implementation of the AIA—is "extremely dynamic," and that these changes "need to be taken into account as we carefully and cautiously determine what additional changes need to occur." You also noted that "changes can occur through any number of channels. They can occur judicially, they occur legislatively and they can occur administratively through the Patent Office, through the FTC."

   a. Have these changes, highlighted in your statements, reduced the need for legislative reform in Congress? Do you still agree that Congress should act "carefully and cautiously" before enacting additional legislative changes to the patent system?

   b. What specific changes do you believe Congress should make to the patent system that would achieve a balance between curbing litigation and actively incentivizing innovation?

   c. In what ways will your agency work with Congress to promote that balance and ensures that combating abusive litigation does not devalue patent ownership and de-incentivize innovation?

   d. What are the respective roles of Congress, USPTO, the FTC, and other entities in enacting or implementing those changes?

2. In your December confirmation hearing before this Committee you stated that so-called "patent trolls" are a problem and that "there can and should be more legislation." What specific issues of abusive patent litigation do you think can and should be addressed by Congress rather than by ongoing changes in the courts?

3. In your previous confirmation hearing you noted that the new *inter partes* review procedure established by the America Invents Act and implemented just last year by the USPTO has proven "popular" among patent stakeholders. This procedure has already resulted in invalidation of nearly 75 percent of all challenged patent claims. What is your assessment of this new procedure generally, and what are your thoughts on its effects on patent quality and patent review moving forward?

4. How have *inter partes* review and other post-grant procedures helped curb abusive patent litigation?

5. In your view, what would be the effect on American business competitiveness in the global economy if Congress were to enact changes to the patent system that makes it more difficult to enforce patent rights? Would such changes disadvantage American businesses attempting to challenge foreign infringing goods?

6. You stated at a recent Chamber of Commerce Global IP Center conference that "there is a lot of case law development and refinement to be had" in the wake of the AIA and recent Supreme Court cases including *Alice*, *Nautilus*, *Octane Fitness*, and others. What changes has the USPTO made to its various review procedures to implement these decisions?

7. USPTO is currently in a 90-day comment period for its subject-matter eligibility guidance after *Alice*. How soon after the end of the comment period in March can the public expect final guidance?

8. At your December confirmation hearing, you said that it is "not productive" to attempt to define the term "patent troll." Instead, you expressed a preference for curbing "abusive behavior." As both a former patent litigator and in your current position as acting director of the USPTO, what types of practices do you view as "abusive"? What specific changes to the litigation system are necessary to curb abusive behavior? What changes— if any— would you recommend Congress include in patent legislation?
    a. What in your view would not be productive in attempting to define the term?

9. What is your office doing to protect American inventors from foreign patent infringers?

10. In 2013, the President announced several executive actions directed toward "bringing greater transparency to the patent system and level the playing field for innovators." These included (1) requiring patent owners engaged in proceedings before the USPTO to regularly update the agency on the actual owner of the patent; (2) engaging in targeted training for examiners to improve the clarity of functional patent claims; and (3) publishing new educational and outreach materials to assist small businesses and others facing patent litigation. Can you update the committee on the status of these initiatives, and offer your assessment of how effective they have been (or will be) at reducing abusive patent litigation while ensuring that the rights of patent owners are protected?

11. What additional steps will USPTO take on its own to ensure that the patent review process continues to promote innovation?

12. Please comment on changes to the USPTO's funding structure that will most benefit the patent quality and efficiency.

13. Can you speak to your thoughts on the value of intellectual property—specifically patents—in driving innovation and economic growth in the United States? What, in your view, is the role of the USPTO in promoting this process?

David Vitter
U.S. Senate Judiciary Committee
Questions for the Record
January 27, 2015

Daniel Henry Marti, to be Intellectual Property Enforcement Coordinator, Executive Office of the President:

1. In your December confirmation hearing before this committee, you stated that you "look forward to working with Congress" to address the issue of "patent trolls." What specific legislation do you support to curb abusive patent litigation without undermining patent rights?

2. In 2013, the President announced several executive actions directed toward "bringing greater transparency to the patent system and level the playing field for innovators." While most of these initiatives will be implemented by the USPTO, the President directed the IP Czar to undertake an interagency review of the processes and standards used during enforcement of Customs and ITC exclusion orders. Can you provide an update on the status of this review and its findings?

3. Please provide your thoughts generally on the role of intellectual property—particularly patents—in promoting innovation and economic growth in the United States. What initiatives, either on its own or in conjunction with the USPTO, will your office take to ensure that the property rights of American innovators are protected and that others have an incentive to invent?

4. The Administration is clearly committed to protecting small businesses and others from abusive patent litigation, but what is the Administration doing to *affirmatively protect* intellectual property rights, as opposed to simply *preventing* patent litigation?

5. What are your views on licensing of intellectual property as a driver of economic growth and job creation?

Questions for Judicial Nominees
Senator Ted Cruz

Alfred Bennett,
Nominee, U.S. District Judge for the Southern District of Texas

Judicial Philosophy

1. **Describe how you would characterize your judicial philosophy.**

   Response: My judicial philosophy, over the past six years that I have served as a state trial court judge, has been characterized by my respect for the rule of law, my respect for all litigants, my respect for all counsel, and my respect for court staff. Furthermore, I have limited my decisions to the controversies properly before the court and followed applicable precedent.

2. **How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?**

   Response: If a judge obeys his or her oath of impartiality and follows binding precedent, he or she will avoid imparting his or her own personal views to legal decisions. If confirmed, I will honor my oath of office and be impartial in my decision-making as I have for the past six years as a state trial court judge.

3. **With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?**

   Response: As a state trial court judge, I am not sufficiently familiar with Supreme Court decisions over the past sixty years to opine which, if any, were wrongly decided. As a state trial court judge, I have applied binding precedents from the Texas Supreme Court and appellate courts without considering whether I thought the precedents were correctly decided. If confirmed, I would be obligated to faithfully follow the precedents of the United States Supreme Court and the Fifth Circuit whether I agree with such precedents or not.

4. **Which sitting Supreme Court Justice do you most want to emulate?**

   Response: While I admire all the sitting Supreme Court Justices for their willingness to engage in public service and their devotion to the rule of law, I am not sufficiently familiar with their individual judicial philosophies to determine which one I would emulate. If confirmed, I will strive to be a judge who is impartial and demonstrates respect for the rule of law, all litigants, legal counsel, and court staff.

5. **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, other)?**

   Response: In *District of Columbia v. Heller,* 554 U.S. 570, 576-77 (2008), the Supreme Court considered how the meaning of the words in the Second Amendment were understood at the time it was ratified to reach their decision. If confirmed, I will follow *Heller* and other

Supreme Court and Fifth Circuit precedents that spell out appropriate methodologies to interpret the Constitution.

6. **What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?**

   Response: None.

7. **What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?**

   Response: Federal courts are courts of limited jurisdiction. It is not the place of a federal court to run the daily operations of prisons, hospitals, or schools. If confirmed, and presented with a matter involving prisons, hospitals, or schools, I would apply the binding precedents of the Supreme Court and the Fifth Circuit.

8. **What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?**

   Response: The Constitution reflects our country's core and enduring principles. As such, it is immune from generational changes in public opinion (notwithstanding the rare constitutional amendment). Thus, when the Constitution is read in its plain and ordinary meaning at the time of its ratification its meaning is not adjusted for the temporal preferences of society. Yet, the Constitution's enduring principles have been applied to modern circumstances, such as technology and the Fourth Amendment. *See, e.g., United States v. Jones,* 132 S. Ct. 945, 949 (2012) (the use of a GPS tracking device on a private vehicle "would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted"). When proceeding in this manner, I do not foresee conflict with judicial restraint.

9. **What is your favorite Supreme Court decision in the past 10 years, and why?**

   Response: As a state trial court judge, I am not sufficiently familiar with Supreme Court decisions from the past ten years to opine which would be my favorite. If confirmed, I will faithfully follow the precedents of the Supreme Court and the Fifth Circuit whether I agree with such precedents or not, as I have done with binding precedents from the Texas Supreme Court and appellate courts for the last six years.

10. **Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.**

    Response: As a state trial court judge, I am not sufficiently familiar with Supreme Court decisions from the past ten years to opine which, if any, were the result of judicial activism. If confirmed, I will faithfully follow the precedents of the Supreme Court and the Fifth Circuit regardless of any personal opinions as I have done with binding precedents from the Texas Supreme Court and appellate courts for the last six years.

11. **What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?**

Response: Natural law, however defined, is not precedent. If confirmed, the only guideposts that I will use in interpreting the Constitution or statutes are the text of the provision or statute at issue and precedents from the Supreme Court and the Fifth Circuit.

Congressional Power

12. 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 federal district court judge, I will be bound by all Supreme Court precedents (*Garcia* included) regardless of any personal opinions that I may have.

13. 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 broad categories of activity Congress may regulate under its commerce power." *United States v. Morrison,* 529 U.S. 598, 608 (2000) (internal citations omitted). Those categories are: (i) the use of the channels of interstate commerce, (ii) the instrumentalities of interstate commerce, or persons or things in interstate commerce, and (iii) those activities having a substantial relation to interstate commerce. *Id.* at 609. The Supreme Court has further stated that Congress's regulatory power may extend to "noneconomic local 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). If confirmed, I will follow these and all other applicable precedents of the Supreme Court and the Fifth Circuit.

14. What limits, if any, does the Constitution place on Congress's ability to condition the receipt and use by states of federal funds?

Response: The Supreme Court has "recognized limits on Congress's power under the Spending Clause to secure state compliance with federal objectives." *See NFIB v. Sebelius,* 132 S. Ct. 2566, 2602 (2012). The Supreme Court has further stated that Congress's Spending Clause power should not "undermine the status of the States as independent sovereigns in our federal system." *Id.* If confirmed, and faced with a matter on this topic, I would follow all applicable precedents of the Supreme Court and the Fifth Circuit.

15. Is Chief Justice Roberts' decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: In the *NFIB v. Sebelius* opinion, five justices indicated that the Commerce Clause did not authorize Congress's action in passing the Patient Protection and Affordable Care Act. There has since been considerable discussion whether this part of Justice Roberts' decision is binding precedent or dictum. *See, e.g., Liberty University, Inc. v. Lew,* 733 F.3d 72, 92 (4th Cir. 2013) ("Although '[t]here has been considerable debate about whether the statements [in *NFIB*] about the Commerce Clause are dicta or binding precedent,' these five justices agreed that the Commerce Clause does not grant Congress the authority to 'compel' or 'mandate' an individual to enter commerce by purchasing a good or service."). The Fourth Circuit expressed "no opinion as to whether the limitation on the commerce power

announced by the five justices in *NFIB* constitute[d] a holding of the Court." *Id.* at 94 n.7. If confirmed, and faced with a matter on this topic, I would follow all applicable precedents of the Supreme Court and the Fifth Circuit.

Presidential Power

16. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President only has those powers provided to him or her under the Constitution or an act of Congress. *Medellin v. Texas,* 552 U.S. 491, 524 (2008). If confirmed, I would follow *Medellin* and all other applicable precedents of the Supreme Court and the Fifth Circuit.

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: The President only has those powers provided to him or her under the Constitution or an act of Congress. *Medellin v. Texas,* 552 U.S. 491, 524 (2008). If confirmed, I will follow *Medellin* and all other applicable precedents of the Supreme Court and the Fifth Circuit.

Individual Rights

18. 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 analysis 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 & quotation marks omitted). If confirmed, and faced with a question involving "fundamental rights", I will follow *Washington* and all other applicable precedents of the Supreme Court and the Fifth Circuit.

19. When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that classifications based upon race, alienage, national origin, gender, and illegitimacy, as well as classifications which burden a fundamental right, are subject to heightened scrutiny under the Equal Protection Clause. *See City of Cleburne, Tex. v. Cleburne Living, Ctr.,* 473 U.S. 432, 440 (1985). If confirmed, and faced with an Equal Protection question I will follow *Cleburne* and all other applicable precedents of the Supreme Court and the Fifth Circuit.

20. Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: The Supreme Court indicated that race-conscious admissions policies must be limited in time, and have a termination point. *Grutter v. Bollinger*, 539 U.S. 306, 342 (2003).

I have no expectation about the specific termination point appropriate for any particular admissions policy. If confirmed, I will follow the *Grutter* precedent, as well as any other Supreme Court and Fifth Circuit precedents addressing the constitutionality of admissions policies.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: The Supreme Court has applied strict scrutiny in cases involving classifications such as race. *See Fisher v. University of Texas at Austin,* 133 S. Ct. 2411, 2419 (2013) ("racial classifications are constitutional only if they are narrowly tailored to further compelling governmental interests.") (internal quotation marks omitted). If confirmed, I would follow *Fisher* and all other applicable Supreme Court and Fifth Circuit precedent in deciding cases involving this issue.

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: The Supreme Court has stated that the Second Amendment protects an individual's right to possess a firearm for traditionally lawful purposes, including self-defense at home. *See McDonald v. Chicago,* 561 U.S. 3025 (2010); *District of Columbia v. Heller,* 554 U.S. 570 (2008). *See also National Rifle Ass'n of America, Inc. v. McCraw,* 719 F.3d 338, 346 (5th Cir. 2013) ("the Second Amendment 'guarantees[s] the individual right to possess and carry weapons in case of confrontation.'") (quoting *Heller*). If confirmed, and faced with a Second Amendment question, I will follow these and all other applicable precedents of the Supreme Court and the Fifth Circuit.

Senator Grassley, Chairman
Questions for the Record

Alfred Bennett,
Nominee, U.S. District Judge for the Southern District of Texas

1. **When you were running for state judge, you said the following: "I look forward to running a strong and winning campaign which will result in a new era of Democratic judges at the Harris County Courthouse."**

   a. In your view, what's the difference between a Republican and Democratic judge?

   Response: The above statement was made in the context of Texas' partisan election of state court judges and my urging of voters to support my judicial candidacy. There is no difference between a Republican and Democratic judge on the bedrock principles of impartiality, observing precedent, and respect for all litigants and their legal counsel.

   b. You've also said that you "love being a Democrat." What assurances can you give future litigants who would come before you that you would hear each case fairly, regardless of the political views of any individual before you?

   Response: The above statement was made in the context of Texas' partisan election of state court judges and my urging of voters to support my judicial candidacy. As a state trial court judge, I have a six-year record demonstrating that I treat all litigants fairly, that I follow the rule of law, and that I do not make decisions based upon any personal views, mine or the litigant. If confirmed as a federal district court judge, I would continue to follow the rule of law, to obey precedent, to give each and every litigant the same respect and attention, and to treat them fairly regardless of political beliefs, their economic status, or their posture in the case.

2. **A newspaper article described you as "pro-choice." What are the legal restrictions on abortions that you would be bound by, as a judge?**

   Response: The above description occurred during my campaign for a legislative position, not during my judicial races. I recognize that a judge has different obligations than a legislator, and my six-year record as a state trial court judge demonstrates that I follow the rule of law and that I do not make decisions based upon any personal views. The Supreme Court has outlined the legal restrictions that may be placed on abortions. *See Gonzales v. Carhart,* 550 U.S. 124 (2007), *Planned Parenthood v. Casey,* 505 U.S. 833 (1992). If confirmed, I intend to faithfully follow these precedents as well as any applicable precedent from the Fifth Circuit.

3. **According to your questionnaire, you have very little criminal law experience, both as an attorney and as a judge. Since you've been nominated, what steps have you taken to familiarize yourself with criminal law?**

Response: Since my nomination, I have been reviewing the Federal Rules of Criminal Procedure, the United States Sentencing Commission Guidelines Manual, Supreme Court cases on criminal procedure and law, the Manual on Recurring Problems in Criminal Trials, and other materials provided by the Administrative Office of the United States Courts. In addition, if confirmed, I intend to take continuing legal education classes in the area of federal criminal law and solicit the advice of judicial colleagues as needed.

4. **What mistakes have you made as a state court judge that will be helpful to you as you transition to federal judge?**

Response: As a state trial court judge, any "mistakes" that I made have been turned into learning opportunities. As I listed in my Senate Judicial Questionnaire, I have been reversed on some occasions by the Texas Court of Appeals. Each time, I have used it as an opportunity to better understand how appellate courts viewed the applicable precedents, and I have been committed to applying the appellate courts' understanding of the law in subsequent cases. In addition, I have gained invaluable experience as I conducted complex trials, worked with juries, managed courtroom staff, worked with judicial colleagues, tended to administrative responsibilities, and engaged in personal time management. If confirmed, I believe these experiences and lessons will aid my transition to federal judge.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: I believe the most important attribute of a judge is a commitment to the rule of law. That means a judge must impartially consider the facts of each case, faithfully apply the law, and follow binding precedent. I believe I have this attribute and have embodied it my past six years on the bench.

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 calm, objective, and an engaged listener. Most importantly, a judge should demonstrate respect: respect for the rule of law, respect for all litigants who come before the court, respect for all counsel, and respect for court staff. I believe I have all these attributes and have exemplified them in my six years on the bench, and if confirmed I will continue to 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: As a state trial court judge, I have faithfully followed all precedents of the Texas Supreme Court and the Texas appellate courts. If confirmed, I will faithfully follow the

precedents of the United States Supreme Court and the Fifth Circuit whether I agree with such precedents or not.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: If confirmed and presented with a case of first impression, I would look first to the text of the statute or rule in question. If the language was clear and unambiguous, I would apply the plain meaning of the text. If the language was ambiguous, I would use canons of statutory interpretation to better discern the meaning of the text and I would also look to Supreme Court and Fifth Circuit opinions in which those courts interpreted similar or analogous language.

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, I would faithfully followed the precedents of the United States Supreme Court and controlling Fifth Circuit precedents without reservation and without any regard to any personal beliefs.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

    Response: Each statute enacted by Congress is presumed to be constitutional. The rules of statutory interpretation require that where a reasonable interpretation can be given to a statute to avoid declaring it unconstitutional, that interpretation should be employed. After applying these rules, a court should declare a federal statute unconstitutional only when Congress has exceeded its authority under the Constitution or the statute violates a provision of the Constitution.

11. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

    Response: No. I am not aware of any circumstance where it would be permissible for a federal judge to rely upon foreign law or the "views of the world community" to interpret 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: In my six years on a state trial court bench, I have demonstrated my commitment to precedent and the text of law and have never been motivated by political ideology. If confirmed, I pledge to do the same on the federal district court bench.

13. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: My record as a state trial court judge is the best evidence that I can offer that I treat all litigants fairly, that I follow the rule of law, and that I do not make decisions based upon any personal views. If confirmed as a federal district court judge, I would continue to follow the rule of law and precedent, and to treat all litigants who appear before me fairly.

14. **If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I plan to manage my caseload in accordance with the Federal Rules of Procedure and the practices and Local Rules of the Southern District of Texas, including but not limited to scheduling case management conferences shortly after matters are filed, appropriately utilizing magistrate judges, making use of technology, and ensuring that trials proceed expeditiously. I will remain actively engaged over the course of a matter to ensure steady progress toward resolution.

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. If confirmed, I would take the steps described directly above to control my docket. In addition, I would endeavor to issue prompt rulings, and require counsel appearing before me to adhere to the highest standards of civility and professionalism while representing their clients.

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: First, I determine the issues properly before the court. Second, I make a fair and impartial evaluation of the facts, and then I apply the relevant law according to precedent. Finally, I endeavor to communicate my decision in a clear and concise manner.

17. **President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?**

Response: I believe cases should be decided on the law and facts of each case without regard to any personal beliefs or opinions of the presiding judge.

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 from the Office of Legal Policy at the Department of Justice on January 29, 2015. I reviewed the questions and personally prepared answers to them. I submitted my answers to the Office of Legal Policy and discussed the same with OLP staff, after which I finalized my responses. I then authorized the Office of Legal Policy to submit these responses on my behalf.

20. **Do these answers reflect your true and personal views?**

    Response: Yes.

Senator Cruz
Questions for the Record

Responses of George C. Hanks, Jr.
Nominee, United States District Judge for the Southern District of Texas

Judicial Philosophy

1. **Describe how you would characterize your judicial philosophy.**

Response: My judicial philosophy has remained the same for my entire judicial career, first as a state trial court judge, then as a state appellate judge, and now as a United States magistrate judge. I honor the oath that I have taken as a judge to treat every person who comes before me fairly under the law, and with dignity and respect. I seek to always faithfully follow the precedent handed down by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and to maintain the integrity of the legal justice system and the confidence that citizens place in the judiciary.

2. **How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?**

Response: A responsible district judge should interpret constitutional provisions by first examining the text of the Constitution itself, and the analysis of that text must then be guided by, and bounded by, prior precedent of the United States Supreme Court and the applicable United States Court of Appeals.

3. **With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?**

Response: As a federal magistrate judge, my understanding of my judicial oath and the Code of Conduct for United States Judges leads me to the conclusion that it would be improper for me to express a personal critique of binding precedent. Canon 2 of the Code of Conduct states that "a judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." If confirmed, I would continue to follow controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, faithfully applying the doctrines of *stare decisis* and judicial restraint, regardless of my personal beliefs.

4. Which sitting Supreme Court Justice do you most want to emulate?

Response: I most want to emulate Chief Justice John Roberts' dedication to seeking a consensus among colleagues, where possible, because I believe this approach strengthens public confidence in the judiciary.

5. 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, other)?

Response: If confirmed and presented with a question of constitutional interpretation, I would follow controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, which includes looking to the original public meaning of the Second Amendment, as in *District of Columbia v. Heller*, 554 U.S. 570 (2008).

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

Response: I do not believe that constitutional rulings and doctrines of foreign courts and international tribunals should play any role in the interpretation of the United States Constitution and the laws of the United States.

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

Response: The role of the federal courts in administering institutions such as prisons, hospitals, and schools is bounded by the Constitution, federal statutes, and precedent from the United States Supreme Court and the applicable United States Courts of Appeals.

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

Response: If I am confirmed, I would approach all constitutional questions by beginning with the text at issue, and my analysis would then be guided by, and bounded by, prior precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

9. What is your favorite Supreme Court decision in the past 10 years, and why?

Response: As a federal magistrate judge, my understanding of my judicial oath and the Code of Conduct for United States Judges leads me to the conclusion that it would be improper for me to identify a particular case as my personal favorite.

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

Response: As a federal magistrate judge, my understanding of my judicial oath and the Code of Conduct for United States Judges leads me to the conclusion that it would be improper for me to express a personal critique of binding precedent as being an example of judicial activism. If confirmed, I would follow controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, faithfully applying the doctrines of *stare decisis* and judicial restraint, regardless of my personal beliefs regarding this precedent.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Response: The term "natural law" has various meanings depending upon the context. If I am confirmed, I would approach all constitutional questions by beginning with the text at issue, and my analysis would then be guided by, and bounded by, prior precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

Congressional Power

12. Explain whether you agree that "State sovereign interests ...are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If I am confirmed, I would follow *Garcia*, as well as other binding precedent from the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, without regard to any personal opinion I may have about the holding of the case.

13. Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has identified three categories of activity that Congress may regulate under the Commerce Clause: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, and persons or things in

interstate commerce; and (3) "activities having a substantial relation to interstate commerce ... i.e., those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-61 (1995) (striking down ban on possession of firearms within 1,000–foot radius of schools because statute did not regulate an activity that "substantially affect[ed]" interstate commerce); *see also United States v. Morrison*, 529 U.S. 598, 617 (2000) (rejecting Congress' attempt to "regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce"); *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 I am confirmed, in cases in which I am called upon to interpret the Commerce Clause, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

14. What limits, if any, does the Constitution place on Congress's ability to condition the receipt and use by states of federal funds?

Response: The Supreme Court has "long recognized" that Congress may condition a grant of federal funds upon the States' "taking certain actions that Congress could not require them to take." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2601-04 (2012) (noting, however, "Congress may use its spending power to create incentives for States to act in accordance with federal policies. But when 'pressure turns into compulsion' ... the legislation runs contrary to our system of federalism."). In *South Dakota v. Dole*, the Supreme Court set out a test to determine whether conditions Congress attaches to the States' receipt of federal funds are valid. 483 U.S. 203, 207-08 (1987). Such conditions are valid only if they are (a) attached to expenditures that benefit the general welfare; (b) unambiguous; (c) reasonably related to the purpose of the expenditure to which they are attached; and (d) not in violation of an independent constitutional provision. *Id.*

If I am confirmed, in cases in which I am called upon to interpret the constitutional limits upon Congress' ability to condition the receipt and use by states of federal funds, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

15. Is Chief Justice Roberts' decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: The Supreme Court has stated that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.'" *Marks v. United States*, 430 U.S. 188, 193 (1977). The portions of Chief Justice Roberts' opinion in *NFIB v. Sebelius* that

touch upon the Commerce Clause and the Necessary and Proper Clause were not joined by a majority of the other justices. *See, e.g., United States v. Sullivan*, 753 F.3d 845, 854 (9th Cir. 2014) (describing the portion of Chief Justice Roberts' opinion that touched upon the Commerce Clause as a "separate opinion," but noting that "the four dissenting justices agreed that 'one does not regulate commerce that does not exist by compelling its existence.'"); *Liberty Univ., Inc. v. Lew,* 733 F.3d 72, 92 (4th Cir. 2013) (noting the "considerable debate" as to whether the Chief Justices' statements were dicta, but further stating that "five justices agreed that the Commerce Clause does not grant Congress the authority to 'compel' or 'mandate' an individual to enter commerce by purchasing a good or service .... [r]ather, these justices concluded that the Commerce Clause permits Congress to regulate only existing activity."); *see also United States v. Henry*, 688 F.3d 637, 641 n.5 (9th Cir. 2012) ("There has been considerable debate about whether the statements about the Commerce Clause are dicta or binding precedent."), *cert. denied*, 133 S. Ct. 996 (2013); *United States v. Roszkowski*, 700 F.3d 50, 58 n.3 (1st Cir. 2012) (declining to "express [an] opinion as to whether the ... Commerce Clause discussion was indeed a holding of the Court").

Presidential Power

16. 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,* Justice Jackson set forth a "tripartite framework" that is now the accepted method for evaluating the President's powers to act depending on the level of congressional acquiescence. 343 U.S. 579 (1952); *see also Medellin v. Texas,* 552 U.S. 491, 524 (2008) (stating that President's authority to act "must stem either from an act of Congress or from the Constitution itself."). If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit in reviewing executive orders and actions, and evaluating the judicially enforceable limits on the President's ability to issue such orders or actions.

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: Justice Jackson's concurrence in *Youngstown* sets forth a "tripartite framework" that is now the accepted method for evaluating the President's powers to act depending on the level of congressional acquiescence. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Medellin v. Texas*, 552 U.S. 491, 524 (2008). If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit in analyzing the limits of Presidential power under the Constitution.

Individual Rights

18. When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The term "fundamental rights" has been defined as "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, 720-21 (1997) (internal citations omitted). If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit for purposes of evaluating substantive due process and fundamental rights.

19. When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The United States Supreme Court has held that heightened scrutiny applies to classifications based on race, alienage, national origin, illegitimacy, and gender. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985). If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit for purposes of analyzing classifications under the Equal Protection Clause.

20. 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 United States Supreme Court has held that the use of racial preferences in the admissions process for public universities must withstand strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment. *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2418 (2013).

If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit in analyzing the use of racial preferences in higher education, regardless of any personal predictions or expectations.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: The Supreme Court has held, "[i]t is well established that when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007); *see also Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2418 (2013). If I am confirmed, I would follow the

precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit for purposes of analyzing, under the Equal Protection Clause, public policies that apportion benefits or assistance on the basis of race.

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: The Supreme Court has held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation," and that it therefore protects the right to keep and bear arms for the purpose of self-defense in the home. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742, 749-50 (2010). However, the Supreme Court has also stated that the right conferred by the Second Amendment is "not unlimited, just as the First Amendment's right of free speech was not." *Heller*, 554 U.S. at 595; *see also Nat'l Rifle Ass'n of Am., Inc. v. McCraw*, 719 F.3d 338, 349 (5th Cir. 2013) (summarizing the textual and historical analysis of *Heller*).

The Fifth Circuit has construed *Heller* as acknowledging that certain restrictions have traditionally been upheld under the Second Amendment. *Nat'l Rifle Ass'n of Am., Inc. v. McCraw*, 719 F.3d 338, 346 (5th Cir. 2013). Accordingly, the Fifth Circuit has set out a two-step inquiry to evaluate whether a firearms regulation comports with the Second Amendment: (1) determining "whether the challenged conduct is even within the scope of the Second Amendment right;" and (2) applying "the appropriate level of means-ends scrutiny … depend[ing] on the nature of the conduct being regulated and the degree to which the challenged law burdens the right." *Id.* at 346 (internal citations omitted).

If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit for purposes of analyzing the scope of the rights conferred by the Second Amendment.

Senator Grassley
Questions for the Record

Responses of George C. Hanks, Jr.
Nominee, United States District Judge for the Southern District of Texas

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe that the most important attribute of a judge is humility. Judges must always honor the oath that they have taken to follow binding precedent and treat every person who comes before the court fairly under the law and with dignity and respect. I strive to faithfully fulfill this obligation in every matter before me.

2. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A good judge should always remember these words from George Washington Carver: "How far you go in life depends on your being tender with the young, compassionate with the aged, sympathetic with the striving, and tolerant of the weak and strong. Because someday in your life you will have been all of these."

   With this in mind, a judge should always be patient and treat every litigant the way the judge would want to be treated—fairly under the law, and with dignity and respect. While remaining conscious of the need for judicial efficiency, a judge must give litigants a full opportunity to be heard and fully consider their positions. I believe that I have demonstrated this temperament throughout my judicial career.

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 follow controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, faithfully applying the doctrines of *stare decisis* and judicial restraint even if I personally disagreed with such precedents. I have followed this principle throughout my career as a state trial and appellate judge, and now as a United States magistrate judge.

4. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: In resolving questions of first impression I would begin with the plain language of the text of the statute or authority at issue employing the canons of construction recognized by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit. If the text is clear and unambiguous, then I would apply its plain meaning. If the text is not unambiguous, I would seek guidance from Supreme Court and Fifth Circuit precedent regarding analogous provisions. If I could not find analogous authority from the Supreme Court or Fifth Circuit, I would look to other federal circuit and district courts for guidance.

5. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

   Response: If confirmed, I would follow controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, faithfully applying the doctrines of *stare decisis* and judicial restraint regardless of my personal beliefs.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Federal courts should avoid addressing the constitutionality of federal statutes unless the resolution of the case requires the court to reach the constitutional question. Federal statutes are presumed to be constitutional, except where Congress has exceeded its authority under the Constitution in enacting the statute or the statute violates a constitutional provision.

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 do not believe that rulings of foreign courts and international tribunals should play any role in the interpretation of the United States Constitution and the laws of the United States.

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: Throughout my judicial career as a state trial and appellate judge, and now as a United States magistrate judge, I have authored hundreds of judicial opinions that demonstrate my continued commitment to the doctrines of *stare decisis* and judicial restraint. If I am confirmed, I would continue this commitment and follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

9. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: During my over 14 years of state and federal judicial service, I have always treated litigants fairly under the law and with unfailing respect and courtesy, without regard to any personal views I might hold. My judicial decisions have consistently followed the rules of *stare decisis* and judicial restraint, and followed binding precedent. If I am confirmed, I would continue to do the same.

10. **If confirmed, how do you intend to manage your caseload?**

Response: Throughout my judicial career I have managed complex caseloads by ensuring that each matter is tracked with an equal amount of diligence and care. I use the electronic case-management tools available to me, and I periodically review the dockets and deadlines of each case to make sure that the imposed deadlines are prompt but reasonable, and that they are made clear to all parties. Further, I remain available to the litigants for conferences regarding discovery or other matters, and I strive to issue prompt rulings. If I am confirmed, I would continue these practices and I would efficiently utilize court staff and magistrate judges where appropriate.

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, my past experiences have demonstrated to me the crucial role that judges play in maintaining a fair and prompt pace of litigation. In particular, judges should use electronic case-management tools and should review the dockets and deadlines of each matter before them. I also believe it is crucial that judges remain available to litigants for conferences regarding discovery or other matters, and that judges issue prompt rulings. If I am confirmed, I would continue these practices.

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: Throughout my judicial career I have authored hundreds of judicial opinions. In writing each opinion, I begin by making sure that I have a thorough understanding of the facts, the arguments, and the procedural posture of the case. In many situations, I have found oral argument or hearings to be a useful tool. When necessary, I have called for additional or supplemental briefing on a particular issue. After reviewing the record and the arguments, I then carefully track the applicable statutory or legal authorities and survey cases from the applicable jurisdiction to ascertain the binding case law. When I draft an opinion, I seek for it to be clear and cogent, and to be based on the facts contained in the record.

13. **President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?**

Response: I am not aware of the full context of this quotation; however, a judge must always decide cases in a fair and impartial manner while making sure that the court's rulings are clear, concise, and firmly grounded in binding precedent. A judge should do so regardless of any personal views.

14. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

    Response: No.

    b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

15. Please describe with particularity the process by which these questions were answered.

Response: On January 29, 2015, I received these Questions for the Record from the Office of Legal Policy. I then reviewed the Questions and drafted my answers. I submitted the initial draft of my answers to the Office of Legal Policy for review and then finalized my responses before submitting them to the Committee.

16. Do these answers reflect your true and personal views?

Response: Yes.

Responses to Questions for the Record for
Michelle K. Lee
Nominee for Under Secretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office (USPTO)
Submitted on February 5, 2015

Senator Chuck Grassley (R-IA)

1. **You've stated that "[w]e need to fix the problem of abusive patent litigation, but we need to do so without diminishing the rights of legitimate patent holders."**

   a. **Can you describe specifically what such a reform would look like?**

   Answer: Our patent system, especially recently, has experienced numerous changes on many fronts including in the courts and through administrative agencies such as the United States Patent and Trademark Office (USPTO) and the Federal Trade Commission (FTC). Helpful reform, whether judicial, administrative or legislative, would curtail abusive patent litigation practices while preserving the rights of patent owners to effectively enforce legitimate patents against infringement. Even with changes that have occurred in the courts and administratively, I believe there can and should be further legislative improvements to our patent system. As I stated in my hearing, each branch of the government has an important role to play in ensuring that our patent system is as strong as it can be. If confirmed, I look forward to working with all stakeholders, Congress, the judiciary and other parts of the Administration, to determine how we can together achieve meaningful and balanced reforms that strengthen our patent system for our innovators.

   b. **What are the rights of legitimate patent holders that might be threatened by efforts to curb abusive patent litigation?**

   Answer: Efforts intended to curb abusive patent litigation practices should target those practices and not prevent a patent owner from asserting his or her legitimate patent right to exclude an infringer from making, using, selling, offering for sale or importing his or her patented technology.

   c. **How, specifically, do you think the right balance could be struck?**

   Answer: The right balance can be struck through a thorough, careful consensus-based review of proposed legislative initiatives by Congress and the Administration in consultation with a diverse group of stakeholders in the patent community.

2. **What do you believe is the most pressing patent reform that could be accomplished legislatively? Administratively?**

   Answer: I believe that legislation considered in the 113th Congress in the Senate and the House of Representatives addressed many of the key issues that ought to be considered as part of further legislative reforms. The specifics of any particular proposed reform should be considered and weighed against other legislative proposals as well as the impact of other recent changes (legislative, judicial and administrative) to our patent system to ensure meaningful and balanced improvements.

   With respect to important reforms that can be implemented administratively, the Office is currently engaging with its stakeholders to consider changes that might be made to, among other things, the

new trial proceedings that the Office recently implemented pursuant to the 2011 *Leahy-Smith America Invents Act* (AIA). The Office conducted a nationwide listening tour on this subject in April and May of 2014. As a result, in June of 2014, the Office published a Request for Comments in the *Federal Register* and, at stakeholder request, extended the period for receiving comments to October 16, 2014. The Request for Comments asked 17 questions on ten broad topics, including a general catchall question, to elicit any proposed changes to the AIA post-grant program that stakeholders believe would be beneficial. The Office received 37 comments from bar associations, corporations, and individuals encompassing a wide range of issues. The Office is carefully reviewing all comments received in response to the Request for Comments and plans to issue an initial set of rules and/or guidance changes in the second quarter of fiscal year 2015 that encompass simple modifications. After two years of experience with these proceedings, the goal is to consider targeted refinements to the USPTO's implementation of these proceedings to ensure consistency with Congress' intent in enacting the AIA.

Also, the USPTO is implementing a new Enhanced Patent Quality Initiative that will build toward excellence in three core areas: (1) examining patent applications; (2) customer service; and (3) quality measurement. On March 25-26, the USPTO is planning a two-day Patent Quality Summit to share with the public the USPTO's proposals on each of these three areas and to solicit the public's input on these and any other patent quality enhancing ideas. If confirmed, I look forward to continuing this important initiative at the USPTO.

3. **You've stated that "[c]reating a world-class quality patent system means that we need to keep all options on the table—big and small, before examination, during examination, and post-examination[.]" What are some specific reforms you have in mind for each stage of the patent examination process that would improve the quality of patents?**

   Answer: Before examination, it is essential that patent applicants and their attorneys or agents have a clear understanding of the patentability standards applicable to their inventions. The USPTO can help by providing readily available information regarding USPTO's examination procedures, guidelines and patentability requirements as well as "best practice" information to patent applicants. During examination, it is critical to ensure that the examiners have substantive, targeted training in their fields of technology and access to relevant prior art. After examination, it is important to maintain effective, expedient and low cost post-issuance administrative review proceedings that provide an alternative to costly and protracted federal court litigation. All these efforts are dependent on the USPTO having continued full access to its fee collections through the appropriations process.

4. **According to a recent report in Retraction Watch, the Patent and Trademark Office (PTO) currently employs Dr. Bijan Ahvazi, who previously had worked at a division of the National Institutes of Health (NIH). While at NIH, Dr. Ahvazi faked findings in three different papers. In October 2014, the Office of Research Integrity banned Dr. Ahvazi from participating in Public Health Service related research without supervision for two years. According to the news report, Dr. Ahvazi continues to be employed by PTO as a patent examiner, and made over $126,000 in 2013.**

   a. **Is it true that Dr. Ahvazi continues to be employed by PTO?**

      Answer: Dr. Ahvazi has been employed by the USPTO since January 2008.

b. **If so, if you are confirmed, will you continue to allow Dr. Ahvazi to review patents, despite his research misconduct? Why or why not?**

Answer: USPTO actions regarding employee conduct are subject to procedural restrictions. Every patent examiner has his or her performance tracked and reported bi-weekly. Examiners are subject to performance-based action for poor performance at the end of every quarter and at the end of each fiscal year. During each bi-week, quarter and fiscal year, an examiner must maintain an acceptable level of examination quality with respect to any of the numerous examination duties set forth in the quality element of the performance appraisal plan (PAP) for which the examiner is responsible at his or her grade and level of authority. If confirmed, I will ensure that employees are held accountable for both their performance and conduct using the procedures available to me.

c. **What actions would you take to make sure that there is no fraudulent activity by patent examiners at PTO?**

Answer: If confirmed, I would continue USPTO's efforts to prevent misconduct through training and other measures, and to investigate and address misconduct when it does occur. I would also continue to appropriately refer waste, fraud, and abuse to the Department of Commerce Inspector General as appropriate.

d. **Do you believe that hiring someone with a history of fraud like Dr. Ahvazi's indicates a fundamental flaw in PTO's hiring practices? If so, what steps would you take to investigate the issue and take corrective action? If not, why not?**

Answer: The USPTO makes every effort to hire well-qualified patent examiners who possess technical, legal and communication skills to perform effectively the job of patent examination. In addition, as with many other federal agencies, the USPTO conducts an extensive background investigation for suitability to perform the job.

Once hired, patent examiners are routinely evaluated on performance, and are subject to disciplinary action, including termination, suspension or reprimand, for misconduct or inadequate performance.

Responses to Questions for the Record for
Michelle K. Lee
Nominee for Under Secretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office (USPTO)
Submitted on February 5, 2015

Senator Orrin G. Hatch (R-UT)

1. **When you appeared before this committee in December, you said, "There continues to be a problem with abusive patent litigation and I believe there can and should be further legislative improvements."**

   Do you still agree that Congress should pursue patent troll legislation?

   Answer: Yes, I believe there can and should be further legislative improvements to our patent system to address litigation abuse. As I said in my confirmation hearings, each branch of the government—the judicial, executive and legislative—has a role to play to ensure that our patent system is as strong as it can be. Congress has a role to play in crafting balanced, meaningful and consensus-based legislation that strengthens our patent system for all innovators. And, the United States Patent and Trademark Office (USPTO) has a role to play, including the effective implementation of the 2011 *Leahy-Smith America Invents Act* (AIA), seven administrative actions designed to increase the clarity of patents and level the playing field for all innovators, and a recently announced Enhanced Patent Quality Initiative.

2. **Section 285 of the Patent Act was Congress's attempt to deter bad behavior in patent litigation. Yes or no, do you agree that Section 285 has failed to achieve its objective?**

   Answer: No. Many courts have made appropriate determinations of what constitutes "exceptional cases" and awarded attorney fees to the prevailing party when warranted by the facts of a particular case. However, as good stewards of our patent system, it is incumbent upon all of us to determine whether and how we might further strengthen our system through meaningful and balanced reforms in light of the rapidly evolving technical, business and legal environments. If confirmed, I look forward to working with our stakeholders, Congress and other parts of the Administration to make our patent system the best it can be.

3. **Yes or no, do you believe that Section 285 needs to be amended to deter abusive and meritless litigation?**

   Answer: A carefully crafted amendment could build upon recent court cases related to awards of attorneys fees. If confirmed, I look forward to hearing from a wide range of stakeholders on any changes needed to section 285.

4. **Yes or no, do you agree the Supreme Court's cases in *Highmark* and *Octane Fitness* do nothing to ensure the recovery of fee awards from insolvent shell corporations?**

   Answer: I am unaware of any cases that have involved an insolvent shell corporation and a court's consideration of awarding attorney fees to the party prevailing against such corporation.

5. **Understandably, the USPTO is focused on reducing the backlog and pendency of its patent applications. If confirmed, what will you do to ensure that patent examinations are of the highest quality? Obviously, the issuance of high quality patents would greatly minimize exposure to abusive litigation practices by trolls.**

   Answer: Enhancing patent quality will continue to be a top priority for the USPTO. The USPTO is implementing a new Enhanced Patent Quality Initiative that will build toward excellence in three core areas: (1) examining patent applications; (2) customer service; and (3) quality measurement. On March 25-26, the USPTO is planning a two-day Patent Quality Summit to share with the public the USPTO's proposals in each of these three areas and to solicit the public's feedback on these and any other quality enhancing ideas. Further, I recently created a new position of Deputy Commissioner for Patent Quality, which will be charged with identifying the ways that the USPTO can further enhance patent quality. If confirmed, I look forward to continuing this important initiative.

6. **From your earlier answers on the Sensitive Application Warning System (SAWS), I understand that applicants are not "generally" notified when an application is placed in the SAWS program. Are there circumstances under which an applicant is notified that their application is in the SAWS program? If so, what are those circumstances?**

   Answer: The Sensitive Application Warning System program is one of many internal efforts that the USPTO has in place to ensure that only the highest quality patents are issued by the Office. By bringing an additional quality assurance check to a very small number of pending patent applications, this program ensures that applications that could potentially be of great interest to the public are properly issued or properly denied.

   There are currently no circumstances under which an applicant is formally notified that his or her application is subject to this program. However, it is possible that applicants may become aware informally of their inclusion in the program during the prosecution of their application.

7. **I understand that interested parties have submitted Freedom of Information Act (FOIA) requests for a list of applications that have been flagged for the SAWS program and that these requests have been denied under FOIA exemption (b)(5). Do you agree that information relating to the applications included in the SAWS program should remain hidden from the public and the applicants? If so, why?**

   Answer: The Sensitive Application Warning System program is a quality assurance check which is part of the pre-decisional, deliberative process for certain patent applications. The Office has provided information about the very small percentage of applications in this quality assurance program, approximately 0.04% or roughly 200-300 applications out of a total of more than 500,000 new applications filed per year. Publicly identifying which applications have undergone review under this program may color those applications in the public's eye and lead to unjustified inferences as to the issued patent's strength or weakness.

8. **In your earlier answers on the SAWS program, you stated that an application in the program "undergoes the same types of examination procedures as any other patent application, and is held to the same substantive patentability standards." You also indicated that the SAWS program acts as "an additional quality assurance check." If applications in the SAWS program undergo the same examination procedures and are held to the same patentability standards, how are they treated differently than applications not in the SAWS program?**

   Answer: From a procedural perspective, these applications undergo the same types of examination procedures. The additional quality assurance check ensures that the USPTO is properly issuing or properly denying these applications.

9. **When can this Committee and stakeholders expect the interim guidance on subject matter eligibility to be updated, including with software claim examples? Please be as specific as possible.**

   Answer: The USPTO has already updated its interim guidance on subject matter eligibility and provided software claim examples. The Office updated its interim guidance on December 16, 2014, and provided software claim examples on January 27, 2015. The USPTO also held a public forum on January 21, 2015, to discuss the guidance and receive feedback from our stakeholders, and is now in a 90-day public comment period on the guidance and accompanying examples. Currently, the Office is engaged in training its examiners on the interim guidance and the claim examples, and will shortly make those training materials available to the public.

   After the comment period closes on March 16, 2015, the USPTO will carefully consider and evaluate the comments and feedback from the public, as well as recent court developments, and determine whether any further changes to the 2014 interim guidance are necessary. If changes are needed, the USPTO will determine the best way to promptly communicate these changes to patent examiners and the public, such as through additional examiner training, additional examples and/or revised guidance published on our website. The USPTO does not have a specific date for additional guidance updates at this time because the USPTO needs to evaluate the case law developments and input from the public to determine whether, and to what degree, changes may be needed.

10. **I have heard from stakeholders who are concerned that the interim guidance on subject matter eligibility does not provide enough direction to examiners on evaluating what is an "abstract idea," particularly as it relates to software. When the interim guidance is updated, will it include more direction and examples to assist examiners in this evaluation?**

    Answer: Yes, in fact, the USPTO already issued an update to the guidance including software claim examples on January 27, 2015, which provides direction to examiners on evaluating what an "abstract idea" is in the context of software-related inventions. The USPTO has been mindful to craft guidance and training materials that direct examiners to identify "abstract ideas" by comparing claimed concepts to the types of ideas that the courts have found to be abstract. As the courts continue to apply and interpret *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.* in future decisions, the USPTO may provide additional software-related claim examples to further inform examiners and our stakeholders about the evaluation of "abstract ideas."

Responses to Questions for the Record for
Michelle K. Lee
Nominee for Under Secretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office (USPTO)
Submitted on February 5, 2015

Senator Lindsey O. Graham (R-SC)

1. **The America Invents Act, signed into law in 2011, required the establishment of USPTO satellite offices, which bring many of the USPTO's services to regional locations. In your opinion, have the USPTO satellite offices been a success? If so, what has made them successful?**

   Answer: Yes, I believe that the United States Patent and Trademark Office (USPTO) satellite office program, even in its early stages, meaningfully benefits our nation's innovation communities and the Office. In fact, I served as the first regional director of the Silicon Valley satellite office, and I take great pride in leading the development of this program.

   As prescribed by the 2011 *Leahy-Smith America Invents Act* (AIA), the USPTO has established four satellite offices across the United States, permanent offices in Detroit and Denver and temporary offices in Silicon Valley and Dallas—permanent offices are scheduled for completion for both of the latter locations later this year.

   In all four satellite office regions, we have successfully increased and expanded outreach activities to the members of the local innovation communities, including independent inventors, businesses technology incubators, intellectual property practitioners, schools, universities, bar associations, trade associations and other government offices. Additionally, the USPTO has been able to recruit highly qualified patent examiners for both the Detroit and Denver offices, and the same is expected for the Silicon Valley and Dallas locations. The USPTO expects the retention rate of the new patent examiners in the Detroit and Denver offices will be consistent with or exceed that of new examiners in Alexandria. Together, the recruiting and retention of highly qualified patent examiners contributes to patent application backlog reduction and enhances the quality of patent examination.

   The USPTO has also been able to hire Administrative Patent Judges in each of the four satellite offices to reduce the Patent Trial and Appeal Board's (PTAB's) appeal and trial inventory. Nearly 20 percent of judges are based in the satellite offices; many of them would not have considered a career in government service but for the availability of employment at the satellite offices.

   Finally, the satellite offices provide stakeholders with easier access to USPTO services including prior art searching, examiner interviews, and PTAB hearings. Also, the USPTO benefits from increased input from a wider range of stakeholders on its policies, programs, and procedures, enabling the Office to better serve our nation's innovators.

2. **What criteria does the USPTO consider when deciding where to place one of these satellite offices? Is geographic diversity one of the criteria the USPTO should consider?**

   Answer: Yes, geographic diversity of the satellite office locations was one of our selection criteria. In fact, the AIA provided a number of criteria to consider during the selection of the satellite office locations, including:

   - geographic diversity among the offices;

- ability to achieve the purposes of the satellite office, including increasing outreach activities to patent filers and innovators, improving recruitment and enhancing patent examiner retention, decreasing the number of patent applications waiting for examination, and improving the quality of patent examination;
- availability of scientific and technically knowledgeable personnel in the region from which to draw new patent examiners at minimal recruitment cost; and
- economic impact to the region.

In regards to the geographic diversity criteria, the four satellite office locations represent a regional presence in each of the time zones in the continental United States.

Senate Report 113-181 provided further guidance for the Office to consider when selecting any additional satellite offices, which we have followed. Again, geographic distribution of existing satellite offices was a factor.

> *"Satellite Offices.—The Committee maintains support for USPTO's nationwide workforce program and the establishment of satellite offices. The Committee's recommendation will support allowing existing satellite offices to occupy permanent facilities. Additionally, the Committee recognizes the value of creating additional satellite offices in regions with a high volume of patents filed and issued to provide increased access to patent seekers. When selecting locations for additional satellite offices, the Committee directs USPTO to consider the regional volume of patent activity, geographic distribution of existing satellite offices, availability of donated space for satellite offices within a geographic area not currently served by USPTO, access to transportation options, and proximity to universities and patent experts."* [S. Rep. No. 113-181, at 24 (2014)]

3. **The USPTO has placed, or plans to place, satellite offices in the Northeast, the Midwest, Texas, the Mountain West, and the West Coast. One notable omission is the Southeast, where the manufacturing and innovation economies are blossoming. Does the USPTO have any plans to locate a satellite office in the Southeast in the near future? If so, has the USPTO considered any particular locations in the southeast?**

Answer: At this time, the USPTO is focused on opening and supporting its four existing satellite offices, and is not considering additional satellite office locations. Remaining work includes opening permanent satellite offices in Silicon Valley and Dallas later this year. The Office may consider establishing additional satellite offices in the future. Regardless of a physical presence in a region, the USPTO actively supports innovators throughout the country and is constantly working to make USPTO services and other resources readily available nationwide.

For example, the USPTO supports a nationwide network of Patent and Trademark Resource Centers (PTRCs) at public and university libraries, including at least one PTRC in every state in the Southeast. In South Carolina, a PTRC is located at the R.M. Cooper Library at Clemson University. These centers play a valuable role in their state by disseminating patent and trademark information and supporting the diverse intellectual property needs of the local innovation community.

Working with the North Carolina Bar Association, the USPTO helped to establish a Pro Bono program covering North Carolina, South Carolina, and Tennessee. On February 17, 2015, the Office will launch a Pro Bono program in Georgia.

Finally, since the beginning of 2014, the USPTO's outreach in the Southeast has included: (1) hosting informational "roadshows" in which the Office both sought input from and educated our stakeholder community on new USPTO policies, rules, and procedures; (2) participating in student inventor programs and competitions; (3) offering inventor assistance seminars for innovators and entrepreneurs; and (4) contributing to intellectual property conferences and providing education on intellectual property topics at numerous universities.

If confirmed, I look forward to further supporting the important innovation in the Southeastern region.

Responses to Questions for the Record for
Michelle K. Lee
Nominee for Under Secretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office (USPTO)
Submitted on February 5, 2015

Senator David Vitter (R-LA)

1. **In your July 2014 testimony before the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet, you stated "the USPTO believes that additional legislative changes to build upon the AIA are needed to further enhance patent quality and to lessen abuses in the system." In comments at the Chamber of Commerce's Global IP Center conference in November 2014, you said that "the challenge and the promise" for the USPTO "is that we continue to make sure our IP system is balanced and impactful and incentivizing innovation."**

   Moreover, during your December confirmation hearing you acknowledge that the legal landscape surrounding patents—including judicial and administrative developments such as the *Alice* and *Octane Fitness* Supreme Court decisions and the USPTO's ongoing implementation of the AIA—is "extremely dynamic," and that these changes "need to be taken into account as we carefully and cautiously determine what additional changes need to occur." You also noted that "changes can occur through any number of channels. They can occur judicially, they occur legislatively and they can occur administratively through the Patent Office, through the FTC."

   a. **Have these changes, highlighted in your statements, reduced the need for legislative reform in Congress? Do you still agree that Congress should act "carefully and cautiously" before enacting additional legislative changes to the patent system?**

      Answer: I believe there can and should be additional legislative improvements to our patent system. The recent changes that you describe should also be considered and weighed in crafting balanced, impactful and consensus-based legislation. As it would for any piece of legislation, I agree that Congress should act carefully and cautiously in considering and enacting additional legislative changes to the patent system.

   b. **What specific changes do you believe Congress should make to the patent system that would achieve a balance between curbing litigation and actively incentivizing innovation?**

      Answer: Legislative changes to discourage abusive patent litigation practices should specifically target those practices and not prevent a patent owner from asserting his or her legitimate patent right to exclude an infringer from making, using, selling, offering for sale or importing his or her patented technology. Legislation in the 113th Congress addressed many of the key issues, which remain worthy of consideration and discussion again in the 114th Congress. If confirmed, I look forward to working with all stakeholders, Congress, the judiciary and other parts of the Administration to determine how we can work together to achieve meaningful and balanced reforms that strengthen our patent system for our innovators.

c. **In what ways will your agency work with Congress to promote that balance and ensure that combating abusive litigation does not devalue patent ownership and de-incentivize innovation?**

Answer: Congress and the United States Patent and Trademark Office (USPTO) share the goal of promoting innovation. Intellectual property rights play a key role in incentivizing innovation. Patent practice and policy experts at the USPTO are available to provide briefings to Members of Congress and their staffs on a range of operational, procedural and policy matters and provide, upon request, technical drafting assistance. USPTO experts are also available to help identify case law relevant to proposed legislative provisions and provide context for how a court might interpret the statutory intent of those provisions.

With respect to the Office's post grant proceedings, which were recently implemented pursuant to the 2011 *Leahy-Smith America Invents Act* (AIA), the Office is currently engaging with its stakeholders to consider changes to improve the proceedings. The Office conducted a nationwide listening tour on this subject in April and May of 2014. As a result, in June of 2014, the Office published a Request for Comments in the *Federal Register* and, at stakeholder request, extended the period for receiving comments to October 16, 2014. The Request for Comments asked 17 questions on ten broad topics, including a general catchall question, to elicit any proposed changes to the AIA post-grant program that stakeholders believe would be beneficial. The Office received 37 comments from bar associations, corporations, and individuals, encompassing a wide range of issues. The Office is carefully reviewing all comments received in response to the Request for Comments and plans to issue an initial set of rules and/or guidance changes in the second quarter of fiscal year 2015 that encompass simple modifications. After two years of experience with these proceedings, the goal is to consider targeted refinements to the USPTO's implementation of these proceedings to ensure consistency with Congress' intent in enacting the AIA.

d. **What are the respective roles of Congress, USPTO, the FTC, and other entities in enacting or implementing those changes?**

Answer: The role of Congress is to craft balanced, meaningful and consensus-based legislation. Changes to the Patent Act can, of course, only be enacted by Congress.

The USPTO implements statutory changes through regulations. The Office can also make changes to existing regulations, or changes in the Office's practices and allocation of resources to help ensure the timely examination and issuance of high quality patents. The USPTO also has a role in sharing its patent practice, policy and litigation expertise, including technical drafting assistance, upon request, with Congress.

The Federal Trade Commission (FTC) plays a role in identifying, analyzing and taking appropriate regulatory action when patent owners conduct patent enforcement activities that may be determined to be unfair or deceptive acts or practices. The FTC has played a useful role through its past reports on the patent system, and its investigation of abusive demand-letter assertions and other inequitable practices.

2. **In your December confirmation hearing before this Committee you stated that so-called "patent trolls" are a problem and that "there can and should be more legislation." What specific issues of abusive patent litigation do you think can and should be addressed by Congress rather than by ongoing changes in the courts?**

   Answer: In crafting balanced, meaningful and consensus-based legislation, all the issues discussed in the 113th Congress are worthy of consideration and discussion again in the 114th Congress. If confirmed, I look forward to working with all stakeholders, Congress, the judiciary and other parts of the Administration to determine how we can together achieve meaningful and balanced reforms that strengthen our patent system for our innovators.

3. **In your previous confirmation hearing you noted that the new *inter partes* review procedure established by the America Invents Act and implemented just last year by the USPTO has proven "popular" among patent stakeholders. This procedure has already resulted in invalidation of nearly 75 percent of all challenged patent claims. What is your assessment of this new procedure generally, and what are your thoughts on its effects on patent quality and patent review moving forward?**

   Answer: The trial proceedings established by the AIA have provided a quicker, less expensive alternative to patent litigation in U.S. district courts. The public has recognized their value by filing nearly 1,500 total petitions last fiscal year alone—three times more than was expected when the proceedings were first implemented. Consistent with congressional intent, these proceedings can help ensure the highest quality patents possible in our system.

4. **How have *inter partes* review and other post-grant procedures helped curb abusive patent litigation?**

   Answer: Although these proceedings are still relatively new, the Office has heard from some that, because the USPTO's post-grant procedures provide a lower-cost alternative to district court litigation on the issue of validity, the cost of settling patent litigations has decreased.

5. **In your view, what would be the effect on American business competitiveness in the global economy if Congress were to enact changes to the patent system that make it more difficult to enforce patent rights? Would such changes disadvantage American businesses attempting to challenge foreign infringing goods?**

   Answer: Legislation that makes it more difficult to enforce patents could disadvantage domestic as well as foreign patent holders. The goal of any proposed legislation should be to promote innovation, not litigation, and legislation should not favor any patent owner on the basis of his or her technology or nationality, or otherwise make it more difficult to enforce legitimate patent rights.

6. **You stated at a recent Chamber of Commerce Global IP Center conference that "there is a lot of case law development and refinement to be had" in the wake of the AIA and recent Supreme Court cases including *Alice*, *Nautilus*, *Octane Fitness*, and others. What changes has the USPTO made to its various review procedures to implement these decisions?**

   Answer: The USPTO carefully considers the developments in the case law, and if needed, implements appropriate changes to its procedures (including examination and AIA post-grant proceedings), examination guidance, and training materials to ensure their compliance with the law.

   For example, in response to the *Alice Corp.* decision, the USPTO studied the case carefully and determined that changes to the examination process were needed to implement the decision. The USPTO developed and issued interim guidance on subject matter eligibility on December 16, 2014, to implement the necessary changes, published software claim examples on January 27, 2015, and is currently in the process of training examiners in accordance with the interim guidance and examples.

7. **USPTO is currently in a 90-day comment period for its subject-matter eligibility guidance after *Alice*. How soon after the end of the comment period in March can the public expect final guidance?**

   Answer: After closure of the comment period on March 16, 2015, the USPTO will carefully consider and evaluate the comments and feedback from the public, as well as any new court developments, and will determine whether changes to the 2014 interim guidance are necessary. If changes are needed, the USPTO will determine the best way to promptly communicate these changes to patent examiners and the public, such as through additional examiner training, additional examples or revised guidance published on the USPTO website. The USPTO does not have a specific date for "final" guidance at this time because the USPTO needs to evaluate the case law developments and input from the public to determine whether, and to what degree, changes may be needed. Even after such "final" guidance may be issued, the USPTO continually reviews the case law to determine whether additional changes are required.

8. **At your December confirmation hearing, you said that it is "not productive" to attempt to define the term "patent troll." Instead, you expressed a preference for curbing "abusive behavior." As both a former patent litigator and in your current position as acting director of the USPTO, what types of practices do you view as "abusive"? What specific changes to the litigation system are necessary to curb abusive behavior? What changes—if any— would you recommend Congress include in patent legislation?**

   Answer: Abusive practices may include, but are not limited to, vague or bare assertions of patent infringement, demands for licensing fees based on the cost of litigation and not the value of an infringed patented technology, or excessive discovery demands.

   In crafting balanced, meaningful and consensus-based legislation, the issues discussed in the 113th Congress are worthy of consideration and discussion again in the 114th Congress. Further review and discussion of these and any other issues should take into account the changes in the patent law landscape reflected in recent court decisions and administrative agency initiatives, including the USPTO's implementation of the AIA and numerous other actions focused on patent quality and leveling the playing field for all innovators.

a. **What in your view would not be productive in attempting to define the term?**

Answer: There is no generally agreed-upon definition of the term "patent troll." This fact alone restricts the term's utility to the ongoing patent-reform debate. Rather than focusing on who is or is not a "patent troll," I believe it is more productive to focus on curtailing abusive litigation. Bad actors in the patent system are not confined to any particular business model. Even operating companies and manufacturers sometimes engage in abusive litigation. Conversely, companies that do not practice a technology in the field of the patent that they own, and whose primary business is licensing their patented technology, will often appropriately enforce legitimate and valuable patent rights. Reform legislation that is restricted to particular business models may fail to address some abusive behavior, and, at the same time, prevent the enforcement of important patents that are valid and infringed.

9. **What is your office doing to protect American inventors from foreign patent infringers?**

Answer: Strengthening international intellectual property (IP) protection and enforcement is a key element in protecting American inventors from foreign infringers. Through policy guidance, technical advice and capacity building programs, the USPTO continues to work toward a sustainable integrated intellectual property enforcement framework. At the international level, the USPTO works bilaterally with foreign governments to provide analysis, advice and training and technical assistance on IP enforcement compliance, including hosting workshops, seminars and education and outreach programs on best practices for protecting patent and other intellectual property rights. The USPTO also works directly with the Office of the United States Trade Representative to provide expert assistance in negotiating new international enforcement obligations in trade agreements.

On the domestic front, the USPTO has been and continues to be very actively engaged in providing a robust educational outreach initiative to U.S. small- to medium-sized businesses, covering the full range of intellectual property, including patents. All programs include training on protecting and enforcing intellectual property in the U.S. and abroad, and are designed to reach American businesses that are exporting or are considering exporting, as well as those businesses that are not actively considering exporting but want to better understand how to protect themselves from intellectual property theft from abroad. These programs include the particularly well-received "IP Boot Camp," which is offered in the field throughout the U.S., "China IP Road Shows" and related "mini-events" focusing on intellectual property issues in China (as well as similar initiatives for other countries, e.g., Brazil), and other events and presentations throughout the U.S. as well as webinars.

10. **In 2013, the President announced several executive actions directed toward "bringing greater transparency to the patent system and level the playing field for innovators." These included (1) requiring patent owners engaged in proceedings before the USPTO to regularly update the agency on the actual owner of the patent; (2) engaging in targeted training for examiners to improve the clarity of functional patent claims; and (3) publishing new educational and outreach materials to assist small businesses and others facing patent litigation. Can you update the committee on the status of these initiatives, and offer your assessment of how effective they have been (or will be) at reducing abusive patent litigation while ensuring that the rights of patent owners are protected?**

Answer: The USPTO has made substantial progress in implementing the President's executive actions related to IP. First, to make patent ownership information available to the public, the USPTO has revamped its existing assignment database, which houses ownership information that is

voluntarily submitted by patent owners. The new database offers a cleaner user interface and includes a variety of search functions not previously available to make it simpler for the public to locate ownership information. Second, the USPTO has successfully trained all examiners on four new training modules focused on functional patent claims and clarity of the patent record. The USPTO designed these training modules to help examiners more accurately identify and treat functional claims during examination as well as to build a more complete patent record through enhanced documentation. Third, the USPTO designed and released an on-line toolkit to educate the public about all aspects of patent litigation, including how to respond to a patent infringement complaint and how to locate an attorney. The toolkit also features links to other websites that may be useful to those facing patent litigation.

To keep the public abreast of the new information and tools made available under these executive actions, the USPTO has extensively publicized its implementation activities through blogs, webinars, and public meetings. The USPTO likewise has made all materials available to the public on its website. Members of the public have shared that these trainings and toolkit are useful. The USPTO intends to continue monitoring and improving the effectiveness of its services going forward and will continue advancing transparency in the patent system. To this end, in January the USPTO recently launched a new initiative to enhance the quality of patents issued by the Office. This initiative will further reduce needless litigation by bringing more clarity and certainty to the scope of patent rights.

11. What additional steps will USPTO take on its own to ensure that the patent review process continues to promote innovation?

Answer: The innovation that is fostered by a strong patent system is a key driver of economic growth and job creation. Effectively promoting such innovation requires that issued patents fully comply with all statutory requirements and, of equal importance, that the patent examination process advance quickly, transparently, and accurately. The USPTO has taken steps to provide clear and consistent application of its statutory examination mandates. For instance, the USPTO has recently released new training for examiners in the area of functional claiming, guidance on subject matter eligibility of claims, and an improved classification system for searching prior art faster and more efficiently. Additionally, the USPTO has begun to implement long-range plans to improve its operational capabilities, such as upgrading information technology (IT) tools for its patent examiners through the Patents End-to-End program and expanding international work-sharing capabilities, all of which will help improve the quality of issued patents.

High quality patents permit certainty and clarity of rights, which in turn fuels innovation, promotes economic investment and reduces needless litigation. Presently, the USPTO is launching a new, wide-ranging initiative to enhance the quality of patents issued by the USPTO. The initiative, which will be described in further detail in an upcoming *Federal Register* notice, will focus on three elements: excellence in examining patent applications; excellence in customer service; and excellence in measurement of quality. On March 25-26, the USPTO is planning a two-day Patent Quality Summit as a first step to facilitate a public discussion of these proposals and to solicit feedback on these and any other quality enhancing ideas.

12. Please comment on changes to the USPTO's funding structure that will most benefit patent quality and efficiency.

Answer: Patent quality and efficiency, as well as many other aspects of the operation of the USPTO, have and will continue to benefit from the fee-setting authority granted to the Office pursuant to the

AIA. With the ability to set its own fees, working with appropriators to ensure that the Office has full access to fees collected, and collaborating with our stakeholders to create an operating reserve to buffer the Office against fluctuations in collections, the USPTO is able to contemplate and carry out initiatives previously considered impractical.

13. Can you speak to your thoughts on the value of intellectual property—specifically patents—in driving innovation and economic growth in the United States? What, in your view, is the role of the USPTO in promoting this process?

Answer: Innovation is the life blood of the U.S. economy, and patents are the currency of innovation. A 2012 Department of Commerce report, prepared jointly by the USPTO and the Economics and Statistics Administration, found that intellectual property-intensive industries, including those which rely on patents, accounted for some 40 million jobs, which pay on average 42% more than non-IP based jobs, and represented nearly 35% of U.S. GDP. As the clearinghouse for U.S. patent rights, the USPTO plays a key role in fostering job creation and economic growth, paving the way for investment, research, scientific development and commercialization of new technologies.

Senator Grassley, Chairman
Questions for the Record

Daniel Marti,
Nominee, Intellectual Property Enforcement Coordinator

1. **How can the private sector better assist government efforts to crack down on intellectual property crimes?**

   I share your resolve to combat intellectual property crimes and believe that the private sector plays a key role to the development and implementation of an effective intellectual property enforcement strategy. If confirmed, I look forward to leveraging my private practice experience as I work with Federal law enforcement agencies to consider ways the U.S. Government can continue to enlist private sector support in combatting intellectual property crimes. Among the approaches I would employ would be using the IPEC position as a driver of ideas and convener of relevant stakeholders to consider additional ways the Government and the private sector can combat intellectual property crimes as well as message domestically and abroad the importance of intellectual property rights to innovation and job creation.

2. **What is your plan for improving international outreach on intellectual property crime matters?**

   If confirmed, I will work with relevant Federal agencies, including the Departments of Justice, State, Homeland Security, and the U.S. Trade Representative, to continue to foster constructive and sustained engagement with foreign counterparts on intellectual property matters. As part of these efforts, I would look forward to evaluating whether there are ways in which we can further support and coordinate the efforts of our embassies and personnel abroad so that we may enhance their efforts. Moreover, I will work with all stakeholders, including the private sector, to address intellectual property challenges we face abroad, to ensure that we advance a thoughtful, strong, and effective approach to the promotion and protection of intellectual property.

3. **Your predecessor encouraged Internet stakeholders, such as content companies, advertising networks, payment processors and search engines, to enter into voluntary initiatives to combat the distribution of pirated content over the Internet. What are your thoughts on the progress to date? Do you plan to advance these efforts? If so, how?**

   Voluntary initiatives have proven to be an innovative and important mechanism to combat online piracy and counterfeiting by reducing financial incentives associated with infringement. The five existing voluntary initiatives have been particularly successful because they have brought together key stakeholders and companies to collaborate around reducing online infringement of American intellectual property. If confirmed, I look forward to evaluating the efficacy of, and opportunities for, improvements to the existing voluntary initiatives as well as whether there are other areas in which additional voluntary initiatives would strengthen the protection of intellectual property.

4. **How will your background working on intellectual property issues in private practice help you in the role of the Intellectual Property Enforcement Coordinator?**

   Devoting the entirety of my professional career to the enforcement of intellectual property rights in the U.S. and abroad, I have worked with IP rights holders across various industries in connection with a diverse set of IP issues. This includes issues of counterfeiting, piracy, cybersquatting, trade secret misappropriation, false and deceptive advertising, and other forms of IP infringement and unfair competition. Through these diverse client representations over the course of my career, I have developed a deep and broad view of IP rights and policy. Additionally, from experience I have learned that an effective IP strategy must take a multifaceted approached and be positioned to anticipate, and respond to, the evolving nature of technology and the realities of the marketplace. If confirmed, I look forward to using the broad view of IP policy and enforcement issues provided by my private sector experience in the coordination of intellectual property issues within the Administration.

5. **What do you see to be the greatest threats to U.S. intellectual property both here and abroad? What do you plan to do about them?**

   As a private citizen, I believe the most pressing challenges are the global nature (e.g., foreign manufacturing of counterfeit products and hosting of pirated content) and scale or volume of such IP infringement in a rapidly evolving technology environment. At the same time, rapidly evolving technology can provide effective and efficient tools for enhancing and strengthening the protection of intellectual property. If confirmed, I look forward to working with Federal agencies, the private sector, our trading partners, and others to address these and other challenges.

6. **Trade secret theft can do significant harm to companies, the U.S. economy and our national security. What more can the U.S. government do to protect valuable trade secrets of American companies as they compete in the global marketplace?**

   Trade secrets play a crucial role in the U.S. economy. Trade secret theft can cripple a company's competitive advantage at home and in foreign markets, diminish export prospects around the globe, and put American jobs in jeopardy. Of particular concern are the threats to U.S. business posed by economic espionage coordinated by foreign governments and trade secret theft through industrial espionage. If confirmed, I will work tirelessly to advance Executive Branch efforts to prevent the theft of trade secrets accomplished through insider threats or cyber hacking. It is essential that we continue to act vigorously to combat the theft of U.S. trade secrets that could be used by foreign companies or foreign governments to gain competitive advantage in the marketplace.

RESPONSES OF DANIEL HENRY MARTI TO QUESTIONS SUBMITTED BY SENATOR VITTER

David Vitter
U.S. Senate Judiciary Committee
Questions for the Record
January 27, 2015

1. **In your December confirmation hearing before this committee, you stated that you "look forward to working with Congress" to address the issue of "patent trolls." What specific legislation do you support to curb abusive patent litigation without undermining patent rights?**

   A strong and well-functioning patent system is an objective I think we can all agree upon. If confirmed, I stand ready to work with offices within the Executive Office of the President and agencies across the Federal Government, particularly the U.S. Patent and Trademark Office, in support of efforts designed to curb abusive patent litigation and to ensure the highest-quality patents in our system. If confirmed, I also look forward to working with Congress to consider possible legislation, as part of a multifaceted approach to addressing abuses of the patent system.

2. **In 2013, the President announced several executive actions directed toward "bringing greater transparency to the patent system and level the playing field for innovators." While most of these initiatives will be implemented by the USPTO, the President directed the IP Czar to undertake an interagency review of the processes and standards used during enforcement of Customs and ITC exclusion orders. Can you provide an update on the status of this review and its findings?**

   It is essential that effective processes and standards exist for the evaluation and subsequent enforcement of exclusion orders. If confirmed, I will look into this effort and stand ready to work with you on this important issue.

3. **Please provide your thoughts generally on the role of intellectual property—particularly patents—in promoting innovation and economic growth in the United States. What initiatives, either on its own or in conjunction with the USPTO, will your office take to ensure that the property rights of American innovators are protected and that others have an incentive to invent?**

   America is the world's leader for creativity and ingenuity. This Nation rightly prides itself on the innovation and creativity that have been the engines of our economy throughout our history. Intellectual property, including trade secrets, plays a crucial role in driving the U.S. economy and jobs. As the world's most innovative economy, strong and effective protection and enforcement of intellectual property rights is critical to U.S. economic growth and American jobs.

   If confirmed, I will work with Federal agencies, including with USPTO, and the private sector to protect the property rights of American innovators. This would include combating the increasingly sophisticated counterfeit and pirated goods shipped to this country, advancing efforts to prevent the theft of trade secrets through insider theft or

cyber hacking, and advocating for thoughtful and effective protection of intellectual property rights by our trading partners.

4. **The Administration is clearly committed to protecting small businesses and others from abusive patent litigation, but what is the Administration doing to *affirmatively protect* intellectual property rights, as opposed to simply *preventing* patent litigation?**

   I have devoted the entirety of my professional practice to matters concerning intellectual property enforcement; my clients have included companies in a broad range of fields. If confirmed, I will work to promote a thoughtful and strong intellectual property system that encourages innovation, creativity, and fair competition based on the rule of law. This would include building on the successes and momentum of the Office of the Intellectual Property Enforcement Coordinator and continuing to implement the 2013 Joint Strategic Plan on Intellectual Property Enforcement. As one example of these successes, IPEC has supported voluntary initiatives that have proven to be innovative and important mechanisms to combating online piracy and counterfeiting by reducing financial incentives associated with infringement.

5. **What are your views on licensing of intellectual property as a driver of economic growth and job creation?**

   Licensing of intellectual property is a valid and important aspect of a healthy and robust innovation economy. Throughout my private sector experience, I have managed numerous IP-based transactions, including the licensing of copyrightable subject matter, technology, trademarks, and trade secrets; and I know how value-based licensing helps drive economic growth by advancing U.S. creativity and innovation. To be clear, while I strongly favor a healthy IP licensing climate, I do not support the use of abusive tactics – including the threat, or initiation, of frivolous litigation – to extract unwarranted settlement payments, licensing fees or royalties.

Hon. Rolando Olvera
Nominee, United States District Court for the Southern District of Texas
Responses to Questions for the Record
From Senator Ted Cruz

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

Response: My judicial philosophy is based on a combination of the following factors: (1) a commitment to enforce and administer the law; (2) an unwavering demeanor of courtesy and respect to all before the court; (3) a hard work ethic to move the docket quickly and efficiently; and (4) a goal of fair, consistent, and sagacious rulings.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

Response: My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to the doctrine of stare decisis and the rule of law. If confirmed as a federal district judge, I would continue said commitment to binding precedent, without regard to personal values or beliefs.

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

Response: I am firmly committed to the doctrine of stare decisis. My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to said doctrine and the rule of law; I apply precedent without first asking myself whether a case was wrongly decided. If confirmed as a federal district judge, I would continue said commitment to binding precedent, without regard to personal beliefs.

4. Which sitting Supreme Court Justice do you most want to emulate?

Response: While I respect any individual to have reached the level of a Supreme Court Justice, I would not presume to intimately know the judicial philosophy of any Supreme Court Justice, past or present. Regardless, my judicial philosophy is my own, and if confirmed, I would continue the same philosophy I have demonstrated and developed the past twelve years as a state district judge.

5. 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, other)?

Response: I am aware that the Supreme Court evaluated how the words of the Second Amendment were commonly understood by ordinary citizens when that provision was ratified in order to determine its meaning. See *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I would apply *Heller* and other Supreme Court and Fifth Circuit precedent regarding methods of constitutional interpretation.

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

Response: Foreign courts and/or foreign laws play no role in determining the meaning of the United States Constitution, unless required to do so by binding precedent in a specific case set forth by the U.S. Supreme Court and Fifth Circuit.

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

Response: While the rulings of federal courts may affect said institutions, federal courts administer justice and the courts, nothing else.

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

Response: As a state district court judge, I have not been involved in any legal debate as to the theory of a living Constitution. I do believe in the doctrine of judicial restraint, which I would define as a judge's responsibility to decide only the contested issues properly before the court and to base said decision on text and precedent, without regard to personal beliefs. My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to the doctrine of stare decisis and the rule of law. If confirmed as a federal district judge, I would continue said commitment to judicial restraint, and would apply any binding precedent from the Supreme Court and Fifth Circuit, without regard to how some legal commentators may classify a case.

9. What is your favorite Supreme Court decision in the past 10 years, and why?

Response: In my day to day work experience, any case directly on point as to an issue in controversy before the court may be deemed a favorite case. My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to the doctrine of stare decisis and the rule of law. If confirmed as a federal district judge, I would continue said commitment to binding precedent, without regard to personal beliefs.

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

Response: My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to said doctrine and the rule of law; I apply precedent without first asking myself whether a case is an example of judicial activism. If confirmed as a federal district judge, I would continue said commitment to binding precedent, without regard to personal beliefs.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Response: Legal scholars define natural law as a set of laws inherent to human nature and civilized course of conduct that govern human society. If confirmed, I would look to the text of

the constitutional or statutory provision at issue and apply binding precedent to any case requiring the interpretation of the Constitution or statutes.

Congressional Power

12. 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: My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to said doctrine and the rule of law. If confirmed as a federal district judge, I would continue said commitment, without regard to personal beliefs. Thus, if presented with a case involving the constitutional limits on federal power versus state sovereign interests, I would apply the *Garcia* case along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

13. 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 limits of Congress' Commerce Clause power as to non-economic activity in the following cases: (1) *United States v. Lopez*, 514 U.S. 549 (1995); (2) *United States v. Morrison*, 529 U.S. 598 (2000); and (3) *Gonzales v. Raich*, 545 U.S. 1 (2005). Thus, if confirmed, I would apply all three of the above cases, along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

14. What limits, if any, does the Constitution place on Congress's ability to condition the receipt and use by states of federal funds?

Response: In *South Dakota v. Dole*, 483 U.S. 203, 207-208 (1987), the Supreme Court set forth the following limits on congressional ability to attach conditions upon States with respect to the receipt of federal funds: (1) the conditions must be in pursuit of "the general welfare"; (2) the conditions must be expressed unambiguously enabling the States to exercise an informed decision as to the consequences of using said funds; (3) the conditions must be related to a federal interest in national projects or programs; and (4) the conditions must not violate any constitutional provisions that would bar conditional grants of federal funds. Thus, if confirmed, I would apply the *Dole* case, along with any other relevant binding precedent from the Supreme Court, such as *NFIB v. Sebelius*, 132 S. Ct. 2566, 2602 (2012), and Fifth Circuit.

15. Is Chief Justice Roberts' decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: This question is currently being litigated. In the *Sebelius* case, five justices concluded that Congress did not have sufficient authority under the Commerce Clause and Necessary and Proper Clause to pass the Affordable Care Act.

Presidential Power

16. 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 is addressed by the Supreme Court in cases including *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), and *Medellin v. Texas*, 552 U.S. 491 (2008). These cases stand for the proposition that the President's executive orders or executive actions must result from either an act of Congress or the Constitution. If confirmed, I would apply these cases along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: The President's possession of unenumerated powers is addressed by the Supreme Court in cases including *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), and *Medellin v. Texas*, 552 U.S. 491 (2008). These cases stand for the proposition that the President's powers must result from either an act of Congress or the Constitution. If confirmed, I would apply these cases along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

Individual Rights

18. 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 a right is fundamental for purposes of the substantive due process clause when 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" (internal quotations and citations omitted). If confirmed, I would apply the *Glucksberg* case along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

19. 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 (1995), the Supreme Court held that classifications that are "so seldom relevant to the achievement of any legitimate state interest" such as classifications based upon race, alienage, national origin, gender, or illegitimacy would be subject to heightened scrutiny under the Equal Protection Clause. If confirmed, I would apply the *Cleburne* case along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

20. 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 personal expectations on the issue of the use of racial preferences in public higher education. If confirmed, I would apply *Grutter* and *Fisher v. University of Texas*, 133 S.

Ct. 2411 (2013), along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: In *Grutter v. Bollinger*, 539 U.S. 306, 308 (2003), the Supreme Court held that race based actions may be valid if "necessary to further a compelling governmental interest", and would not be a violation of the Equal Protection Clause if such actions were "narrowly tailored to further that interest." If confirmed, I would apply *Grutter* and *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013), along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held the Second Amendment established an individual right for U.S. citizens to possess firearms in the home. Although the Supreme Court has not specifically addressed the issue, related Fifth Circuit case law has established broader restrictions for the use of firearms in public. For example, in *National Rifle Association v. McCraw*, 719 F.3d 338, 346 (5th Cir. 2013), the court upheld a state law prohibiting individuals aged eighteen to twenty from carrying handguns in public. If confirmed, I would apply the *Heller* case along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

Hon. Rolando Olvera
Nominee, United States District Court for the Southern District of Texas
Responses to Questions for the Record
From Senator Chuck Grassley

1. What is the most important attribute of a judge, and do you possess it?

Response: The most important attributes of a judge are a combination of the following: (1) a commitment to enforce and administer the law; (2) an unwavering demeanor of courtesy and respect to all before the court; (3) a hard work ethic to move the docket quickly and efficiently; and (4) a goal of fair, consistent, and sagacious rulings. I believe I have demonstrated the foregoing qualities during my tenure as a state district judge and presiding judge for the state of Texas.

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 fundamental cornerstone of judicial temperament is one based in respect for every aspect of the judicial and legal system; one must respect the law, the parties, the attorneys, and the public. In summary, one is a judicial public servant, and must honor said duty at all times. I believe I have demonstrated the foregoing qualities during my tenure as a state district judge and presiding judge for the state of Texas, and if confirmed, will continue to do so as a federal district 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: My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to the doctrine of stare decisis and the rule of law. If confirmed as a federal district judge, I would continue said commitment, without regard to whether I agreed or disagreed with any precedent.

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 scenario of a case of first impression, my first source would be the plain language of the statute, and if clear, I would base my decision on said language. If the statutory language was ambiguous, I would then follow analogous authority in Supreme Court and Fifth Circuit cases.

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: My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to the doctrine of stare decisis and the rule of law. If confirmed as a federal district judge, I would continue said commitment, without regard to whether I believed an opinion was erroneously decided.

6. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Statutes enacted by Congress are presumed to be constitutional; a constitutional challenge should only be considered as an option of last resort, and limited in scope to a statute which violates the Constitution or exceeds congressional authority under the Constitution.

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, in my opinion, it is not appropriate for United States judges to rely on foreign law or the views of the "world community" in determining the meaning of the United States Constitution, unless required to do so by binding Supreme Court and Fifth Circuit precedent.

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: My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to the doctrine of stare decisis and the rule of law. If confirmed as a federal district judge, I would continue said commitment, without regard to 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?

Response: My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to the doctrine of stare decisis and the rule of law. If confirmed as a federal district judge, I would continue said commitment, without regard to any personal views.

10. If confirmed, how do you intend to manage your caseload?

Response: As a state district judge for approximately twelve years presiding in a court of general jurisdiction which includes a criminal, civil and family law docket, I have extensive experience in managing a large caseload. If confirmed as a federal district judge, I would continue my practice of setting reasonable deadlines at every stage of a trial, including but not limited to scheduling orders with pleading and discovery deadlines, status hearings, and pretrial

requirements as to contested issues and exchange of exhibits and discovery. In summary, detailed supervision enhances the work effort by the attorneys and the likelihood of settlement and/or alternatively, an efficient contested trial.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, judges play an active role in controlling the pace of the docket. If confirmed, I would follow the steps set forth in my response to the above Question #10.

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: In the scenario where the parties have elected a trial before the court as opposed to a jury trial, the parties present evidence and testimony. At the conclusion of the trial, the case is taken under advisement. By rule, the attorneys of record for the parties must then submit to the court their prospective judgments, along with findings of fact and conclusions of law, and all supporting statutes and case law. I then carefully consider the testimony, evidence, and controlling precedent. Finally, I issue a judgment.

13. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?

Response: I have no knowledge as to the context of this statement. My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to the doctrine of stare decisis and the rule of law. If confirmed as a federal district judge, I would continue said commitment.

14. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

15. Please describe with particularity the process by which these questions were answered.

Response: I received these questions January 29, 2015, and immediately commenced the process of drafting my answers. I discussed the initial draft with a Department of Justice representative, and then finalized my answers for submission.

16. Do these answers reflect your true and personal views?

Response: Yes.

Questions for Judicial Nominees
Senator Ted Cruz

Responses of Justice Jill N. Parrish
Nominee, United States District Judge for the District of Utah

Judicial Philosophy

1. **Describe how you would characterize your judicial philosophy.**

   Response: My judicial philosophy is characterized by the five following principles, which I have followed during my tenure on the Utah Supreme Court. First, I maintain an open mind until all of the issues are fully presented. Second, I am always prepared. Third, I treat all who appear before me with dignity, courtesy, and respect. Fourth, I afford all parties procedural fairness. Finally, I have no personal agenda. I uphold the rule of law by following the statutory text and applying binding precedent.

2. **How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?**

   Response: A responsible judge interprets all constitutional provisions, including the due process and equal protection guarantees, without regard to any personal views she may have on those provisions. This can be accomplished by applying the binding precedent laid down by the Supreme Court of the United States.

3. **With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?**

   Response: If there is one lesson that I have learned from my time as a justice on the Utah Supreme Court, it is that I should not judge a case until I have fully prepared and engaged in all of the issues. This requires reading all of the briefs and supporting materials, listening to the arguments of counsel, debating the case with my colleagues, and researching the applicable law and precedent. Because I have not gone through this process with any of the cases that have been decided by the Warren, Burger, or Rehnquist courts, I am not in a position to conclude that any of those cases were wrongly decided. If confirmed as a federal district judge, I will faithfully follow all binding precedent from the United States Supreme Court and Tenth Circuit Court of Appeals.

4. **Which sitting Supreme Court Justice do you most want to emulate?**

   Response: I respect the commitment and service of each of the justices currently sitting on the United States Supreme Court. Each of them exhibits traits I seek to emulate, but I am not familiar enough with all of their traits to single out any particular justice.

5. **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, other)?**

Response: If confirmed as a federal district judge, I will follow the precedent on constitutional interpretation enunciated by the United States 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.

6. **What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?**

Response: Foreign law, including the constitutional rulings and doctrines of foreign courts and international tribunals, and the views of the "world community" can never be binding precedent on the courts of the United States and generally do not provide relevant or persuasive authority. The interpretation of the Constitution and laws of the United States is informed by the intent of the framers and Congress as reflected by the enacted text. Foreign law may inform an understanding of that intent in those rare cases where the framers or Congress had explicitly looked to that law as an example to emulate or avoid, for example the Magna Carta. *See, e.g., Boumediene v. Bush*, 553 U.S. 723, 845 (2008), *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 27–273 (1989).

7. **What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?**

Response: Under Article III, section 2 of the United States Constitution, the role of the federal courts is limited to deciding those cases and controversies that come before them. In deciding those cases, federal courts must apply the controlling law. As a result, the role of the federal courts with respect to the administration of prisons, hospitals, and schools is limited by both the Constitution and applicable federal law.

8. **What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?**

Response: The theory of a living Constitution has many formulations. One formulation is that the Constitution evolves over time as it adapts to new circumstances, without being formally amended. The difficulty with such a theory is that judges lack any objective criteria for determining the ways in which the Constitution has evolved. It therefore presents the possibility that a judge's personal philosophies could be substituted in the place of the constitutional provisions adopted by the framers.

A judge who practices judicial restraint will refrain from injecting her own philosophies or policy preferences into the Constitution and laws and will uphold congressional enactments unless directly contrary to the provisions of the Constitution. In my twelve years on the Utah Supreme Court, I have practiced judicial restraint by relying on

objective criteria such as constitutional text and binding precedent. Any personal views I may have had on an issue have played no role in my decisions.

9. What is your favorite Supreme Court decision in the past 10 years, and why?

Response: I do not have a favorite Supreme Court decision. I would apply them all as binding precedent.

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

Response: Judicial activism or result-oriented jurisprudence occurs when a judge brings her personal agenda to a case. It is often manifest when a judge decides the outcome of a case before going through the process of applying the controlling law to the facts. It also can be manifest when a judge reaches issues that do not need to be decided or substitutes her own preferences for the result dictated by the governing law. Although I understand the term judicial activism, I am not sufficiently familiar with the cases decided by the Supreme Court during the last decade to feel comfortable characterizing any one of them as an example of judicial activism. My twelve years on the Utah Supreme Court have taught me that it is not possible to quarrel with the outcome of a case without first immersing myself in the facts, applicable law, and relevant precedent. Because I have not immersed myself in the facts and relevant precedent of the cases decided by the Supreme Court over the past decade and because I lack a basis for assessing any personal agendas of the justices, I am unable to identify any of them as examples of judicial activism.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Response: My understanding is that natural law is a philosophical theory that interprets legal principles by relying on an understanding of human nature and general concepts of justice rather than deciding cases based on the terms of legislative enactments. If confirmed as a federal district judge, I will decide cases based upon the Constitution and statutes rather than abstract notions of natural law.

Congressional Power

12. 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 in this area. Accordingly, if confirmed I will follow it without regard to any personal views I may have on the issue.

13. Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Court has struck down statutes absent a nexus to economic activity. *See 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), it held that Congress may regulate the local possession and use of marijuana because "failure to regulate that class of activity would undercut" a larger regulatory regime directed at economic activity. *See id.* at 18, 26; *see also id.* at 37 (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, I will apply all relevant Supreme Court and Tenth Circuit precedent to the particular facts of any case involving congressional power under the Commerce Clause and the Necessary and Proper Clause.

14. What limits, if any, does the Constitution place on Congress's ability to condition the receipt and use by states of federal funds?

Response: The Supreme Court addressed this issue in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012). *Sebelius* held that Congress may condition the receipt of federal funds, but it must be in the "nature of a contract." *Id.* at 2602 (internal quotation marks omitted). Thus, "Congress may use its spending power to create incentives for States to act in accordance with federal policies. But when pressure turns into compulsion, the legislation runs contrary to our system of federalism." *Id.* (citation omitted) (internal quotation marks omitted). If confirmed, I will apply this and other controlling precedent in evaluating the conditional provision of federal funds to the states.

15. Is Chief Justice Roberts' decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: Whether Chief Justice Roberts' decision on the Commerce and Necessary and Proper Clauses in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), is binding precedent is a matter of dispute in the federal appellate courts. *See, e.g., United States v. Henry,* 688 F.3d 637, 641–42 n.5 (9th Cir. 2012) (noting the existence of a controversy concerning whether the Commerce Clause analysis in *NFIB* is a holding or dicta); *United States v. Rose*, 714 F.3d 362, 371 (6th Cir. 2013) (treating the Commerce Clause reasoning in *NFIB* as a holding); *United States v. Roszkowski*, 700 F.3d 50, 58 n.3 (1st Cir. 2012) (declining to decide on the precedential status of *NFIB*'s Commerce Clause discussion); *Liberty Univ. Inc. v. Lew*, 733 F.3d 72, 94 n.7 (4th Cir. 2013) ("We express no opinion as to whether the limitation on the commerce power announced by five justices in *NFIB* constitutes a holding of the Court."); *United States v. Robbins*, 729 F.3d 131, 135–36 (2d Cir. 2013) (assuming *arguendo* that the activity-inactivity distinction in *NFIB* was controlling precedent).

The dispute arises from the fragmented nature of the *Sebelius* opinion. The Supreme Court provided guidance on such a situation in *Marks v. United States*, 430 U.S. 188 (1977). Under *Marks*, "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be

viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Id.* at 193 (internal quotation marks omitted).

Presidential Power

16. 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 "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). Whether the President has acted within such authority is evaluated by the Supreme Court under the "tripartite scheme" laid out in Justice Jackson's concurring opinion in *Youngstown*. *See Medellin v. Texas*, 552 U.S. 491, 524 (2008) (citing *Youngstown*, 343 U.S. at 635 (Jackson, J., concurring)). If confirmed, I will faithfully apply all relevant Supreme Court and Tenth Circuit precedent in evaluating the legality of executive orders or actions.

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: "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.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)). If confirmed, I will apply this and other binding precedent.

Individual Rights

18. When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: It is the Supreme Court that defines when a right is "fundamental" for purposes of the substantive due process doctrine. In *Washington v. Glucksberg,* the Court held that a right is "fundamental" if it is "deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty." 521 U.S. 702, 720–21 (1997) (citations omitted) (internal quotation marks omitted). It further held that the "asserted fundamental liberty interest" must have a "careful description." *Id.* at 721 (internal quotation marks omitted). If confirmed, I will follow this approach, and all binding Supreme Court and Tenth Circuit precedent, in any case involving asserted fundamental rights.

19. When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Under Supreme Court precedent, a form of heightened scrutiny applies to classifications such as gender, race, alienage, illegitimacy, or national origin that are seldom relevant "to the achievement of any legitimate state interest" or that "bear [] no

relation to ability to perform or contribute to society." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440–41 (1985) (internal quotation marks omitted). If confirmed, I will follow Supreme Court and Tenth Circuit precedent regarding application of heightened scrutiny under the Equal Protection Clause.

20. 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 personal expectation with respect to this issue. In *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), the Supreme Court stated its expectation that twenty-five years from the time of its decision, racial preferences would no longer be necessary in public higher education. Ten years later, the Court addressed a similar issue in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013). If confirmed, I will apply this precedent, along with any other relevant Supreme Court or Tenth Circuit precedent, to the facts of a case presenting an issue of racial preference.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: In *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), the Supreme Court addressed the propriety of using race in the context of beneficial treatment in education admissions. The Supreme Court held that under the Equal Protection Clause, "strict scrutiny must be applied to *any* . . . program using racial categories or classifications." *Id.* at 2419 (emphasis added). This includes public polices apportioning benefits or assistance on the basis of race. To survive strict scrutiny, the classification must be "narrowly tailored to further compelling government interests." *Id.* If I am confirmed, I will apply this and other controlling precedent in a case requiring a determination of whether the Equal Protection Clause tolerates public policies that apportion benefits or assistance on the basis of race.

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: The United States Supreme Court addressed the individual right to keep and bear arms for self-defense in the home in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). It held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation," and forecloses restricting the use of firearms "for self-defense in the home." *Heller*, 554 U.S. at 592, 636. Although the Supreme Court has yet to elucidate on "Second Amendment right[s] in some places beyond the home," *United States v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011) (Wilkinson, J.), those appellate courts that have addressed this issue have either held or assumed that the Second Amendment guarantees the right to keep and bear arms for self-defense in public. *Compare Peruta v. Cnty. of San Diego*, 742 F.3d 1144, 1173 (9th Cir. 2014) ("[T]he Second Amendment protects a responsible, law-abiding citizen's right to bear arms outside the home for the

lawful purpose of self-defense."), *and Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012) ("A right to bear arms . . . implies a right to carry a loaded gun outside the home."), *with Drake v. Filko*, 724 F.3d 426, 430–35 (3d Cir. 2013) (recognizing likely application of the Second Amendment outside the home), *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013) (assuming Second Amendment rights exist "outside the home"), *and Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012) ("[T]he [Second] Amendment must have *some* application in the . . . context of the public possession of firearms."). If confirmed, I will apply Supreme Court and Tenth Circuit precedent in a case concerning these rights.

Senator Grassley
Questions for the Record

Jill N. Parrish,
Nominee, U.S. District Judge for the District of Utah

1. **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. When a judge possesses integrity, she will abide by her oath to faithfully follow the rule of law embodied in the Constitution, statute, and binding precedent and to administer justice without respect to persons. Of necessity, this requires thorough preparation, keeping an open mind until a case or issue has been submitted, and treating all litigants with courtesy, dignity, and respect. I believe that I have exhibited integrity throughout my legal career and, if confirmed, am committed to discharging my duties as a federal district judge with absolute integrity.

2. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge must have patience and a commitment to afford all litigants procedural fairness. Affording a litigant procedural fairness requires keeping an open mind, listening, acknowledging, and giving serious consideration to the arguments of the parties. It further requires treating all persons with courtesy, dignity, and respect. I believe that I have these traits and have demonstrated them during my twelve years on the Utah Supreme Court.

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: As a member of the Utah Supreme Court for the last twelve years, I understand the importance of stare decisis and binding precedent. If confirmed as a federal district judge, I will faithfully follow the precedent of the United States Supreme Court and the Court of Appeals for the Tenth Circuit. Any personal views I may have on an issue will be irrelevant to the decisions I render.

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 presented with a case of first impression involving an issue of statutory construction, I will look to the ordinary meaning of the statutory language construed in the context of the statute as a whole. If the statute is ambiguous, I will look to analogous authority or generally-accepted canons of statutory construction. I will follow a similar procedure in cases of first impression involving constitutional or contractual provisions.

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 federal district judge, I will faithfully follow binding precedent regardless of whether or not I agree with it. Any personal views I might have on an issue will play no role in my decision.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: The circumstances under which it is appropriate for a federal court to declare a statute unconstitutional are extremely limited. If confirmed as a federal district judge, I will not address a constitutional issue unless it is necessary to the disposition of a case. If required to address a constitutional issue, I will begin with the proposition that statutes passed by Congress and signed into law by the President are presumptively valid. A judge should only declare a statute unconstitutional if it is necessary to the disposition of a case and it is clear that the statute is contrary to the text of the Constitution as interpreted by binding precedent.

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: Foreign law, including the constitutional rulings and doctrines of foreign courts and international tribunals, or the views of the "word community" can never be binding precedent on the courts of the United States and generally do not provide relevant or persuasive authority. The interpretation of the Constitution and laws of the United States is informed by the intent of the framers and Congress as reflected by the enacted text. Foreign law may inform an understanding of that intent in those rare cases where the framers or Congress had explicitly looked to that law as an example to emulate or avoid, for example the Magna Carta. *See, e.g., Boumediene v. Bush*, 553 U.S. 723, 845 (2008), *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 272–73 (1989).

8. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I have been a member of the Utah Supreme Court for nearly twelve years. During that time, I have sat on over nine hundred cases that resulted in a written opinion. I believe my record demonstrates that I decide cases based upon the law and precedent. If confirmed as a federal district judge, I will continue to decide cases in the 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: A judge's personal views should play no role in the decisional process. The best evidence of my ability to put aside any personal views and be fair to all who appear before me is my track record as a justice on the Utah Supreme Court during the past twelve years. I believe it demonstrates that I decide cases based upon the rule of law.

10. **If confirmed, how do you intend to manage your caseload?**

Response: While parties must be given adequate time for discovery and case preparation, justice delayed is often justice denied. Therefore, I believe that it is important to keep matters moving toward expeditious resolution. The best way to accomplish this is through active participation as a trial judge. This includes holding a scheduling conference early in each case to set realistic deadlines and then holding the attorneys to those deadlines absent good cause to deviate from them. If confirmed, I will be available to resolve any scheduling or discovery disputes and to assist the parties in narrowing issues for trial. I will also give careful consideration to dispositive motions and rule on them 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. I believe that a trial judge does play an important role in moving cases toward expeditious resolution. If confirmed, I will proceed as outlined in my previous answer to meet that goal.

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: The key to reaching the correct decision is thorough preparation. I begin with a complete review of the briefing in each case. I listen carefully to the arguments of counsel. I then focus my attention on the underlying law and facts. I study the applicable statutes, regulations, and precedent and then apply them to the facts of the particular case at hand to reach a decision. In cases where I am the assigned author, I then undertake the preparation of a written opinion that will fully explain the basis of my decision.

13. **President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?**

Response: I am not familiar with the context of this quotation. While I am courteous and respectful to all who appear before me, I follow the rule of law, rather than my own views or values, in deciding cases.

14. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees."**

a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No. I have had no contact with any such groups.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: I am not aware of any such endorsements.

15. **Please describe with particularity the process by which these questions were answered.**

Response: On January 29, 2015, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally drafted my answers and submitted them to the Office of Legal Policy. I made minor revisions before finalizing them and submitting them to the Committee.

16. **Do these answers reflect your true and personal views?**

Response: Yes.

December 5, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
Washington, DC 20510

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Grassley, Majority Leader Reid, and Republican Leader McConnell:

On behalf of our nearly 200 corporate members and more than 35,000 individual app developer members, I write in support of President Obama's nomination of Michelle K. Lee to serve as Director of the U.S. Patent and Trademark Office. The Application Developers Alliance is the preeminent association supporting developers as creators, innovators, and entrepreneurs by promoting a robust ecosystem for continued innovation and economic growth.

Lee's background as an intellectual property attorney in the private sector as well as her tenure with the USPTO makes her well suited for this position. While serving the USPTO and during her tenure as Interim Director, Lee has demonstrated exceptional leadership. By supporting initiatives to improve patent quality and the post-grant review process, Lee has shown she can lead and manage the USPTO through a critical time.

App developers, startups, and small businesses are at the forefront of innovation, but too many are the victims of patent trolls who do not create or innovate. As trolls continue to harm small businesses and drain millions of dollars from the economy, the need for comprehensive patent reform is stronger than ever. On this issue, Lee has demonstrated that she is thoughtful and fair. She understands the balance needed to protect truly novel ideas while protecting innovators from entities that abuse the system. We expect that she will be integral to protecting startups and app developers.

We urge the Senate to quickly confirm her nomination.

Sincerely,

Jon Potter
President
Application Developers Alliance

Counsel, Academics, and Executives
Representing American Innovators

November 14, 2014

By Hand and Email

Hon. Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
473 Russell Senate Office Building
Washington, DC 20510

Hon. Chuck Grassley, Ranking Member
United States Senate
Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

We write to express our support for the nomination of Michelle K. Lee for the office of Under Secretary for Intellectual Property and Director of the United States Patent and Trademark Office, Department of Commerce. We are a diverse group of lawyers, academics, and executives who work in the fields of patents and trademarks, and we represent a broad spectrum of American innovators. Each of us has worked directly with Ms. Lee or is familiar with her work, and we believe she will be a superb Director of the U.S. Patent and Trademark Office.

The jobs, goods, and services that make up our economy depend on robust innovations that are protected by patents and trademarks. Protection of innovation, enshrined in the Constitution, begins at the U.S. Patent and Trademark Office. The Director of the USPTO is the most important and visible protector of our nation's commitment to innovation. Ms. Lee's career and dedication to public service reflect a lifelong commitment to, and an exceptional ability to preserve and bolster, the promotion of innovation.

Ms. Lee has been a patent lawyer for 20 years and has extensive experience with the legal and management issues that arise at the USPTO. She currently serves as the Deputy Under Secretary and Deputy Director of the USPTO, a position she has held since January of 2014. She successfully opened the USPTO's new Silicon Valley Office and served as its Director from 2012 to 2013. Beginning in 2011, Ms. Lee served as a Member of the USPTO's Patent Public Advisory Committee.

Ms. Lee held significant management responsibility prior to her government service. From 2003 to 2012, Ms. Lee was the Deputy General Counsel and Head of Patents and Patent Strategy at Google Inc., where she built the team and program from the ground up. She was a Partner and an Associate at Fenwick & West LLP from 1996 to 2003 and an Associate at Keker & Van Nest LLP from 1994 to 1996. Ms. Lee held two prestigious judicial clerkships, for Judge

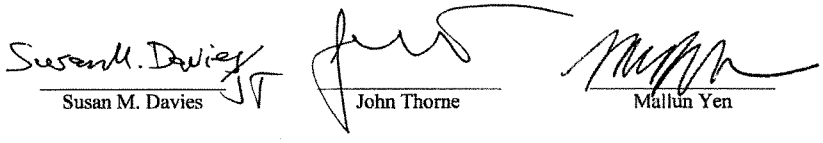
Vaughn R. Walker in the U.S. District Court for the Northern District of California, and for Judge Paul R. Michel of the U.S. Court of Appeals for the Federal Circuit, which is the court responsible for reviewing actions by the USPTO. Ms. Lee received a B.S. in electrical engineering from the Massachusetts Institute of Technology where she graduated at the top of her class, an M.S. in computer science also from MIT, and a J.D. from Stanford Law School where she served on the law review. Before law school, she worked as a computer scientist at Hewlett-Packard Research Laboratories and the MIT Artificial Intelligence Laboratory.

Ms. Lee co-founded a non-profit organization, the "ChIPs," which is dedicated to supporting and promoting the advancement, development, and retention of women practicing IP law or involved in innovation. The ChIPs has grown from its start in Silicon Valley to become a national women's organization that includes and inspires women in all the fields involving innovation including pharmaceutical science, materials science, biotech, and medical devices. Upon confirmation, Ms. Lee will be the first woman and the first ethnic minority to head the USPTO.

In each of her prior positions, Ms. Lee has consistently displayed honesty, wide and deep legal knowledge, strong management skills, unfailing civility in dealing with everyone, the willingness to listen to all perspectives and the ability to collaborate and work with all sides of an issue, and a commitment to promoting the progress of science and the useful arts. She is a model of the talents and manner that our legal system, at its best, seeks to foster and spread.

We urge the Committee to hold a hearing promptly and to approve Ms. Lee's nomination to this important post.

Respectfully,



Susan M. Davies | John Thorne | Mallun Yen

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* Although we list our affiliations below, all of us are signing this letter in our personal capacities.

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Robert A. Armitage, Consultant, IP Strategy & Policy
John C. Baum, Owen, Wickersham & Erickson, P.C.
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Matthew D. Powers, Tensegrity Law Group LLP
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Roberta Yang, General Counsel, Rock-It Cargo USA LLC
Emerald Yeh, Chair, Asian Pacific Fund Board
Mallun Yen, Executive Vice President, RPX Corporation
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Congress of the United States
House of Representatives

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES:
COMMERCE, JUSTICE, SCIENCE
LABOR, HEALTH AND HUMAN SERVICES, EDUCATION

SENIOR WHIP

CONGRESSIONAL ASIAN PACIFIC AMERICAN CAUCUS, *CHAIR EMERITUS*

SUSTAINABLE ENERGY AND ENVIRONMENT COALITION, *VICE CHAIR*

LGBT EQUALITY CAUCUS, *VICE CHAIR*

January 26, 2015

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230 United States Capitol

The Honorable Harry Reid
Minority Leader
United States Senate
S-221 United States Capitol

The Honorable Charles Grassley
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building

The Honorable Patrick Leahy
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building

Re: Michelle Lee nomination to USPTO

Dear Majority Leader McConnell, Minority Leader Reid, Chairman Grassley, and Ranking Member Leahy:

I am writing to express my support for the nomination of Michelle Lee to the position of Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO) and to request that you schedule a vote on her nomination as soon as possible.

Michelle was a popular choice when she was selected as the first Director of the USPTO's Silicon Valley office in November 2012. She has been actively involved in patent reform discussions for close to a decade, advising the USPTO on policies, goals, performance and operations during her service as a member of its Patent Public Advisory Committee (PPAC) and providing input during the implementation of the America Invents Act.

Prior to joining the Silicon Valley USPTO office, Michelle enjoyed a successful tenure at Google as Deputy General Counsel and Head of Patents and Patent Strategy. Under Michelle's leadership and strategic vision, Google's patent team flourished, growing from holding fewer than ten patents at the outset to having an impressive portfolio of over 10,500 patents. While at Google, she led efforts on two key issues that USPTO is facing today, patent assertion entities and the mobile phone patent wars, experience that would serve her well as director of USPTO.

I had the pleasure of working with Michelle on the opening and site selection for the permanent USPTO Silicon Valley office location, where she was an instrumental ally as we worked to find a creative solution to enable the permanent office to open in the face of budget sequestration, and

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I have found her to be eminently qualified for the job of Director of USPTO. Her expertise in the field is unmatched, she is highly regarded by her colleagues, she has performed admirably as Acting Director, and she will expand USPTO's horizons by bringing gender and ethnic diversity and the perspective of Silicon Valley innovators and the AAPI community into the fold.

I believe Michelle's leadership skills and breadth of experience will make her an asset to the USPTO, and I ask you to please schedule a vote on her nomination as soon as possible.

Thank you for your consideration.

Sincerely,

Michael M. Honda
Member of Congress

IW

December 1, 2014

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
473 Russell Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate
Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

As the co-founder and immediate-past chairman of the Asian/Pacific Islander American Chamber of Commerce and Entrepreneurship (ACE), I wish to express my strong support for the nomination of Ms. Michelle K. Lee for the office of Under Secretary of Intellectual Property and Director of the United States Patent and Trademark Office at the U.S. Department of Commerce. Our organization addresses the needs and interests of business owners, entrepreneurs and corporate leaders of Asian American, Native Hawaiian and Pacific Islander heritage, and we cannot think of a more qualified and dedicated individual than Ms. Lee.

Asian Americans and Pacific Islanders (AAPIs) are often at the forefront in developing new products and services here in the U.S. Today there are more than 1.6 million businesses owned and operated by AAPIs in this country, fueling innovation, job creation and economic development. We need someone from the business sector who understands that America can only advance as a global economic power if it has someone with the knowledge, expertise and drive to advance our country's economic prowess. Ms. Lee demonstrates each of these characteristics and so much more.

Not long ago, Ms. Lee addressed business leaders from more than 30 corporations and 10 nonprofit associations. She emphasized the importance of education, competition and the need for business ingenuity to stimulate growth, economic opportunity and intellectual curiosity. Her experience in the private sector and her educational credentials from the

Hon. Patrick J. Leahy
Hon. Chuck Grassley
Page 2

Massachusetts Institute of Technology and Stanford University have instilled confidence from the small-business sector that she is the perfect person for this position.

We urge the Judiciary Committee to advance her nomination.

Thank you for your interest and anticipated support for Ms. Michelle Lee.

Most sincerely,

Bill Imada
Immediate-Past Chairman
Asian/Pacific Islander American Chamber of Commerce & Entrepreneurship

International Trademark Association

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November 5, 2014

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

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman and Ranking Member Grassley:

INTA wishes to express our support for the nomination of Michelle K. Lee to be the next Under Secretary for Intellectual Property and Director of the United States Patent and Trademark Office, Department of Commerce. We applaud the President's decision to nominate Ms. Lee given her impressive qualifications and in-depth experience which is necessary for the USPTO to advance its strategic objectives of protecting intellectual property and promoting innovation.

Ms. Lee's experience and professional career demonstrate that she has a deep understanding of intellectual property law and with over two decades of experience she would make an outstanding leader in promoting and protecting the nation's intellectual property. In addition, Ms. Lee brings decades of legal, technical and business experience as a patent lawyer combined with extensive experience with the legal and management issues that arise at the USPTO. As the Deputy Director of the USPTO, she encouraged progress and technological advancement while promoting both business and consumer interests. Ms. Lee's vast experience in intellectual property, her reputation for hard work and her demonstrated abilities as the current Deputy Under Secretary of Commerce and Deputy Director of the U.S. Patent and Trademark Office, makes her the ideal candidate to advance the USPTO's core mission of serving the public in the most efficient and cost-effective manner possible. We are convinced that Ms. Lee will continue to make the USPTO even more efficient while also improving the quality of trademark examination and performance goals.

The USPTO is in immediate need of permanent leadership, and we thus urge the Committee to take action on the confirmation process as soon as possible.

Sincerely,

Mei-lan Stark
President

PowerfulNetworkPowerfulBrands.

National Asian Pacific American Bar Association | NAPABA

December 1, 2014

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
473 Russell Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

We, the undersigned and listed, are the General Counsels and Chief Legal Officers of American companies representing a diverse cross section of industries. We are all of Asian origin and members of the National Asian Pacific American Bar Association (NAPABA).

Some of our companies are predominantly users of technology and intellectual property ("IP"). Others sell and license IP. Some of us represent small companies, while others work for household names. However, we are united in the belief that innovation is critical to our collective futures, can provide sustainable and high quality employment for Americans and create enormous value for our shareholders. Accordingly, we write to strongly endorse the nomination of Michelle K. Lee for the office of Under Secretary for Intellectual Property and Director of the United States Patent and Trademark Office ("USPTO"), Department of Commerce.

Professionally, and in many cases, personally, we have come to know Ms. Lee and her work well. Her credentials and accomplishments, which are detailed in the attached Fact Sheet, should leave little doubt that she is both thoroughly and uniquely qualified for this critical post. Prior to pursuing a career in law, she participated in cutting edge research as a technologist at both Hewlett-Packard and in the famed Artificial Intelligence Laboratory at MIT. Ms. Lee is a star in the legal profession, and her appointment would serve to provide a role model for and inspire future generations of women and minority lawyers and technologists. It is hard to imagine anyone who would objectively be more qualified, either in terms of intelligence or integrity, as the Director of the USPTO.

1612 K Street NW, Ste. 1400, Washington, DC 20006 • t: 202.775.9555 • f: 202.775.9333 • www.napaba.org

We urge the Committee to expeditiously advance Ms. Lee's nomination as the Director of the USPTO. In a fast-moving and competitive global economy, our respective organizations, as well as the nation, would be truly well served by her appointment.

Although we list our affiliations below, all of us are signing or have agreed to participate in this letter in our personal capacities.

Respectfully,

Melvin N.A. Avanzado
General Counsel
Fortune Enterprise Holdings, Inc.
(Seafood City Supermarkets)

Anne Lee Benedict
Chief Legal Officer
Summit Materials

Lee C. Cheng
Chief Legal Officer, SVP-
Corporate Development &
Corporate Secretary
Newegg Inc.

Irene Chiu
VP & General Counsel
GCA Therapeutics Ltd.

Arthur Chong
Executive VP, General Counsel
& Secretary
Broadcom Corporation

John G. Chou
Executive VP & General Counsel
AmerisourceBergen Corporation

Vernon G. Chu
General Counsel
BBC Worldwide Americas, Inc.

A.B. Cruz III
Executive VP, General Counsel,
Corporate Secretary & Chief
Compliance Officer
Emergent BioSolutions

Camilla Eng
General Counsel
JM Eagle

Rudy Figueroa
VP Administration, HR & Legal,
General Counsel & Corporate
Secretary
Mitsui Rail Capital LLC

Ivan K. Fong
General Counsel
3M

Jennifer Choe Groves
General Counsel
Phoenix Financial Holdings, Inc.

Arlene Hornilla
General Counsel
Hysitron, Inc.

Anita Y. Hsu
VP & General Counsel
MBK Real Estate Companies

Marie Oh Huber
Senior VP, General Counsel & Secretary
Agilent Technologies, Inc.

Ki Yun Hwang
CEO & General Counsel
Black Letter Discovery

Christopher C. Javillonar
General Counsel
Permobil, Inc.

Hoil Kim
VP, Chief Administrative Officer, General Counsel & Secretary
GT Advanced Technologies, Inc

Michael L. Korniczky
Executive VP & General Counsel
Clondalkin Group

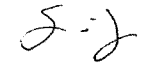
John W. Kuo
Senior VP, General Counsel & Corporate Secretary
Varian Medical Systems

Jannie K. Lau
Executive VP, General Counsel & Secretary
InterDigital, Inc.

Parkin Lee
Senior VP & Chief Legal Officer
The Rockefeller Group

Iris Leong
VP & Legal Counsel
Tawa Supermarket, Inc

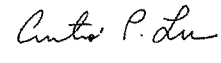
Sandra Leung
General Counsel & Corporate Secretary
Bristol-Myers Squibb Company



Simon Y. Leung
Senior VP, General Counsel &
Corporate Secretary
SYNNEX Corporation

Diana C. Liu
Principal & General Counsel
Artemis Real Estate Partners
LLC

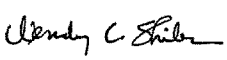
Don Liu
Senior VP, General Counsel &
Secretary
Xerox Corporation



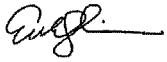
Curtis Lu
General Counsel
LightSquared

Linda Lu
VP & Chief Litigation Officer
Nationwide

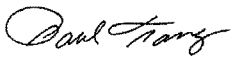
Hyun Park
Senior VP & General Counsel
PG&E Corporation



Wendy Shiba
Retired Executive VP, General
Counsel & Secretary
KB Home

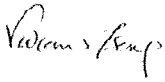


Ellen J. Shin
General Counsel & Secretary
Prospect Medical Holdings, Inc.



Paul C. Tang
Executive VP & General Counsel
Burlington Stores, Inc.

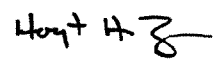
Alan K. Tse
Executive VP & General Counsel
Churchill Downs Incorporated



Vivian Tseng
VP & General Counsel
Welch Foods, Inc.

Michael C. Wu
Senior VP, General Counsel &
Secretary
Carter's, Inc.

Simone Wu
Senior VP, General Counsel &
Secretary
Choice Hotels International, Inc.



Hoyt Zia
Senior VP, General Counsel &
Corporate Secretary
Hawaiian Airlines, Inc.

Lawrence P. Tu
Senior EVP & Chief Legal Officer
CBS Corporation

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

October 28, 2014

Dear Chairman Leahy and Ranking Member Grassley:

I write on behalf of the membership of Engine Advocacy in strong support of President Obama's nomination of Michelle K. Lee to be the next Director of the U.S. Patent and Trademark Office.

Engine represents more 500 startups and small businesses across the country. Because startups are key drivers of innovation, our members have a keen interest in ensuring that the IP system continues to promote innovation by improving patent quality while ensuring a level playing field for all inventors. As the President's principal advisor on intellectual property policy, the Director of the USPTO plays a central role in the development and implementation of these policies and in ensuring the efficient operation of the Agency. We strongly support Michelle Lee's nomination to this critical post. As a lawyer in private practice and in public service, including her time overseeing the opening of the Silicon Valley Patent Office, Michelle has proven time and again she is up to the challenge.

We believe that Michelle has demonstrated strong leadership since assuming the position of Deputy Director earlier this year, and that she has advanced a balanced and thoughtful view of IP policy. We particularly commend the significant steps she has taken to improve patent quality, and have been encouraged to see outreach from the Office to the startup and small business community, including providing useful resources such as those found at: http://www.uspto.gov/patents/litigation/index.jsp. We also applaud efforts to install the Office's first female Director.

We urge the Committee to report this nomination and the full Senate for speedy consideration so that the USPTO can have the effective and steady leadership that it needs to perform its critical mission.

Sincerely,

Julie P. Samuels
Executive Director, Engine

RECEIVED DEC 1 1 2014

Asian/Pacific Islander American Chamber of Commerce & Entrepreneurship
2025 M Street NW, Suite 610, Washington D.C. 20036
ph. (202) 715-0787

December 1, 2014

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
473 Russell Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate
Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

As the President & CEO of the Asian/Pacific Islander American Chamber of Commerce and Entrepreneurship (ACE), I am writing this letter to express my strong support for the nomination of Ms. Michelle K. Lee for the office of Under Secretary of Intellectual Property and Director of the United States Patent and Trademark Office at the U.S. Department of Commerce. Our organization addresses the needs and interests of business owners, entrepreneurs and corporate leaders of Asian American, Native Hawaiian and Pacific Islander heritage, and we cannot think of a more qualified and dedicated individual than Ms. Lee.

Asian Americans and Pacific Islanders (AAPIs) are often at the forefront in developing new products and services here in the U.S. Today there are more than 1.6 million businesses owned and operated by AAPIs in this country, fueling innovation, job creation and economic development.

Having spent 15+ years in the Technology Sector in a company that boasted the highest number of patents, I understand firsthand, the importance of and the qualification that is required to succeed in the role of the Under Secretary of Intellectual Property and

One Voice Representing the Asian American, Native Hawaiian and Pacific Islander
Business Community Across the Country

Hon. Patrick J. Leahy
Hon. Chuck Grassley
Page 2

Director of United States Patent and Trademark Office at the U.S. Department of Commerce. Ms. Lee has the rare combination of the knowledge, expertise, experience and the drive to succeed in this role and advance our country's economic power.

Recently, Ms. Lee captivated the audience of business leaders from more than 30 corporations and 10 nonprofit associations with a talk in which she emphasized the importance of education, competition and the need for business ingenuity to stimulate growth, economic opportunity and intellectual curiosity. Her experience and accomplishment in the private sector - Google's first Deputy General Counsel and Head of Patents and Patents Strategy - and her educational credentials from the Massachusetts Institute of Technology and Stanford Law School have instilled confidence with this audience and the small-business sector that she is the perfect person for this position.

We urge the Judiciary Committee to advance her nomination.

Thank you for your interest and anticipated support for Ms. Michelle Lee.

Most sincerely,

Sach Takayasu
President & CEO
Asian/Pacific Islander American Chamber of Commerce & Entrepreneurship

AIPLA
AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION

November 10, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles L. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination for United States Intellectual Property Enforcement Coordinator

Dear Chairman Leahy and Ranking Member Grassley:

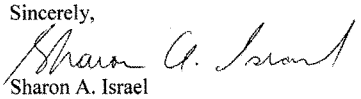
I am writing on behalf of the American Intellectual Property Law Association ("AIPLA") to express our support for the Senate Judiciary Committee moving forward with the confirmation of the United States Intellectual Property Enforcement Coordinator. The Intellectual Property Enforcement Coordinator plays a critical role within the White House to ensure that the agencies tasked with the enforcement of U.S. intellectual property rights are taking a coordinated and cooperative approach.

AIPLA is a national bar association with approximately 15,000 members who are primarily lawyers in private and corporate practice and government service and in the academic community. AIPLA's members represent a wide and diverse spectrum of individuals, companies, and institutions, and are involved directly or indirectly in the practice of patent, trademark, copyright, and unfair competition law. Our members represent both owners and users of intellectual property.

The U.S. economy thrives on jobs created by intellectual property through the investment in the innovation of new products and creative works. Effective intellectual property enforcement is not only essential to American businesses, but also vital for the protection of U.S. consumers from harmful counterfeit products. AIPLA supported the creation of the Intellectual Property Enforcement Coordinator in the PRO-IP Act to ensure that the U.S. has a strong leader within the Administration to respond to the ever growing challenges related to intellectual property theft.

Since the creation of this role, AIPLA has engaged with the Office of the Enforcement Coordinator on a number of important issues and we look forward to continued involvement once the new Intellectual Property Enforcement Coordinator is confirmed. This important position has been vacant for over a year, and AIPLA urges the Committee to move forward with the confirmation process. We thank you in advance for your consideration.

Sincerely,



Sharon A. Israel
President
American Intellectual Property Law Association

241 18th Street, South · Suite 700 · Arlington, VA 22202
Phone: 703.415.0780 · Fax: 703.415.0786 · www.aipla.org · aipla@aipla.org

November 14, 2014

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Dear Chairman Leahy and Ranking Member Grassley:

I am writing on behalf of the Copyright Alliance to urge the swift confirmation of Mr. Daniel Marti as the next Intellectual Property Enforcement Coordinator (IPEC). Mr. Marti has a distinguished record as an intellectual property lawyer, as well as a personal and family connection to the creative community, which will serve him well in understanding the many opportunities and challenges creative workers and innovators face in the current environment. As Managing Partner of the DC office of Kilpatrick Townsend & Stockton LLP, Mr. Marti additionally has the credentials indicating an ability to establish a more lasting administrative template for the office, which should serve to ensure that resources are used wisely in organizing and operating the office, particularly in the face of budgetary challenges.

It is also important to move quickly to fill the important position of IPEC, which has been vacant for almost sixteen months, for policy reasons. The copyright sector alone contributes over one trillion dollars and 5.4 million jobs to the economy and is credited with $142 billion in foreign sales and exports. Maintaining a strong and capable presence in the role of IPEC is of vital importance to preserve and expand these contributions to our economy.

Thank you for the opportunity to share our views on this important nomination.

Best regards,

Sandra Aistars
Chief Executive Officer
Copyright Alliance

1224 M Street, NW Suite 101 Washington, D.C. 20005 | 202-540-2243|copyrightalliance.org

The Honorable Dianne Feinstein
The Honorable Charles Schumer
The Honorable Dick Durbin
The Honorable Sheldon Whitehouse
The Honorable Amy Klobuchar
The Honorable Al Franken
The Honorable Christopher A. Coons
The Honorable Richard Blumenthal
The Honorable Mazie Hirono

The Honorable Orrin G. Hatch
The Honorable Jeff Sessions
The Honorable Lindsey Graham
The Honorable John Cornyn
The Honorable Michael S. Lee
The Honorable Ted Cruz
The Honorable Jeff Flake

1224 M Street, NW Suite 101 Washington, D.C. 20005 | 202-540-2243|copyrightalliance.org

CreativeFuture
Creativity. Innovation. Tomorrow.

November 20, 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

Dear Chairman Leahy and Ranking Member Grassley:

I write on behalf of CreativeFuture in support of the nomination of Daniel Marti to serve as the next Intellectual Property Enforcement Coordinator.

CreativeFuture is a coalition made up of more than 350 companies and organizations – encompassing film, television, music, and book publishing – that promotes the value of creativity, expanded digital access to legitimate content, and the fundamental right of creators to determine how their works are distributed.

We believe Mr. Marti has the skills and experience necessary to coordinate the enforcement activities of the many federal agencies with responsibility for intellectual property. His predecessor also had a solid track record of encouraging voluntary initiatives among stakeholders in the internet ecosystem – including ISPs and the advertising community – to help take the profit out of piracy.

It is our hope that Mr. Marti will carry forward all of this important work, which has suffered while the IPEC position has remained unfilled for over a year.

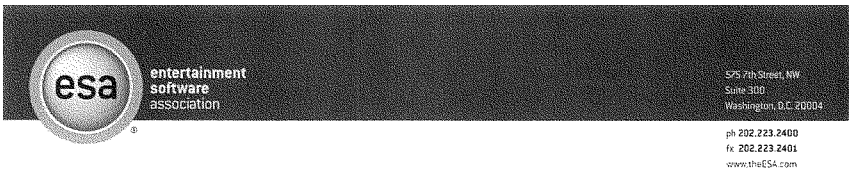
On behalf of our 350 member organizations and firms and the hundreds of thousands of creative individuals they represent, I urge you and the members of your Committee to move Mr. Marti's nomination to the full Senate for approval before the end of this year.

We look forward to working with him and thank you for your consideration.

Sincerely,

Ruth Vitale
Executive Director
CreativeFuture

5757 Wilshire Boulevard, Suite 900, Los Angeles, CA 90036
+1-323-591-3000 | www.CreativeFuture.org



575 7th Street, NW
Suite 300
Washington, D.C. 20004

ph 202.223.2400
fx 202.223.2401
www.theESA.com

December 9, 2014

The Honorable Patrick Leahy
Chairman, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, United States Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We applaud the Senate Judiciary Committee for considering the nomination of Danny Marti as U.S. Intellectual Property Enforcement Coordinator (IPEC). The IPEC plays a vital role in advancing the intellectual property contributions of companies such as those that publish computer and video games for video game consoles, handheld devices, personal computers, and the Internet.

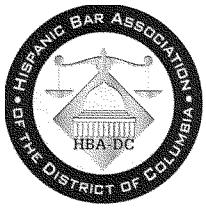
Mr. Marti has dedicated his career to the protection of intellectual property and his confirmation will further ensure the $21 billion U.S. video game industry will continue to fuel the foundation of the high-tech, innovative, and artistic experiences created by our industry's 146,000 direct and indirect employees and enjoyed by hundreds of millions of U.S. consumers.

We urge the confirmation of his nomination by the Senate as soon as possible.

Sincerely,

Michael D. Gallagher
President & CEO

Cc: Members of the Senate Committee on the Judiciary



HISPANIC BAR ASSOCIATION
OF THE DISTRICT OF COLUMBIA
P.O. Box 1011 | Washington, D.C. 20013-1011
www.hbadc.org

November 10, 2014

Via Electronic Mail and U.S. Mail

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

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Highest Endorsement of Daniel H. Marti as Intellectual Property Enforcement Coordinator

Dear Chairman Leahy and Ranking Member Grassley:

The Hispanic Bar Association of the District of Columbia (HBA-DC) is pleased to give its highest endorsement to Daniel H. Marti to be Intellectual Property Enforcement Coordinator in the Executive Office of the President. We believe, based on Mr. Marti's exemplary career and numerous leadership positions and proven commitment to the Latino and immigrant communities, that he would be a valued member of President Obama's Administration.

The HBA-DC undertakes a careful review of candidates who seek its endorsement to make certain that individuals with impeccable credentials, as well as proper temperament and character, are promoted to these trusted positions. We ensure that candidates for endorsement meet the letter and spirit of our endorsement policy, which includes such criteria as established professional qualifications, a demonstrated commitment to the Latino community and to the advancement of other minority communities.

Mr. Marti's career reflects the requisite experience in intellectual property matters. He is presently the Managing Partner of the Washington D.C. office of Kilpatrick Townsend & Stockton LLP, the youngest and first Hispanic Managing Partner in the firm's history. For the past 15 years, Mr. Marti has devoted the entirety of his practice to the protection, management, and enforcement of intellectual property assets in the United States and abroad. He advises clients in connection with domestic and international trademark portfolio management, licensing, and other intellectual property-based transactions.

Mr. Marti also has experience in management that is helpful in working with the number of diverse actors in the world of intellectual property. At his firm, he has served as Chair of the Diversity Council, as Co-Chair of the firm's Intellectual Asset Acquisitions & Transactions team,

and as a member of the Firm's Shares Committee and Hiring Committee. Mr. Marti's recognition as Kilpatrick Townsend's "Coach of the Year" in 2007 reflects the kind of leadership qualities and ability to work with others that enhance his qualification as Intellectual Property Enforcement Coordinator.

Additionally, Mr. Marti has received a number of accolades, which attest to his wide recognition in the legal profession. He was named a "Super Lawyer" for Intellectual Property in Washington, D.C. by *Super Lawyers* magazine both in 2013 and in 2014, and as an "IP Star" by *Managing Intellectual Property* magazine in 2013 and again in 2014. Previously, Mr. Marti was profiled as one of only four national "Rising Stars" by *Diversity & the Bar*, the flagship publication of the Minority Corporate Counsel Association. Thus, Mr. Marti's distinguished career has prepared him exceedingly well to be Intellectual Property Enforcement Coordinator.

Mr. Marti has also demonstrated a commitment to the rights and advancement of the Hispanic community, to the District of Columbia community, and to the rights and advancement of historically disadvantaged communities with an impressive record of volunteer work. He has served as a keynote speaker and panelist for various events held by the HBA-DC and the Hispanic National Bar Association. Mr. Marti also serves on the Board for the American Cancer Society's National Capital Region Corporate Council and is a former member of the American Cancer Society Council's Finance Committee.

Mr. Marti has served as well on Kilpatrick Townsend's Pro Bono Committee, working closely with, and supporting, his firm's attorneys and staff to seek out a broad range of pro bono opportunities. As a Pro Bono Committee Member since 2002, Mr. Marti helped to update and increase Kilpatrick Townsend's Pro Bono Program which has grown to represent thousands of individuals and hundreds of community organizations that have benefited from the pro bono representation of his firm's attorneys by an amount of more than 270,000 hours of donated time, at a value of more than $80 million.

In sum, Mr. Marti's admirable record of commitment to public service builds precisely the kind of profile that HBA-DC wishes to hold up to the legal profession as an example of the ideal nominee for office. For these reasons, the HBA-DC is both proud and excited to give its highest endorsement to Daniel H. Marti to be the President's Intellectual Property Enforcement Coordinator. We understand the Committee on the Judiciary values highly-qualified candidates to increase diversity in the highest levels of government. HBA-DC supports this critical goal in the face of our nation's changing demographic. The Committee is well placed to advance Mr. Marti as the ideal, highly qualified, nominee to Intellectual Property Enforcement Coordinator.

Please let me know if you require further information in support of Mr. Marti. I can be reached by email at president@hbadc.org.

Sincerely,

Fernando Rivero
President
Hispanic Bar Association of the District of Columbia

cc: Sergio Oheninger, David Diaz, Endorsement Committee Co-Chairs

IACC
INTERNATIONAL ANTICOUNTERFEITING COALITION

1730 M Street NW • Suite 1020 • Washington, DC 20036 • 202-223-6667 • iacc@iacc.org

The Honorable Chuck Grassley
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510

January 8, 2015

Dear Chairman Grassley and Ranking Member Leahy:

On behalf the International AntiCounterfeiting Coalition (IACC), I write to you today in support of the Administration's nomination of Danny Marti to serve as the next U.S. Intellectual Property Enforcement Coordinator (IPEC). The IPEC plays a vital role in advancing policy as well as coordinating the efforts of the Executive Branch in the promotion and protection of IP as a cornerstone of the U.S. economy. Regrettably, that position has remained vacant for over a year; so I urge you to act swiftly to confirm Mr. Marti.

The IACC is an international organization of approximately 250 members including many of the world's best-known brands from the apparel, software, pharmaceutical, electronics, automotive, entertainment, consumer goods, and other product sectors. Our mission is to combat counterfeiting and piracy by promoting laws, regulations, directives, and relationships designed to render the theft of intellectual property undesirable and unprofitable.

Mr. Marti offers a wealth of professional experience and a demonstrated understanding of the challenges faced by the private sector with regard to IP protection and enforcement. The IACC fully supports the nomination of Mr. Marti as the next IPEC and urges you to confirm his nomination as soon as possible.

Thank you for your consideration.

Sincerely,

Bob Barchiesi
President

Protecting Rights Holders Since 1979

RECEIVED NOV 13 2014

INTA International Trademark Association

655 Third Avenue, 10th Floor
New York, NY 10017-5646, USA
t: +1 212-642 1700 | f: +1 212-768 7796
inta.org

November 5, 2014

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

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman and Ranking Member Grassley:

The International Trademark Association (INTA) applauds President Obama's nomination of Daniel Marti to be the U.S. Intellectual Property Enforcement Coordinator (IPEC). It has been quite some time that this extremely important post has been vacant and we believe Mr. Marti is the right person for the position.

Mr. Marti brings a wealth of knowledge and expertise to the position, along with a distinguished career in working on intellectual property issues. His legal practice has concentrated on the protection, management, and enforcement of intellectual property assets in the United States and abroad. As a result, Mr. Marti is accustomed to being on the front lines of efforts to protect the ideas and innovations that form the basis of our knowledge-based economy. Many of the issues he has dealt with in the private sector involving a wide range of IP-related matters including trademarks, false advertising, unfair competition, copyrights, trade secrets and cybersquatting, are the very issues which are foremost in the U.S. government's IP strategy.

The Office of the U.S. Intellectual Property Enforcement Coordinator plays a vital and important role in the protection of intellectual property, including trademarks. The IPEC helps to expand the very positive role that IP plays in the nation's economy, thereby protecting current jobs and ensuring future job creation. Given Mr. Marti's extensive experience working on intellectual property issues, we are convinced that he will take the work of the IPEC office to a whole new level for improving the enforcement of intellectual property rights, promoting cooperation with foreign governments and developing new approaches to reducing infringement in this digital age.

In conclusion, we look to your leadership in achieving timely action by the Senate Judiciary Committee on Mr. Marti's nomination and the Senate's confirmation so that Mr. Marti assume the position of Intellectual Property Enforcement Coordinator in the very near future.

Sincerely,

Mei-lan Stark
President

PowerfulNetworkPowerfulBrands.

MOTION PICTURE ASSOCIATION
OF AMERICA, INC.
1600 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006

CHRISTOPHER J. DODD
CHAIRMAN
CHIEF EXECUTIVE OFFICER

November 7, 2014

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Motion Picture Association of America and its member companies—Paramount Pictures Corp., Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corp., NBCUniversal, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.—I write in support of Daniel Marti for the position of Intellectual Property Enforcement Coordinator. Mr. Marti's experience should serve him well in his role as the Administration's representative tasked with coordinating strategies to protect intellectual property, an asset upon which millions of Americans' livelihoods depend.

With this Committee's foresight and leadership, Congress created the position of the Intellectual Property Enforcement Coordinator as part of the 2008 bi-partisan PRO-IP Act. Since enactment, the office has made important contributions toward reinforcing the collective responsibility that the federal government and private stakeholders share in protecting intellectual property. Not only must the IPEC ensure that enforcement goals are set and implemented across numerous agencies of the Federal Government, he or she must continue to facilitate the negotiation of voluntary initiatives to combat intellectual property theft. Our economy depends on creative goods and services, and without meaningful enforcement at the highest level, American jobs and our standing in the international community will suffer.

As you know, this vital office has been without a Coordinator since August 2013. We stand ready to work with you and the Committee on this important nomination and urge Mr. Marti's nomination receives consideration without delay.

Sincerely,

Christopher J. Dodd

975 F Street, NW
Suite 375
Washington, DC 20004
Tel: 202-393-NMPA (6672)

40 Wall Street
6th Floor
New York, NY 10005-1344
Tel: 212-370-5330

David M. Israelite
President & CEO

October 31, 2014

The Honorable Patrick Leahy
Chairman
Committee on Judiciary
United States Senate

The Honorable Charles Grassley
Ranking Member
Committee on Judiciary
United States Senate

Dear Chairman Leahy & Ranking Member Grassley:

As you know, on September 8 the President nominated Daniel Marti to serve in the role of Intellectual Property Enforcement Coordinator (IPEC).

This important post has been vacant for too long and it is an encouraging step that the administration has nominated a candidate as well-qualified as Mr. Marti. NMPA strongly supports his expeditious consideration and confirmation by the U.S. Senate.

NMPA appreciates your continued leadership to ensure that combating intellectual property crime and protecting rights holders remains a priority of the U.S. Government.

Sincerely,

Cc: Members of the Senate Judiciary Committee

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

December 9, 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

Dear Chairman Leahy and Ranking Member Grassley:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, strongly supports the nomination of Mr. Danny Marti, Esq., for the position of U.S. Intellectual Property Enforcement Coordinator (IPEC) and urges the committee to report his nomination without delay.

As you well know, in 2008 Congress enacted the PRO-IP Act to better protect the intellectual property (IP) rights of inventors and creators while ensuring the products consumers use are authentic, safe, and effective. The PRO-IP Act recognized that more effective IP enforcement requires additional resources, better laws, and high-level leadership to implement a strategic and well-coordinated approach across federal government agencies.

The IPEC office has been without such leadership for more than a year, and it is imperative that this position is filled without delay to help fulfill the promise of the PRO-IP Act. The Chamber believes that Mr. Marti is a highly-qualified nominee who would be a strong advocate for intellectual property rights.

Sincerely,

R. Bruce Josten

cc: Members of the Committee on the Judiciary

January 21, 2015

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

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

Dear Chairman Goodlatte, Chairman Grassley, Rep. Conyers, and Senator Leahy:

The undersigned represent a broad coalition whose members represent the majority of the nation's patent holders and inventors. We are a diverse array of American innovators, ranging from universities and non-profit foundations, to start-ups and small businesses, to manufacturing, technology, and life sciences companies. Together we represent thousands of organizations that employ millions of workers in the United States. We all believe that the future of the U.S. economy, including domestic job growth and our competitive advantage in the global economy, depends on a strong patent system that incentivizes innovators to invent and protects their inventions from unfair copying by others.

We appreciate the hard work you and your staffs have undertaken to craft a bill to target abusive practices in patent litigation, and we accept your challenge to our member groups to work with you to craft a responsible bill to address those abuses. As we have demonstrated in the past, we are willing to work with you and other stakeholders to develop targeted and measured reforms that address harmful patent enforcement practices. However, we will continue to strongly oppose legislation that would weaken the overall patent system and thereby diminish innovation and job creation in the United States.

In addition, there have been several major judicial and administrative developments in patent law since the last time your committees fully considered these issues and drafted proposed legislation. As a result of these developments, we are even more concerned that some of the measures under consideration over the past year go far beyond what is necessary or desirable to combat abusive litigation. Indeed, new patent lawsuit filings already have dropped dramatically – 40 percent, year over year, from September 2013 to 2014. Recent developments include the following:

- The Supreme Court decided five patent cases this past year, including *Alice Corporation v. CLS Bank*, *Nautilus v. Biosig Instruments*, *Limelight Networks v. Akamai Technologies*, *Octane Fitness v. ICON Health & Fitness*, and *Highmark Inc. v. Allcare Health Management Systems*, that are already making it easier to defeat patents, including the kind of patents that often are asserted in abusive litigation, and disincentivizing the

bringing of meritless claims. They certainly require thorough Congressional consideration as changes to the patent system are debated.

- The Leahy-Smith America Invents Act (AIA), which includes a number of provisions to increase patent quality and reduce abusive practices, was fully implemented less than two years ago, and its effects are only now beginning to take hold. For example, the AIA created new procedures – "inter partes review" (IPR) and "covered business method patent review" (CBM) – to allow anyone to challenge patents in a fast, relatively inexpensive proceeding before the Patent Trial and Appeal Board (PTAB). These administrative proceedings are already impacting the litigation landscape: judges in patent cases are now granting 80% of all motions to stay patent litigation if the patent is also involved in a parallel IPR or CBM proceeding. This is not to suggest that improvements are not needed with respect to implementation by the U.S. Patent & Trademark Office (USPTO), particularly with respect to concerns raised that these proceedings may be structured in a way that fails to afford basic due process to patent owners. In just two years since the USPTO implemented the new procedures in late 2012, petitioners have challenged claims of more than 2,300 patents. In concluded proceedings, fully 75% of the involved claims have been found unpatentable and only about 20% of patents have survived the proceeding with no changes.

- This past October, the Judicial Conference of the United States adopted changes to the Federal Rules of Civil Procedure that will ensure that patent cases meet the heightened pleading standards required of all other federal cases. The changes also will ensure that discovery in patent litigation will be "proportional to the needs of the case," reducing the ability of patent plaintiffs to use unnecessary discovery requests to drive up costs for defendants in an effort to force unwarranted settlements. These rule changes make any statutory provision heightening pleading standards or limiting the scope of discovery in patent cases unnecessary and repetitive, since courts now have been directed to limit excessive and abusive discovery requests and ensure adequately described pleadings in patent cases. The rule changes are currently pending before the Supreme Court and are expected to be sent to Congress in early 2015.

- The Federal Trade Commission and state attorneys general also are aggressively using their authority to combat abusive patent demand letters and protect small businesses and consumers from unscrupulous practices. Instead of collecting settlement fees, senders of mass demand letters now find themselves mired in legal proceedings and their patents subject to challenges. Settlements between MPHJ Technology Investments LLC and the New York Attorney General and the FTC in January and November show the effectiveness of consumer protection and unfair competition laws at protecting small businesses from abusive and deceptive representations in demand letters.

Taken together, these judicial and administrative developments, and the plunge in the patent litigation rate, have fundamentally changed the landscape under which patent legislation should be considered. As Congress considers potential changes to the patent system that threaten the constitutionally-guaranteed property rights of innovators, it must assess the full

effects of the AIA, changes to the Federal Rules of Civil Procedure, the case law developments, and these administrative developments.

We look forward to working with you and your colleagues to make improvements to patent law that protect small businesses, consumers, and the general public from abusive patent practices, while zealously guarding the United States' competitive edge as the dominant global leader in innovation.

Thank you for your consideration of our views.

Sincerely,

Abcam
Cambridge, MA

Abengoa Bioenergy
Chesterfield, MO

Access Technologies Group, Inc.
New Canaan, CT

Acorda Therapeutics
Ardsley, NY

Actuated Medical, Inc.
Bellefonte, PA

ADA Technologies, Inc.
Littleton, CO

Advanced Technology Ventures (ATV)
Palo Alto, CA

Aegerion Pharmaceuticals
Cambridge, MA

Alexion Pharmaceuticals
Cheshire, CT

Alnylam Pharmaceutical
Cambridge, MA

American Seed Trade Association
Alexandria, VA

Amgen
Thousand Oaks, CA

Amicus Therapeutics
Cranbury, NJ

AMJET Turbine Systems, LLC
Keokuk, IA

Analytic Design Laboratories
Plain City, UT

Antaya Science and Technology
Hampton, NH

AquaBounty Technologies
Maynard, MA

Aquadation Technologies LLC
Austin, TX

Architecture Technology Corporation
Eden Prairie, MN

Arizona BioIndustry Association
Chandler, AZ

Association of American Universities
Washington, DC

Association of Public Land Grant Universities
Washington, DC

AstraZeneca Pharmaceuticals
Wilmington, DE

Athersys
Cleveland, OH

Atlas Venture
Cambridge, MA

aTyr Pharma
San Diego, CA

Auxilium Pharmaceuticals
Chesterbrook, PA

Aware, Inc.
Bedford, MA

Bavarian Nordic
Mountain View, CA

Bay Area In-House MedTech Attorneys (BAIMA)

BayBio
South San Francisco, CA

Bayer CropScience LP
Research Triangle Park, NC

Bennett Aerospace
Cary, NC

Bi-Level Technologies
Encinitas, CA

Biocom
San Diego, CA

BioFlorida, Inc.
West Palm Beach, FL

Biogen Idec
Cambridge, MA

BioHouston
Houston, TX

Bio Nebraska Life Sciences Association
Omaha, NE

BioNJ
Trenton, NJ

BioOhio
Columbus, OH

BioScience Association of Maine
Biddeford, ME

Biotechnology Industry Organization (BIO)
Washington, DC

bluebird bio
Cambridge, MA

BrainScope Company, Inc.
Bethesda, MD

Brew Data LLC
Cedar Rapids, IA

California Healthcare Institute – CHI
La Jolla, CA

Cedars-Sinai Medical Center
Los Angeles, CA

Celgene
Summit, NJ

Center for Health Care Services
San Antonio, TX

Cianna Medical, Inc.
Aliso Viejo, CA

Ciencia, Inc.
East Hartford, CT

Cleveland Medical Devices Inc.
Cleveland, OH

Colorado BioScience Association
Denver, CO

Colorado School of Mines
Golden, CO

CoLucid Pharmaceuticals
Durham, NC

Conatus Pharmaceuticals
San Diego, CA

CONNECT
San Diego, CA

Cotera, Inc.
Menlo Park, CA

CropLife America
Washington, DC

CSL Behring
King of Prussia, PA

Cummins Allison Corporation
Mount Prospect, IL

CURE – Connecticut United for Research Excellence, Inc.
New Haven, CT

CyberLogic, Inc.
New York, NY

Cybernet Systems Corporation
Ann Arbor, MI

CymaBay Therapeutics
Newark, CA

Dallas IEEE
Dallas, TX

Delaware Bio
Newark, DE

Design Interactive, Inc.
Orlando, FL

Digimarc Corporation
Beaverton, OR

Dolby Laboratories, Inc.
San Francisco, CA

DSM North America
Parsippany, NJ

DuPont
Johnston, IA

Dynatronics Corporation
Salt Lake City, UT

Eagle Forum
St. Louis, MO

EccoCast Communications
Iowa City, IA

Edison Nation
Charlotte, NC

Electric Drivetrain Technologies LLC
Moab, UT

Electron Technologies, Inc.
Chantilly, VA

ElliptiGO Inc.
Solana Beach, CA

Engine Research Associates, Inc.
Fort Wayne, IN

Enteromedics
Saint Paul, MN

Entrepreneurs for Growth
Burke, VA

Enventys
Charlotte, NC

Exagen Diagnostics
Albuquerque, NM

Exemplar Genetics, LLC
Sioux City, IA

ExploraMed Development, LLC
Mountain View, CA

ExploraMed NC7, Inc.
Mountain View, CA

Fallbrook Technologies Inc.
Cedar Park, TX

FishEye Software, Inc.
Maynard, MA

Flocel Inc.
Cleveland, OH

FM Technologies, Inc.
Chantilly, VA

ForSight Labs LLC
Menlo Park, CA

ForSight Vision4, Inc.
Menlo Park, CA

ForSight Vision6, Inc.
Menlo Park, CA

FORUM Pharmaceuticals
Watertown, MA

The Foundry, LLC
Menlo Park, CA

Gain ICs, LLC
Colorado Springs, CO

Genzyme
Cambridge, MA

Georgia Bio
Atlanta, GA

GlobeImmune
Louisville, CO

GlycoMimetics
Gaithersburg, MD

Gradient Technologies LLC
Memphis, TN

Great Lakes NeuroTechnologies Inc.
Cleveland, OH

Green Tape LLC
Greenwood Village, CO

Ground Zero Pharmaceuticals, Inc.
Irvine, CA

HF Holding, Inc.
Basin, MT

Hammersmith Ventures
Austin, TX

Horizon Pharma
Deerfield, IL

Hydra Biosciences
Cambridge, MA

iChromatograpny/Analtech, Inc.
Newark, DE

IEEE-USA
Washington, DC

Ikaria, Inc.
Hampton, NJ

Illinois Biotechnology Industry Organization
Chicago, IL

Immune Design
Seattle, WA

Indiana Health Industry Forum
Indianapolis, IN

Indiana Manufacturers Association
Indianapolis, IN

Industry-University Research Center, Inc. (INDUNIV)
San Juan, PR

Infinity Pharmaceuticals
Cambridge, MA

Innovation Alliance
Washington, DC

Innovative Surface Technologies, Inc.
Saint Paul, MN

Innovative Technology Applications Company, LLC
Chesterfield, MO

Intercept Pharmaceuticals
New York, NY

InterDigital, Inc.
Wilmington, DE

InterScience, Inc.
Troy, NY

Inventors Center of Kansas City
Kansas City, MO

Invocon, Inc.
Conroe, TX

Iowa Biotechnology Association
Des Moines, IA

Iowa Inventors Group
Cedar Rapids, IA

IsoTherapeutics Group, LLC
Angleton, TX

ItsOn, Inc.
Redwood City, CA

KBS Automist
Baxter, MN

Kentucky Life Sciences Council
Louisville, KY

Keystone Aerospace
Austin, TX

Keystone Synergistic Enterprises, Inc.
Port St. Lucie, FL

Kineta, Inc.
Seattle, WA

Kinetic Resolve, Inc.
Stillwater, MN

Licensing Executives Society (USA and Canada), Inc.
Alexandria, VA

LifeScience Alley
St. Louis Park, MN

Life Science Tennessee
Nashville, TN

Lightstone Ventures
Palo Alto, CA

MacroGenics
Rockville, MD

Maetrics LLC
Indianapolis, IN

Magnet Optimization Research Engineering (M.O.R.E.), LLC
Reading, MA

Massachusetts Biotechnology Council (MassBio)
Cambridge, MA

MaxCyte
Gaithersburg, MD

MCG BioComposites, LLC
Cedar Rapids, IA

MedCara Pharmaceuticals
Conrad, IA

Medical Device Manufacturers Association
Washington, DC

Membrane Technology and Research, Inc.
Newark, CA

Merck & Co., Inc.
Kenilworth, NJ

MichBIO
Ann Arbor, MI

Minnesota Inventors Congress
Redwood Falls, MN

Miramar Labs, Inc.
Santa Clara, CA

Missouri Biotechnology Association (MOBIO)
Jefferson City, MO

Modulated Imaging
Irvine, CA

Monsanto
St. Louis, MO

Montana BioScience Alliance
Billings, MT

Morgenthaler Ventures
Menlo Park, CA

National Small Business Association
Washington, DC

Navidea Biopharmaceuticals
Dublin, OH

NAVSYS Corporation
Colorado Springs, CO

Neotract, Inc.
Pleasanton, CA

NeuroPace
Mountain View, CA

NeuroWave Systems Inc.
Cleveland Heights, OH

New Venture Advisors
Manchester, NH

New Mexico Biotechnology & Biomedical Association
Albuquerque, NM

NewYorkBIO
New York, NY

North Carolina Biosciences Organization (NCBIO)
Research Triangle Park, NC

Nuelle, Inc.
Mountain View, CA

OncoMed Pharmaceuticals
Redwood City, CA

Open Innovators
Hebron, CT

Opexa Therapeutics
The Woodlands, TX

Orbital Research Inc.
Cleveland, OH

Oregon Bioscience Association
Portland, OR

Orexigen Therapeutics
La Jolla, CA

Orthopedic Venture Partners
Minneapolis MN

OvaScience
Cambridge, MA

Pacira Pharmaceuticals
Parsippany, NJ

Patent Bakery LLC
Austin, TX

Patent Office Professional Association
Alexandria, VA

Pennsylvania Bio
Wayne, PA

PhRMA
Washington, DC

Precision Combustion, Inc.
North Haven, CT

Principia Biopharma
South San Francisco, CA

Propel LLC
Pawtucket, RI

PTC Therapeutics
South Plainfield, NJ

Qualcomm
San Diego, CA

Qualtech Systems, Inc.
East Hartford, CT

Quantum Interface
Austin, TX

Reaction Biology Corporation
Malvern, PA

Receptos
San Diego, CA

Recombinetics
Saint Paul, MN

Regulus Therapeutics
San Diego, CA

Relypsa
Redwood City, CA

Rio Grande Valley Diabetes Association
Edinburg, TX

Rocky Mountain Technologies Inc.
Basin, MT

SAb Biotherapeutics
Sioux Falls, SD

Safety First USA, Inc.
Marion, IA

SCBIO
Greenville, SC

Schaefer Technologies, Inc.
Indianapolis, IN

Science & Sensors Technologies
Los Angeles, CA

Small Business Technology Council
Washington, DC

Smiths Medical
Dublin, OH

SoCalBio
Los Angeles, CA

Sofinnova Ventures
Menlo Park, CA

Solace Therapeutics
Framingham, MA

South Dakota Biotech Association
Sioux Falls, SD

Southwest Sciences, Inc.
Santa Fe, NM

Startech International
San Antonio, TX

Student Employment Software, LLC
Greenwich, CT

Sucampo Pharmaceuticals, Inc.
Bethesda, MD

Sunovion Pharmaceuticals
Marlborough, MA

Syndax Pharmaceuticals
Waltham, MA

Tessera Technologies, Inc.
San Jose, CA

Texas BioAlliance
Houston, TX

Texas Eagle Forum
Dallas, TX

Texas Healthcare and Bioscience Institute
Austin, TX

Texas Life-Sciences Collaboration Center
Georgetown, TX

Texas Life Science Foundation
Austin, TX

Theoris Group Inc.
Indianapolis, IN

Thomson Licensing LLC
Princeton, NJ

Trevena
King of Prussia, PA

Twelve, Inc.
Menlo Park, CA

Unilife Corporation
York, PA

U.S. Business and Industry Council
Washington, DC

U.S. Startups and Inventors for Jobs
Washington, DC

Valeritas
Bridgewater, NJ

Vermont BioSciences Alliance
Burlington, VT

Versartis
Menlo Park, CA

Virginia Biotechnology Association (Virginia Bio)
Richmond, VA

Vitae Pharmaceuticals
Fort Washington, PA

Washington Biotechnology & Biomedical Association (WBBA)
Seattle, WA

Wisconsin Alumni Research Foundation
Madison, WI

Yorktown Technologies
Austin, TX

Zatorski Coating Co., Inc.
East Hampton, CT

cc:

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Harry Reid
Minority Leader
United States Senate
Washington, DC 20510

The Honorable John Cornyn
Majority Whip
United States Senate
Washington, DC 20510

The Honorable Richard J. Durbin
Minority Whip
United States Senate
Washington, DC 20510

The Honorable John Boehner
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Majority Leader
United States House of Representatives
Washington, DC 20515

The Honorable Steny Hoyer
Minority Whip
United States House of Representatives
Washington, DC 20515

Members of the House Judiciary Committee

Members of the Senate Committee on the Judiciary

NOMINATIONS OF KARA STOLL, NOMINEE TO BE A U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT, AND ROSEANN A. KETCHMARK, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI

WEDNESDAY, MARCH 11, 2015

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. Charles E. Grassley, Chairman of the Committee, presiding.

Present: Senators Grassley, Tillis, and Franken.

Chairman GRASSLEY. I am not going to make an opening statement until my two colleagues have made their statement.

If you are ready, Senator Blunt and Senator McCaskill. Senator McCaskill, you are the senior Senator, so we will start with you.

Senator MCCASKILL. I am going to defer to my colleague.

Chairman GRASSLEY. Then, Senator Blunt.

STATEMENT OF HON. ROY BLUNT, A U.S. SENATOR FROM THE STATE OF MISSOURI, INTRODUCING ROSEANN A. KETCHMARK, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI

Senator BLUNT. Well, I am pleased to be here, Chairman. I thank Senator McCaskill for deferring to me. I have got an appropriations hearing on Armed Services and I am going to be leaving to go there, but that should not be a reflection of any lack of enthusiasm for this nominee.

I think Roseann Ketchmark will do a great job as a judge. I am supportive of her. Looking at her background, I think we will all be impressed the more we find out about her. She spent 4 years while getting her law degree as a registered nurse.

She served for 12 years on the advocacy board for the Child Advocacy Center. This is something that, in the last Congress when we extended the Victims of Child Abuse Act, many of us got to be more familiar with those centers and the good work they do than we would be otherwise.

I am not personally well connected to the Ketchmark family, but I have lots of friends who are. And by the way, her family is here with her today. Her husband, her brother-in-law, her three children, all proud of her, as they should be.

But I am well connected with people that she has worked with and for. She worked for the Jackson County prosecuting attorney, who is a friend of mine. She worked for the Platte County prosecuting attorney, who is a friend of mine. She worked for—when Senator McCaskill was the Prosecutor in Jackson County, obviously worked for a Democrat. She worked for a Republican prosecutor in Platte County. She worked for a Republican U.S. Attorney and a Democrat U.S. Attorney and in all cases, they are supportive of her and her work and an advocate for her as we talk about this judgeship for the U.S. District Court Judge for the Western District of Missouri.

I hope the Committee reports her out favorably and I intend to support her not only today, but on the floor.

Senator McCaskill.

STATEMENT OF HON. CLAIRE McCASKILL, A U.S. SENATOR FROM THE STATE OF MISSOURI, INTRODUCING ROSEANN A. KETCHMARK, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI

Senator MCCASKILL. Thank you very much. Thank you, Senator Grassley, and thank you, Senator Blunt.

I am honored to be here today to lend my support to Roseann Ketchmark for a position on the Western District Federal bench.

I have known Roseann since I took office as Jackson County Prosecutor in January 1993. She was an Assistant Prosecutor in the Office. And when you run a prosecutor's office, many days it feels like you are herding cats, and I am not talking about the criminals. I am talking about all the Type A personalities you have in the office, because people who are attracted to the work of a prosecutor, many types have—well, let us say maybe a heightened sense of self, to put it diplomatically.

Roseann stood out to me because she did not. Roseann was a trained nurse and as I grew to know my staff, I was always struck by the fact that she was not capable of showboating. She was not capable of trying to get the light to shine on her. She had no sharp elbows. She kept her head down and worked incredibly hard and produced a quality product, and by product, I mean her time in the courtroom.

There are different ways to be effective in a courtroom. There are some lawyers that are very effective in a courtroom because they know how to fill the space with their personality. There are other attorneys that are good in the courtroom because they gain the confidence of the jurors, and that is the kind of trial lawyer that Roseann Ketchmark was. That is the kind of prosecutor she was.

Because she was so good at her job, I designated her as the lead child homicide prosecutor in my office. Now, that is an enormous responsibility. And imagine the psychology of that job. Imagine the stress of every day knowing you had to open files and become very familiar with sets of facts that no one should ever have to read about, much less relive day in and day out as you prove to our criminal justice system that someone deserves to be locked up for killing a child.

I was sad when she got another job, but it was a promotion and it is always encouraging when people you work with in your office

are succeeding and moving on. And she went on to work for, as Senator Blunt mentioned, a Republican prosecutor in the adjoining county.

He quickly realized that she was the kind of manager and prosecutor that could be a mentor, someone who could train young lawyers and who could help run his office, and she was the first assistant, which is the most important job—that is like a chief of staff in the Senate—in terms of making sure the office runs well.

She did such a good job there that she was then recruited away to the U.S. Attorney's Office, where she has done remarkable work for 14 years under U.S. Attorneys that were appointed by Republican Presidents and U.S. Attorneys that were appointed by Democratic Presidents.

The one thing that I always like to find out about when I am looking at candidates to have a lifetime appointment is how do the people who work with them feel about them, how do the lawyers that are on the other side of cases feel about them, how do judges view them. And in this case, Roseann Ketchmark is at the top of everyone's list. And these are from very liberal criminal defense lawyers who I disagree with a lot on many things to the most conservative Federal judges.

Roseann has incredibly high references. And I am not sure, Senator, that you will have very many judges that will come before you, potential judges, judges that are seeking confirmation, that have been a lead lawyer in a jury trial over 75 times. She has participated in more than 100 trials, and when you have been—and in front of 28 different judges.

So Roseann Ketchmark knows a good judge when she sees it because she has been in a courtroom in front of 28 different judges, which allows you to view what works in a courtroom, what habits do judges have that are respectful of the litigants, what judges show how hard they have worked in terms of really understanding the issues in front of them, not just something that has been written by their staff, but something they fundamentally grasp and understand.

So I think this is going to be a superior appointment, a superior confirmation. I really want to tell you how much I appreciate, Senator Grassley, you holding this hearing today. I know that it is hard to figure out who gets in front of the Committee and who does not at this point, and I know I speak for Senator Blunt that the State of Missouri is very grateful that you are giving her an opportunity to appear in front of you today.

Thank you very much.

Chairman GRASSLEY. It is not our tradition to vote people out of Committee just because of two speeches like yours, but it probably means that they are going to have a smooth ride.

[Laughter.]

Chairman GRASSLEY. Thanks to both of the Senators. Thank you very much.

If the two people would come to the table and before you sit, normally I do not have people stand up to swear, but as long as you are standing up, let us do it this way.

[Nominees are sworn in.]

Chairman GRASSLEY. Thank you. Both affirm that.

Before I introduce Ms. Stoll, I will give my opening statement, because I wanted to defer to my Senate colleagues, because they are busy with other Committees and I thank them very much for their introduction of Ms. Ketchmark. And I will introduce Ms. Stoll in just a minute.

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

Chairman GRASSLEY. Today we will hear from two nominees to the Federal bench: Kara Stoll, nominated to be Circuit Judge for the Federal Circuit, and Roseann Ketchmark, nominated to be District Judge for the Western District of Missouri.

Anybody that has statements to put in the record, the record will remain open for a few days for my fellow Senators to do that.

I would now go to the introduction of Ms. Stoll, because, Ms. Ketchmark, I will not be introducing you because you have already been introduced so well.

The nominee, Ms. Stoll, is currently a partner in the Washington, DC, office of Finnegan, one of the world's largest intellectual property firms.

Ms. Stoll graduated from Michigan State University in 1991 with a degree in electrical engineering. She worked as a patent examiner in the U.S. Patent and Trademark Office for 6 years.

In 1997, Ms. Stoll graduated from Georgetown University Law Center. After graduation, she clerked on the Federal circuit for Judge Schall. Ms. Stoll joined Finnegan in 1998 as an associate, made partner in 2006. Her legal career has focused on the area of patent litigation.

In addition to her patent litigation practice, she often appears on panels and gives lectures addressing certain developments of intellectual property law.

In 2013, she was named a Washington, DC, quote, unquote, "Super Lawyer" in intellectual property litigation.

Ms. Stoll has also taught courses on Federal circuit practice and procedure and patent law and public policy at Howard University School of Law and George Mason University School of Law.

Now, we will start with Ms. Stoll. Before you make your opening statement, you have an opportunity to introduce any family and friends or professional associates that you have with you that you want us to know about.

Since there are not so many people here, you will not have to stand, but if you would raise your hand so we know who you are. Would you proceed? And then I will call on Ms. Ketchmark after Ms. Stoll makes her opening statement.

STATEMENT OF KARA STOLL, NOMINEE TO BE A U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT

Ms. STOLL. Thank you, Chairman Grassley.

I would like to first start by thanking President Obama for nominating me.

I would like to thank Chairman Grassley, Ranking Member Leahy, and the Members of the Committee for scheduling this hearing. I am so grateful to be here and for your consideration.

For introductions, I am fortunate to have lots of family and friends here with me to support me today and I would like to first introduce my husband, Tom Stoll, and thank him for his unending love and support.

I would like to introduce our three children: Jackie, Braden, and Tessa. And I would like to introduce my parents, Jack and Jackie Fernandez, and thank them for teaching me the value of hard work and getting a good education.

I would like to introduce my wonderful brother- and sister-in-law, Bob and Suzanne Stoll, and my nephew, Michael Stoll, and thank them for their love and support.

And last, but not least, I would like to introduce my wonderful assistant and friend for the past 14 years, Susie Plinsky, and my partner and mentor, Mike Jakes, and my many other friends and colleagues who are here from Finnegan, the United States Patent and Trademark Office, and the court.

I am so grateful to have had the opportunity to work with and learn from them. And last, but not least, I would just like to thank any friends and family who are watching.

Chairman GRASSLEY. Thank you. Now, would you like to proceed with any statement you want to make? You do not have to make a statement, but if you want to, this is the time to do it.

Ms. STOLL. I do not have a statement. Thank you.

Chairman GRASSLEY. Now, we go to Ms. Ketchmark. Before you do that, since we have not had a Member of the Minority speak yet and if you had a statement for the Minority or for yourself, I should give deference to you at this point.

Senator FRANKEN. You should.

[Laughter.]

Senator FRANKEN. Oh, I have nothing to say.

[Laughter.]

Chairman GRASSLEY. Now, Ms. Ketchmark.

STATEMENT OF ROSEANN A. KETCHMARK, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI

Ms. KETCHMARK. Good morning, Chairman Grassley and the distinguished Members of the Committee. Thank you for the opportunity to appear before you today and for considering my nomination.

I am honored and grateful to be nominated to this important position.

I would also like to thank my Senators from the great State of Missouri, Senators Claire McCaskill and Roy Blunt, for all of their past and their ongoing support for me and for their kind introductions.

With me today is my husband, David, and our three children. Our oldest is Nick, who is a second-year student, a biochem major, at the University of Missouri. Our daughter, Jill, is in the 8th grade. And our youngest, Josh, is in the 6th grade.

Also here today is my brother-in-law, Michael Ketchmark, and his law partner, Scott McCreight. I am also delighted and honored to have Judge Gary Fenner with me today. He is a Federal District Judge with the Western District of Missouri.

Again, thank you for considering my nomination and I look forward to answering your questions.

Chairman GRASSLEY. What we will do is we will do five rounds by order of people coming in, first recognizing Senator Tillis and then Senator Franken. I will start.

I am going to start with Ms. Stoll. How do you expect your experience as a patent examiner at Patent and Trademark Office will impact your judicial decisionmaking process?

Ms. STOLL. Thank you. I think that I have a wealth of experience that would help me in my position, were I lucky enough to be confirmed.

That experience that I had at the Patent Office introduced me to concepts of patent law. I learned how to quickly learn new technology and to quickly and efficiently reach decisions. And I also have, as you mentioned, a lot of other experience, including representing plaintiffs and defendants. So I can understand both sides of the issues.

Chairman GRASSLEY. The second question to you: the American Invents Act created by the Patent Trial and Appeal Board. Post-grant review proceedings which place appellate jurisdiction in the U.S. Court of Appeals for the Federal Circuit.

Because this process is relatively new, the Federal circuit has considered and is expected to face a number of cases of first impression. If there were no controlling precedent was a dispositive on an issue with which you were presented, to what source would you turn for persuasive authority?

Ms. STOLL. If I were fortunate enough to be confirmed, I would—and there were no controlling precedent, I would, of course, turn to the governing law, whether it be a statute or regulation, and I could also consult other sources if necessary. For example, we could review decisions that although are not binding, but might be advisory, from other circuit courts or in other areas of the law, but first and foremost, I would consult the statute and any other governing law.

Chairman GRASSLEY. I probably should have asked the next question before I just asked that one.

What would be the principles that would guide you or what methods would you employ in deciding cases of first precedent?

Ms. STOLL. Just to clarify, did you say cases of first impression?

Chairman GRASSLEY. Yes. I think I said impression wrong, but go ahead. Thank you for the correction.

[Laughter.]

Ms. STOLL. Thank you, Chairman Grassley.

I would first look to whatever the governing law is. The Federal circuit often is hearing cases involving statutes, and so I would turn to the statute and look to the plain language of the statute.

I could also consult decisions from other circuit courts or from the Supreme Court in analogous areas of the law or cases that might not be binding, but nonetheless could be instructive.

Chairman GRASSLEY. In a recent article co-authored by you, IP Litigator, when discussing the Federal circuit, you stated, quote, "A Federal Circuit appeal requires the parties to move beyond recitation of technical arguments; thus, including in the PTAB record, where possible, facts for developing compelling equitable and/or

policy arguments and then highlighting those facts on appeal can be important to the eventual outcome. The Federal Circuit must consider how its decisions will affect not only the present parties, but future litigants, as well."

I would like to have you elaborate on it. And then second, what weight will equitable and/or positive arguments play in your decisionmaking process?

Ms. STOLL. Well, first of all, I would just like to say that I recognize that there is a difference between the role of an advocate and the role of a judge. And if I were fortunate enough to be confirmed, I would apply—I would, with full faith, apply the law to the facts to determine the correct outcome.

I do not think that equitable considerations should factor into it if, when you apply the law to the facts, you have an—you have the right outcome.

Chairman GRASSLEY. I am going to go to Ms. Ketchmark now. And if my colleagues will give me a little time over 5 minutes so I do not have to go back for a second round.

Ms. Ketchmark, you served as a prosecutor for many years. Early in your career, you were profiled in a local newspaper article as rising star. That is quite a complimentary thing. In this article, you discussed your work on child molester and sex offender cases, which are often difficult cases to prosecute as they involve emotion with children and families.

You were quoted as saying, quote, "I don't enjoy punishing, yet consider what they do to the children," end of quote. Later on you said that, quote, "Penitentiary doesn't help anyone," end of quote.

So I would like to ask you about that particular comment. Could you please explain what you meant by that statement? For instance, do you believe a judge should balance seeking justice for victims and punishments with the need of rehabilitation for offenders?

Ms. KETCHMARK. Thank you, Chairman Grassley.

The penitentiary is very valuable for a number of reasons. Statistically, it may not have the highest rehabilitation value that we would hope, but it does serve to punish. It does serve to deter and it does help the victims for just making them—securing punishment for the victims.

So I do want to make sure that, and I think my record reflects that, I think prison systems are very valuable and needed, especially in child molestation cases.

Chairman GRASSLEY. If confirmed, are there any crimes or types of offenders that you would have difficulty sentencing to a long prison term if the statute mandated one?

Ms. KETCHMARK. No.

Chairman GRASSLEY. In another article, you mentioned that prosecutors sometimes agree to, quote, "weak plea deals to save children the trauma of trial," end of quote. I can imagine, as a prosecutor, these are difficult decisions that you or other people have to make.

If confirmed, you will be presented with plea deals from time to time that you will need to accept or reject. How would you balance these considerations as a judge?

Ms. KETCHMARK. Thank you, Chairman Grassley.

There are a number of factors that go into plea negotiations. Regarding crimes against children and sex crimes, one of the factors is the trauma, especially of children, testifying in a court proceeding. Disclosing their first sexual experience to jurors is very scary.

I do think that that is a factor in plea negotiations. I do not think that children testifying is particularly therapeutic. So I do believe that is a valid consideration when you discuss dispositive dispositions of criminal cases.

Chairman GRASSLEY. For both of the nominees, I will have additional written questions and other Members that cannot be here will probably have additional questions for answer in writing.

We usually do not schedule to be on the agenda until we get those responded or you could be on the agenda, but maybe not taken up until you have responded to all those questions.

Senator Tillis, I was making a judgment first come, first answer, based upon what we used to do in the Finance Committee when I was Chairman. The precedent here dictates that I go to Senator Franken before you.

Senator TILLIS. Thank you, Mr. Chairman. I recognize Senator Franken was here far later than me, but I do think it is appropriate he goes first.

[Laughter.]

Senator FRANKEN. I ask that that be stricken.

[Laughter.]

Chairman GRASSLEY. So ordered.

Senator FRANKEN. Thank you, Mr. Chairman.

My first question is for Jackie, Braden, Tessa, Nick, Jill and Josh.

[Laughter.]

Senator FRANKEN. If your mother is confirmed, would you refer to her, as you are supposed to, as Your Honor?

[Laughter.]

Senator FRANKEN. I got a "no" from Josh and, for the record, no response from the others.

[Laughter.]

Senator FRANKEN. Ms. Ketchmark, congratulations on Josh.

[Laughter.]

Senator FRANKEN. Ms. Stoll, congratulations on your nomination. One of the issues we have been wrestling with here in the Senate is patent litigation.

In the last year, the Supreme Court has issued several rulings on patents that some have suggested may have the effect of curbing some of the bad practice we have seen from patent trolls.

Those decisions, such as the Court's decision in *Alice Corporation v. CLS Bank*, tighten requirements for obtaining certain patents and make it easier for people to challenge the validity of patents. And we have seen reports that the number of new lawsuits filed by patent holders for infringement have dropped.

Based on your experience in patent litigation, do you agree with those who believe that the Court's recent decisions have resulted in fewer complaints being filed? What other factors do you believe may be contributing and to what extent, if any, do you see these

developments helping small businesses and retailers affected by the abusive litigation practices?

Ms. STOLL. Thank you for your question, Senator.

I am familiar with those Supreme Court cases, of course, and I am also familiar with the problems that you are mentioning. And I can tell you that if I were fortunate enough to be confirmed, I would apply Supreme Court precedent faithfully to the facts before me. And I also would apply any legislation that Congress enacted faithfully to the facts before me.

Senator FRANKEN. But you have no opinion on whether these decisions have tamped down at least a little bit what the effect of has this been.

Ms. STOLL. I do think that those decisions have made it easier to show that patents are invalid and—or that they are not eligible under—for patent validity under 35 U.S.C. Section 101.

I do think that it—those decisions have made it so defendants have an easier time to present in their litigation against patent owners, but I do not know whether there has been a reduction in litigation. And, again, I would just emphasize that I would follow whatever law Congress enacted.

Senator FRANKEN. Sure. Ms. Ketchmark, as the Chairman said earlier, in your career as a prosecutor, you tried crimes against children and sexual assault cases on children.

As I understand it, these cases can pose unique challenges as law enforcement and victims' advocates work together to bring the perpetrator to justice while countering the impact of the assault on the victim and it is impossible to overstate the devastating effect that these assaults have on the victims.

In many parts of the country, prosecutors have recognized the value of using a coordinated multidisciplinary approach in these cases to keep victims safe and assist them in participating in the prosecution. Child advocacy centers, or CACs, are the center of the strategy, epicenter of it. These centers bring together law enforcement, child services, mental health professionals—I do not have to tell you this. I am saying it for everybody else—to coordinate treatment for the victims with the investigation and prosecution of child abuse cases, and I understand that you served on the board of a CAC for many years; is that correct?

Ms. KETCHMARK. Yes, sir.

Senator FRANKEN. Based on your own experiences in the field, can you explain how CACs and other resources for survivors of sexual assault and domestic violence aid in the prosecution of these crimes and why is it so important that local law enforcement and advocacy organizations have resources like CACs?

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

CACs—I am, obviously, an advocate of child advocacy centers. I currently sit on the advisory board at the child advocacy center in the northen part of Kansas City.

The focus of the child advocacy centers is to conduct a forensic interview of the children. That is a one-time interview that is coordinated with all members of, as you mentioned, law enforcement, prosecution, counseling, medical, and treatment disciplines so that the children are not going from office to office repeating the trauma that they have been through.

Senator FRANKEN. Thank you.

Thank you, Mr. Chairman.

Chairman GRASSLEY. Thank you, Senator Franken.

Now, Senator Tillis.

Senator TILLIS. Thank you, Mr. Chair.

Ms. Ketchmark and Ms. Stoll, congratulations. Good to see a proud group of supporters back behind you, as well.

I do have to tell you, in a relative short political career of 8 years, this has already been a remarkable hearing because it is the first time I have ever heard attorneys waive their right to be able to make a long written statement.

[Laughter.]

Senator TILLIS. So that already reinforces my positive predisposition toward both of you before you came in here.

In all seriousness, congratulations. I look forward to supporting your nomination.

Ms. Stoll, I have just a few questions. One of them relates to the disturbing reports we have heard about the backlog of veterans' claims that will come before your bench.

I know that the statutes limit the scope of review for the Federal circuit when they are hearing veterans' appeals. They give you a fair amount of latitude to set aside regulations that are arbitrary, capricious, and I think, hopefully, that means to streamline the process.

I think in 2013, about 13 percent of all the cases you all heard were veterans' appeals, veterans' claims appeals.

Have you had an opportunity to look into this process and do you have any thoughts or ideas on how we may be able to—hopefully a lot will be cleared in pre-appeal, but the ones that ultimately have to come before you, any thoughts on things we can do to make this a priority and help clear the backlog and do the right thing for the veterans?

Ms. STOLL. Thank you for your question and your interest in that area of the law.

I have represented veterans in various pro bono veterans' appeals before the Federal circuit and it is an area of law that is important to me.

I am not that familiar with the problem you have mentioned, but I can tell you that, if I were lucky enough to be confirmed, I would do my best to learn everything I needed to fairly and impartially decide those cases and do everything I need to get totally up to speed on the veterans' appeals.

Senator TILLIS. I hope you will make it a priority. In a State that has as many veterans as some States have citizens, it is personally very important to me and it is obviously important to all veterans across the country.

I only have one other question. And, Ms. Ketchmark, I am not asking you questions for a lack of interest, but I am deferring to my Members and their very high regard for you and since the matters that would come before you would not involve North Carolina, I am just focusing a little bit more on Ms. Stoll.

Ms. Stoll, I only have one final question. I think your experience in intellectual property and patents is extraordinary and I think it will be great experience to bring to the bench. I did have a question

about any experience that you may have with respect to international trade or areas where your past experience may be relevant.

Ms. STOLL. I did clerk at the Federal circuit and during that time I was introduced to other areas of the court's jurisdiction, including international trade. I think that because I have such an extensive background in patent law, I am hopeful that I will be able to start running quickly with those kinds of cases and that the other areas of the court's jurisdiction, including international trade, I will devote all my efforts to try to get up to speed as quickly and efficiently as possible.

Senator TILLIS. Thank you. And by the way, I have kids and I have for 8 years tried to get them to call me Your Honor and they will not do it either. So you are right, Josh. Thank you.

Chairman GRASSLEY. Are you done? Before you folks leave, I want to bring up something to Ms. Stoll. This is not a question. It is not anything you have got to do with.

But, you know, from the Merit Service Protection Board, appeals go to the circuit you are going to be on. I have been a long-time advocate of whistleblower protection and so that appeal goes out.

So I want to make you aware of something and there is no implication in my statement that you do not have to follow the law. But if you look statistically at the number of whistleblower cases that have been appealed to this circuit, whistleblowers have a miserable record of winning. And I do not know whether—I am just giving you a feeling that there is not the proper—I know you are going to tell me, well, they are just interpreting the law against the facts.

But I think there ought to be more careful, based on the statistics of whistleblowers losing so many cases before it, that there is a proper consideration of the importance of whistleblowers in our system of government.

I guess I will leave it at that. That is not a lawyerly way of expressing my view, but it is a political way of expressing my view and I hope that you will be very careful about how you handle whistleblower cases.

Ms. STOLL. Thank you, Chairman Grassley, for your interest in that important area of the law. I have no background in Whistleblower Protection Act, but I can tell you that, if I am fortunate enough to be confirmed, I will do what I can to faithfully apply the statute and award protection warranted.

Chairman GRASSLEY. I want you to know that I did not expect you to give an answer now and whatever you said now will not be used against you.

[Laughter.]

Chairman GRASSLEY. Thank you very much. You are dismissed. Committee meeting adjourned. We will get questions to you within 1 week. So all the Members be aware of the 1-week limit.

The meeting is adjourned.

[Whereupon, at 10:40 a.m., the hearing 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 11, 2015
Dirksen Senate Office Building, Room 226
10:00 a.m.

Kara Stoll, to be a United States Circuit Judge for the Federal Circuit

Roseann A Ketchmark, to be a United States District Judge for the Western 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).

   Roseann Ambrosia Ketchmark
   Roseann Ambrosia Smith
   Roseann Ambrosia Geffre
   Roseann A.G. Smith
   Roseann A.G. Ketchmark

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

   United States District Court Judge for the Western District of Missouri

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

   U.S. Attorney's Office for the Western District of Missouri
   400 East 9th Street
   Suite 5510
   Kansas City, Missouri 64106

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

   1963; Lindsay, Oklahoma

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

   1987 – 1990, University of Kansas; J.D., 1990
   1981 – 1986, University of Oklahoma; B.S., 1986

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

2001 – present
U.S. Attorney's Office for the Western District of Missouri
400 East 9th Street, Suite 5510
Kansas City, Missouri 64106
Assistant United States Attorney (2010 – present)
Executive Assistant United States Attorney (March – June 2010)
First Assistant United States Attorney (2009 – 2010)
Assistant United States Attorney (2007 – 2009)
Executive Assistant United States Attorney (2006 – 2007)
First Assistant United States Attorney (2001 – 2006)

1995 – 2001
Platte County Prosecutor
328 Main, 3rd Floor
Platte City, Missouri 64079
First Assistant Prosecutor

1990 – 1995
Jackson County Prosecutor
415 East 12th Street, 7th Floor
Kansas City, Missouri 64106
Assistant Prosecutor (1990 – 1995)
Law Intern (January – September 1990)

Summer 1989
Johnson County District Attorney's Office
100 North Kansas Avenue
Olathe, Kansas 66061
(no payment received from services)
Law Intern

1988 – 1990
North Kansas City Hospital
2800 Hospital Drive
North Kansas City, Missouri 64116
Registered Nurse

1987 – 1988
Favorite Nurses
801 West 47th Street, Suite 419
Kansas City, Missouri 64112
Registered Nurse

1986 – 1987
Lindsay Municipal Hospital

1305 West Cherokee Street
Lindsay, Oklahoma 73052
Registered Nurse

Other Affiliations (uncompensated unless otherwise indicated):

2006 – present
Geffre's Travel Inn
300 Third Avenue SW
Lamoure, North Dakota 58458
Partner (25% ownership) (2006 – 2011)
Partner (50% ownership) (2011 – present)

2006 – present
Geffre's Travel Inn
401 Main Avenue
Oakes, North Dakota 58474
Partner (25% ownership) (2006 – 2011)
Partner (50% ownership) (2011 – present)

2002 – present
Synergy Services, Inc.
400 East 6th Street
Parkville, Missouri 64152
Children's Advocacy Center Advisory Board Member

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

   I have not served in the U.S. Military, and am not subject to the selective service registration requirement.

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.

   Exceptional Service Award, National Association of Former U.S. Attorneys (2011)
   "40 Under Forty" Community Leadership Award, Ingram's Business Magazine (2003)
   Jackson County Prosecutor's Trial Attorney of the Year (1994)
   Jackson County Prosecutor's Rookie of the Year (1991)
   University of Oklahoma Outstanding Senior in the College of Nursing (1986)
   University of Oklahoma "Big Woman on Campus" Leadership Award (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.

Association for Women Lawyers of Kansas City
Missouri Bar Association
Criminal Law and Procedure Committee (2002 – present)
Missouri Association of Prosecuting Attorneys
Platte 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.

Missouri, 1990
Kansas, 1991

On July 21, 1993, I requested removal from the Kansas Bar, when I realized I would not be practicing law in Kansas.

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

U.S. Court of Appeals for the Eighth Circuit, 2004

U.S. District Court for the Western District of Missouri, 2001

State of Kansas, 1991

State of Missouri, 1990

I am no longer admitted to practice in Kansas. On July 21, 1993, I requested removal from the Kansas Bar when I realized I would not be practicing law in Kansas.

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.

Jackson County Child Fatality Review Panel (1991 – 1995)

Jackson County Child Sexual Abuse Task Force (1990 – 1995)
Chair (1993 – 1995)

Missouri Department of Health and Senior Services, Center for Emergency Response and Terrorism, Federal Point of Dispensing (2011 – present)

Monticello Subdivision Swimming Pool Committee (2007 – 2009)

Northland Community Response Team (CRT) (1998 – present)

Park Hill Community Drug Task Force (1995 – 2001)
Tobacco Subcommittee (1995 – 2001)

Platte County Child Fatality Review Panel (1995 – 2001)
Chair (1995 – 2001)

U.S. Attorney's Anti-Terrorism Task Force (2003 – 2006)

Synergy Services, Inc. Children's Advocacy Center (CAC) (2002 – present)
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.

To the best of my knowledge, none of the organizations of which I am a member or have been a member 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.

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.

Letter of Support for Ann Hansbrough (Association for Women Lawyers of Kansas City, October 3, 2013). Copy supplied.

Application for Associate Circuit Judge, Sixth Circuit Judicial Commission (March 1, 2010). 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.

In the past 24 years as an assistant prosecutor, I have periodically given presentations to law enforcement, probation, and parole officers. I usually speak on crimes against children and sexual assault. I do not know the specific dates I have given such presentations. I often do not speak from a prepared text, and I have not always retained any presentation notes I may have prepared. 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. I have located the following:

March 6, 2013: Guest Presenter, Career Share, English Landing Elementary School, Kansas City, MO. I spoke to the elementary students about a career in the legal field. PowerPoint supplied.

April 25, 2012: Presenter, Murder Trial of *U.S. v. Montgomery*, 2012 Kansas Association of Court Services Officers Spring Conference, Mayetta, KS.

PowerPoint (graphic autopsy photos omitted), last edited on April 21, 2011, supplied.

March 7, 2011: Guest Speaker, Criminal Evidence, Lakeview Middle School, Kansas City, MO. PowerPoint supplied.

October 15, 2009: Presenter, Overview of the U.S. Department of Justice and the U.S. Attorney's Office for the Western District of Missouri, Rockhurst High School, Kansas City, MO. PowerPoint supplied.

March 11, 2009: Presenter, Murder Trial of *U.S. v. Montgomery*, Buchanan County Bar Meeting, St. Joseph, MO. I presented on the capital murder trial of *U.S. v. Montgomery*. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on September 26, 2008, for which a copy of the PowerPoint has been supplied.

February 9, 2009: Presenter, Criminal Justice System, University of Missouri – Kansas City, Kansas City, MO. I presented an overview of the criminal justice system to the Applied Criminal Procedure and Evidence Class. I have no notes, transcript or recording. The address of the University of Missouri – Kansas City is 5100 Rockhill Road, Kansas City, MO 64110.

January 19, 2009: Presenter, Murder Trial of *U.S. v. Montgomery*, Platte County Bar Quarterly Meeting, Kansas City, MO. I presented on the capital murder trial of *U.S. v. Montgomery*. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on September 26, 2008, for which a copy of the PowerPoint has been supplied.

September 26, 2008: Co-Presenter, Murder Trial of *U.S. v. Montgomery*, 2008 Osage County Court Services Conference, Melvern, KS. PowerPoint supplied (graphic autopsy photos omitted).

August 11, 2008: Co-Presenter, Murder Trial of *U.S. v. Montgomery*, 20th Annual Crimes Against Children Conference, hosted by the National Center for Missing and Exploited Children, Dallas, TX. PowerPoint supplied (graphic autopsy photos omitted).

April 10, 2008: Co-Presenter, Murder Trial of *U.S. v. Montgomery*, FBI National Academy Associates and Kansas City FBI Office, Wichita, KS. I presented on the capital murder trial of *U.S. v. Montgomery*. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on August 11, 2008, for which a copy of the PowerPoint has been supplied.

March 14, 2008: Co-Presenter, Murder Trial of *U.S. v. Montgomery*, Interstate Advisory Council for Missing and Exploited Children 2008 Annual Meeting,

Kansas City, MO. PowerPoint (graphic autopsy photos omitted), last edited on December 16, 2004, supplied.

August 29, 2005: Lecturer, Management Issues for AUSA Managers course, sponsored by the Department of Justice National Advocacy Center, Columbia, SC. Because the materials used at this training are law enforcement sensitive, they are not supplied.

June 29, 2005: Presenter, Media Relations, Kansas City Missouri Bar Association's CLE Seminar, Kansas City, MO. I prepared a PowerPoint presentation which lists me as presenter. My son was hospitalized that morning, and a co-worker presented the material in my place. Annotated PowerPoint supplied.

October 25, 2004: Presenter, Overview of the Department of Justice, Boy Scouts of America, Kansas City, MO. I presented an overview of the Department of Justice and the U.S. Attorney's Office for the Western District of Missouri. I have no notes, transcript, or recording. The address of the Boy Scouts is 10210 Holmes Road, Kansas City, MO 64131.

October 1, 2004: Presentation of retirement plaque on behalf of the U.S. Attorney's Office for the Western District of Missouri to Bureau of Prison Warden Hershberger, Hilton Hotel, Kansas City, KS. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 400 East 9th Street, Kansas City, MO 64106

May 15, 2003: Presentation of retirement plaque on behalf of the U.S. Attorney's Office for the Western District of Missouri to Bankruptcy Trustee Joel Pelofsky, Fedora's Restaurant, Kansas City, MO. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 400 East 9th Street, Kansas City, MO 64106

July 31, 2001: Lecturer, Opening Statements, Missouri Office of Prosecuting Attorneys' Trial School, Jefferson City, MO. Because the materials used at this training are law enforcement sensitive, they are not supplied.

January 18, 2001: Guest Presenter, Career Day, Lakeview Middle School, Kansas City, MO. I spoke to the middle school students about a career in the legal field. I have no notes, transcript or recording. The address of Lakeview Middle School is 6720 NW 64th Street, Kansas City, MO 64151.

January 10, 2001: Guest Presenter, Career Day, Congress Middle School, Kansas City, MO. I spoke to the students about a career in the legal field. I have no notes, transcript or recording. The address of Congress Middle School is 8150 North Congress Avenue, Kansas City, MO 64152.

January 2001: Instructor, National Trial Advocacy III School, National Advocacy Center, Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied.

December 2000: Instructor, National Trial Advocacy School, National Advocacy Center, Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied.

September 2000: Instructor, Missouri Office of Prosecuting Attorneys' Vehicular Homicide Trial School, Kansas City, Missouri. Because the materials used at this training are law enforcement sensitive, they are not supplied.

July 2000: Instructor, Missouri Office of Prosecuting Attorneys' Trial Advocacy School, Jefferson City, Missouri. Because the materials used at this training are law enforcement sensitive, they are not supplied.

March 21, 2000: Guest Presenter, Career Day, Park Hill South High School, Kansas City, MO. I spoke to the students about a career in the legal field. I have no notes, transcript or recording. The address of Park Hill South High School is 4500 NW River Park Drive, Kansas City, MO 64150.

February 5, 2000: Lecturer, 2000 Platte County, Missouri, Police Officers Standards and Training, Platte City, MO. I do not recall the topic on which I presented. I have no notes, transcript or recording. The address of the Platte County Sheriff's Office is 415 3rd Street #10, Platte City, MO 64079.

February 2000: Instructor, National Trial Advocacy School, National Advocacy Center, Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied.

January 12, 2000: Guest Presenter, Northland Career Fair, Northland Career Center, Platte City, MO. I spoke to the students about a career in the legal field. I have no notes, transcript or recording. The address of Northland Career Center is 1801 Branch Street, Platte City, MO 64079.

November 10, 1999: Guest Presenter, Career Day, Platte County R-3 High School, Platte City, MO. I spoke to the high school students about a career in the legal field. I have no notes, transcript or recording. The address of Platte County R-3 High School is 1501 Branch Street, Platte City, MO 64079.

October 20, 1999: Guest Presenter, Career Day, Park Hill High School. I spoke to the high school students about a career in the legal field. I have no notes, transcript or recording. The address of Park Hill South High School is 7701 NW Barry Road, Kansas City, MO 64153.

September 1999: Instructor, Missouri Office of Prosecuting Attorneys' Vehicular Homicide Trial School, St. Peters, Missouri. Because the materials used at this training are law enforcement sensitive, they are not supplied.

August 1999: Instructor, Missouri Office of Prosecuting Attorneys' Trial Advocacy School, Jefferson City, Missouri. Because the materials used at this training are law enforcement sensitive, they are not supplied.

May 1999: Instructor, National Advanced Trial Advocacy School, National Advocacy Center, Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied.

September 1998: Instructor, Missouri Lethal Weapon Advanced Trial School, hosted by the Missouri Office of Prosecuting Attorneys, Kansas City, Missouri. Because the materials used at this training are law enforcement sensitive, they are not supplied.

July 28, 1998 and July 29, 1998: Lecturer, Sexual Crimes, 1998 Platte County, Missouri, Police Officers Standards and Training, Platte City, MO. This course was law enforcement sensitive, and I have no notes, transcript or recording.

July 1998: Instructor, Missouri Office of Prosecuting Attorneys' Trial Advocacy School, Jefferson City, Missouri. Because the materials used at this training are law enforcement sensitive, they are not supplied.

November 13, 1997: Guest Speaker, Criminal Law, Platte County R-3 High School, Platte City, MO. I spoke to the freshman class about criminal law and the criminal justice system. I have no notes, transcript or recording. The address of Platte County R-3 High School is 1501 Branch Street, Platte City, MO 64079.

September 13, 1997: Guest Speaker, Interviewing for Jobs, University of Missouri Extension – Platte County, Kansas City, MO. I spoke to the group regarding professionalism and interviewing for jobs. I have no notes, transcript or recording. The address of the Platte County Extension Center is 11724 NW Plaza Circle, Suite 300, Kansas City, MO 64153.

June 20, 1997: Guest Presenter, Prosecuting Child Sexual Abuse Cases, SafeHaven of Kansas City, Inc.'s 1997 In-Service event, Kansas City, MO. I discussed prosecuting child sexual abuse cases. I have no notes, transcript or recording. The address for SafeHaven is 400 East 6th Street, Parkville, MO 64152.

June 6, 1997: Guest Speaker, Criminal Warrants, Platte County Law Enforcement Breakfast, hosted by the Platte County Sheriff's Department, Kansas City, MO. I spoke about applications for arrest warrants and criminal charges. I

have no notes, transcript or recording. The address of the Platte County Sheriff's Office is 415 3rd Street #10, Platte City, MO 64079.

May 1997: Guest Speaker, Criminal Justice System, English Landing Elementary School, Kansas City, MO. I spoke to the elementary students about the criminal justice system. I have no notes, transcript or recording. The address for English Landing Elementary School is 6500 NW Klamm Drive, Kansas City, MO 64151.

March 27, 1997: Lecturer, Crimes Against Children, 1997 Platte County, Missouri, Police Officers Standards and Training, Platte City, MO. This course was law enforcement sensitive, and I have no notes, transcript or recording.

March 16 – 20, 1997: Lecturer, Cross-Examination, Missouri Office of Prosecuting Attorneys' Train the Trainers Course, St. Louis, MO. Because the materials used at this training are law enforcement sensitive, they are not supplied.

January 6, 1996: Guest Speaker, Current Trends in the Law, University of Missouri – Kansas City, Kansas City, MO. I spoke on current trends regarding rape shield, marital rape, and stalking. I have no notes, transcript or recording. The address of the University of Missouri – Kansas City is 5100 Rockhill Road, Kansas City, MO 64110.

September 9, 1994: Speaker, Legal/Medical Issues of Child Physical/Sexual Abuse, Children's Mercy Hospital 1994 Emergency Care of Children Workshop, Community Center for Health & Education, Kansas City, MO. I spoke on legal issues involving medical findings of child physical and sexual abuse. I have no notes, transcript or recording. The address of Children's Mercy Hospital is 2401 Gillham Road, Kansas City, Missouri 64108.

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

As a former assistant prosecutor with the State of Missouri and as current Assistant U.S. Attorney, I occasionally have given interviews to local radio, television and print media reporters in my official capacity. I do not recall all the interviews I have given or the dates I have given interviews. The interviews most always have centered on a particular case that I was prosecuting. 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:

Frank Morris, *Interview, Former Grandview Mayor Remorseful At Fraud Sentencing,* KCUR FM 89.3 Radio Station (August 4, 2014). I have been unable

to obtain a transcript or recording of the interview, but an article with excerpts is supplied.

FBI: Criminal Pursuit, Maternal Instinct (Season 3, Episode 13) (July 10, 2012). Video recording supplied.

Missouri's Legal Leaders (Shook, Hardy & Bacon, Documentary Video Project, 2008). Video recording supplied.

Mark Morris, *Ex-Deputy Pleads Not Guilty In Mistreatment Of Suspect*, The Kansas City Star, May 28, 2008. Copy supplied.

Jesse Truesdale, *Adding Insult to Injury 18 Months After Car Was Stolen, Couple Dunned For Storage*, The Chieftain, January 31, 2007. Copy supplied.

Chris Grenz, *Bold Moves, Challenges Are Nothing New To Todd Graves,* The Kansas City Business Journal, January 22, 2007. Copy supplied.

Ivan Foley, *Platte City Motorcycle Cop Arrests Bank Robbers,* The Landmark, November 30, 2006. Copy supplied.

Press Release, U.S. Attorney's Office Western District of Missouri, "Rock Port Man Admits Falsifying Forms To Receive Wage While Also Receiving Disability," October 13, 2005. Copy supplied.

Mark Morris, *Former Judge Pleads Guilty*, The Kansas City Star, May 4, 2005. Copy supplied.

Shana Haines, *Former Local Man Gets 37 Years For Sodomy, Porn,* The Landmark, October 2, 2003. Copy supplied.

Young Leaders Unite, Ingram's Magazine, April 2003. Copy supplied.

William Allen, *Tyson Faces CWA Indictment?,* The St. Louis Post-Dispatch, December 27, 2001.

Firefighter Pleads Not Guilty To Arson Charges In Missouri, Associated Press, June 10, 2001. Copy supplied.

Benita Y. Williams, *Husband, Wife Get Decades In Prison,* The Kansas City Star, March 6, 2001. Copy supplied.

Tony Morton, *Let The Chips Fall,* Pitch, August 24, 2000. Copy supplied.

Cindy Eberting, *Woman Learns Car Was Used in Hoax Bomb Threat Was Left On Her Auto At KCI While She Was Away*, The Kansas City Star, August 12, 1998. Copy supplied.

Benita Y. Williams, *Man Accused Of Killing Officer Faces New Charges,* The Kansas City Star, March 4, 1998. Copy supplied.

Court TV, Fatal Sting: MO v. Albanese (Courtroom Television Network) (December 1997). The December 1997 murder trial of *State of Missouri v. Albanese,* in which I served as prosecutor, was broadcast live on television. I believe I was interviewed after the verdict was returned, but do not have any transcripts or recordings of the event.

Joe Lambe, *Chief Pleads Guilty On Calls Driving Time From KC To Town: A Clue To User Of Toll Psychic Hot Line,* The Kansas City Star, July 27, 1996. Copy supplied.

Jerina Copsey, *"Rising Star" Joins Prosecutor's Office,* The Landmark, April 27, 1995. Copy supplied.

Joe Lambe, *Child Witnesses Test The Skills Of Prosecution And Defense,* The Kansas City Star, March 15, 1995. Copy supplied.

Extreme Sex Abuse Case – Prison Time For Assault, Jackson County Advocate, April 14, 1994. Copy supplied.

Donald Bradley, *Infant Deaths: SIDS Or Homicide?,* The Kansas City Star, unknown date in 1994. Copy supplied.

Joe Lambe, *Dead Child's Mother Enters Guilty Plea,* The Kansas City Star, unknown date in 1994. Copy supplied.

Joe Lambe, *Incest Cases Are No-Win Situations,* The Kansas City Star, April 27, 1993. Copy supplied.

Joe Lambe, *Man Receives 140-Year Sentence,* The Kansas City Star, September 26, 1992. Copy supplied.

Karen Blakeman, *Life, 50 Years Is Term In Crimes Blamed On Gang*, The Kansas City Star, October 26, 1991. Copy supplied.

Joe Lambe, *Man Rejects Plea Offer, Then Gets 285 Years,* The Kansas City Star, October 3, 1991. Copy supplied.

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

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

I have not held judicial office.

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

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

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

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

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

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

I have not held public office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

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

In 1992, I volunteered for President Clinton's first presidential campaign by going door-to-door to Democratic voters in St. Joseph, Missouri, to ask questions regarding their current candidate preferences.

Although perhaps not strictly responsive to this question, in 2000, I appeared as an extra in a campaign commercial for U.S. Representative Sam Graves for the Sixth Congressional District of Missouri. I was not identified in the advertisement, nor did I have a speaking role.

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 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.

1990 – 1995
Jackson County Prosecutor
415 East 12th Street, 7th Floor
Kansas City, MO 64106
Assistant Prosecutor

1995 – 2001
Platte County Prosecutor
328 Main, 3rd Floor
Platte City, MO 64079
Assistant Prosecutor

2001 – present
U.S. Attorney's Office for the Western District of Missouri
400 East 9th Street, Suite 5510
Kansas City, MO 64106
First Assistant United States Attorney (2001 – 2006)
Executive Assistant United States Attorney (2006 – 2007)
Assistant United States Attorney (2007 – 2009)
First Assistant United States Attorney (2009 – 2010)
Executive Assistant United States Attorney (March – June 2010)
Assistant United States Attorney (2010 – present)

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

I have not served as a mediator or arbitrator.

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 1995, I served as an Assistant Prosecutor for Jackson County, Missouri. The vast majority of my work involved the prosecution of crimes against children and sexual assaults. I was lead attorney in at least 31 trials, 28 of which were tried to a jury.

From 1995 to 2001, I served as First Assistant Prosecutor for Platte County, Missouri. In addition to supervising a staff of seven attorneys, I was lead attorney in at least 44 trials, 35 of which were tried to a jury. I served as co-counsel in each of the seven homicide cases tried in Platte County during this time period. The other 37 trials in which I was involved included prosecutions of crimes against children, physical and sexual assault cases, and robbery.

In 2001, I became an Assistant United States Attorney for the Western District of Missouri. The first five years I served as First Assistant and worked closely on a daily basis with the U.S. Attorney and the administrative officer. As First Assistant I had a very limited caseload, as I was primarily involved in managing the office's $12 million annual budget, personnel actions, hiring of attorneys and support staff, allocation of positions and office space, and supervising division chiefs, branch managers, unit managers, administrative officer and the public information officer. From 2003 to 2006, I also served on the U.S. Attorney's Anti-Terrorism Task Force (also known as the Terrorism Working Group), a federal, state and local law enforcement initiative that supported the district's mission to prevent and prosecute terrorism.

From 2006 to 2010, I continued to serve on the management team. The focus of my duties and position title, however, varied as to the needs of the U.S. Attorney. As Executive Assistant from 2006 to 2007, my major duties involved coordinating media and community events and organizing training conferences co-hosted by the U.S. Attorney's Office. As Executive Assistant in 2010 my major duty was to prepare our district for a national peer review evaluation.

In 2010, I joined the Fraud and Corruption Trial Team. I currently carry a criminal caseload involving matters such as tax evasion, bank fraud and public corruption. Because of my interest in civil law, in 2010 I also have worked on several cases involving medical malpractice and employment discrimination in the Civil Division. I participated in two medical malpractice mediations and one employment discrimination bench trial.

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

As an Assistant Jackson County Prosecutor, from 1990 until 1995, I represented the State of Missouri in criminal prosecutions. The majority of my caseload was in the Child Abuse and Sex Crimes Unit of the office. As First Assistant in the Platte County Prosecutor's Office, from 1995 until 2001, I represented the State of Missouri in criminal prosecutions. As an Assistant United Stated Attorney for the Western District of Missouri, from 2001 until the present, I have represented the United States in prosecuting criminal cases, defending the United States in civil cases, and collecting debts owed the federal government. Since 2010, I have specialized in the prosecution of federal fraud and corruption.

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

Throughout my legal career, approximately 80% of my practice has been in litigation. As an assistant prosecutor for the State of Missouri, 100% of my practice involved criminal proceedings. I appeared in court on a daily basis for the State of Missouri. As First Assistant U.S. Attorney from 2001 to 2006 approximately 20% of my practice involved the oversight of both criminal and civil litigation. During this period I did not appear in court, but I did oversee the work of attorneys who did. Since 2006, approximately 90% of my practice has involved criminal proceedings and 10% has involved civil proceedings. I currently appear in court on a weekly basis.

i. Indicate the percentage of your practice in:
   1. federal courts: 30%
   2. state courts of record: 70%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 2%
   2. criminal proceedings: 98%

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

I have tried approximately 120 cases to verdict. I served as chief counsel in over 75 of these cases and as associate counsel in the remaining cases.

i. What percentage of these trials were:
   1. jury: 80%
   2. non-jury: 20%

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

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

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

a. the date of representation;

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

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

1. *State of Missouri v. Waters*, Crim. No. CR91-3850, 221 S.W.2d 416 (Mo. Ct. App. 2006), 855 S.W.2c 413 (Mo. Ct. App. 1993).

Mr. Waters was found guilty of sodomizing a 21-year-old woman after she voluntarily got into Mr. Waters' truck in an area known for its prostitution traffic. The victim initially gave inconsistent statements to the police about how she came to be in Mr. Waters' truck, but consistently described how Mr. Waters sodomized her with a variety of instruments, including a hammer handle and metal pole. Mr. Waters had a long criminal history of committing sexual assaults involving sodomizing victims with instruments, such as a broom handle. Mr. Waters did not testify at trial, and therefore his criminal history was not disclosed to the jury. Mr. Waters was convicted and sentenced to 30 years without parole. I served as

chief counsel in the case and was equally responsible for pre-trial matters, exhibits and jury instructions. At trial, I conducted approximately half the direct examinations and cross examinations of the witnesses, and I presented the second half of the closing argument.

Dates of Representation:	August 1991 – February 1992
Court:	Sixteenth Judicial Circuit Court of Missouri, Jackson County
Judge:	Hon. Lee Wells
Associate Counsel:	Joseph Bednar (Formerly at the Jackson County Prosecutor's Office, Kansas City, Missouri) Spencer Fane Britt & Browne, LLP 304 East High Street Jefferson City, Missouri 65101-3237 (573) 634-8116
Opposing Counsel:	Patrick J. Berrigan Watson & Dameron 2500 Holmes Street Kansas City, Missouri 64108 (816) 474-3350

2. *State of Missouri v. Blakey*, Crim. No. CR92-3712, 892 S.W.2d 827 (Mo. Ct. App. 1995).

Mr. Blakey was convicted of severely assaulting his boyfriend, who was mentally disabled, drug-addicted, deaf, and mute. The nerve damage from the assault impaired the victim's already limited ability to sign with his hands. Mr. Blakey was convicted and sentenced to a 10-year term of imprisonment. I served as chief counsel in the case and was equally responsible for pre-trial matters, exhibits and jury instructions. At trial, I conducted approximately half the direct examinations and cross examinations of the witnesses, and I presented the second half of the closing argument.

Dates of Representation:	June 1992 – August 1993
Court:	Sixteenth Judicial Circuit Court of Missouri, Jackson County
Judge:	Hon. Michael Coburn (deceased)

Associate Counsel:	Daniel C. Miller (Formerly at the Jackson County Prosecutor's Office, Kansas City, Missouri) Solo Practitioner 618 SE 4th Street Lee's Summit, Missouri 64063 (816) 875-0470
Opposing Counsel:	I believe counsel was an assistant with the Jackson County Public Defender's Office Oak Tower Building – 20th Floor 324 East 11th Street Kansas City, Missouri 64106 (816) 889-2099

3. *State of Missouri v. Ashley*, Crim. No. CR92-1832, 940 S.W.2d 927 (Mo.App 1997).

Mr. Ashley burglarized a home of a woman with three small children. Mr. Ashley woke the woman and then choked, kicked, repeatedly stabbed, and raped her. Mr. Ashley's DNA matched bodily fluid samples obtained from the crime scene. Mr. Ashley was convicted by a jury and sentenced to life plus 130 years in prison. I believe I served as co-counsel in the case and was equally responsible for pre-trial matters, exhibits and jury instructions. At trial, I believe I conducted approximately half the direct examinations and cross examinations of the witnesses, and I presented the second half of the closing argument. According to *The Kansas City Star*, this was the first criminal trial in Kansas City, Missouri, that utilized DNA science as evidence.

Dates of Representation:	April 1992 – February 1994
Court:	Sixteenth Judicial Circuit Court of Missouri, Jackson County
Judge:	Hon. Michael Coburn (deceased)
Associate Counsel:	I believe I had a second-chair with me during trial, but I cannot recall his or her name.
Opposing Counsel:	Kenton M. Hall (Formerly at the Jackson County Public Defender's Office) Solo Practitioner 926 Cherry Street Kansas City, Missouri 64106 (816) 472-3528

Leon M. Munday
Jackson County Public Defender's Office
Oak Tower Building – 20th Floor
324 East11th Street
Kansas City, Missouri 64106

4. *State of Missouri v. Propheter*, Crim. No. CR94-0697, 949 S.W.2d 284 (Mo. Ct. App. 1997).

Mr. Propheter suffocated his three year-old son and threw the body off a bridge into the Platte River. The boy's body was never found, and there was no physical evidence of a crime or foul play. Although Mr. Propheter made admissions, it was challenging to overcome the criminal law principal known as the *corpus delicti* rule, which sets forth that a confession, standing alone, is insufficient evidence to convict a defendant. Mr. Propheter was found guilty and sentenced to life without parole. I served as co-counsel in the case and was equally responsible for pre-trial matters, exhibits and jury instructions. At trial, I conducted approximately half the direct examinations and cross examinations of the witnesses, and I presented the second half of the closing argument.

Date of Representation:	February 1994 – August 1997
Court:	Sixteenth Judicial Circuit of Missouri, Jackson County
Judge:	Hon. William Roberts
Co-Counsel:	Daniel C. Miller (Formerly at the Jackson County Prosecutor's Office, Kansas City, Missouri) Solo Practitioner 618 SE 4th Street Lee's Summit, Missouri 64063 (816) 875-0470
Opposing Counsel:	Charles M. Rogers Wyrsch Hobbs & Mirakian, P.C. 1000 Walnut Street Kansas City, Missouri 64106 (816) 221-0080

5. *State of Missouri v. Cook*, Crim. No. 95CF01248, 5 S.W.3d 572 (Mo. Ct. App. 1999).

The defendant, Mr. Cook, had a history of mental illness. Five months before the charged offense, police were called to Mr. Cook's home because he believed that he was cutting the devil out of his hand. Following his release from a mental facility, he shot and killed a young woman in an apartment courtyard as she was returning home from dinner with her parents. The defense presented eight mental experts in an attempt to show that Mr. Cook was not guilty by reason of insanity at the time of the offense. The prosecution team presented one mental health expert to refute the insanity defense. The jury agreed with the prosecution and found the defendant guilty of murder in the second degree. He was sentenced to two life sentences. I served as a member of a three-attorney trial team and was equally responsible for pre-trial matters, exhibits and jury instructions. At trial, I conducted approximately half the direct examinations and cross examinations of the witnesses, and I presented half of the closing argument.

Dates of Representation:	August 1995 – December 1999
Court:	Sixth Judicial Circuit Court of Missouri, Platte County
Judge:	Hon. Ward B. Stuckey
Co-Counsel:	Todd P. Graves (Formerly at the Platte County Prosecutor's Office, Platte City, Missouri) Graves Garrett, LLC 1100 Main, Suite #2700 Kansas City, Missouri 64105 (816) 256-3181
	David M. Ketchmark (Formerly at the Platte County Prosecutor's Office, Platte City, Missouri) U.S. Attorney's Office Western District of Missouri 400 East 9th Street Kansas City, Missouri 64106 (816) 426-3122
Opposing Counsel:	Patrick J. Berrigan Watson & Dameron 2500 Holmes Street Kansas City, Missouri 64108 (816) 474-3350

6. *State of Missouri v. Albanese*, Crim. No. 97CF00023, 70 S.W.3d (Mo. Ct. App. 2002), 9 S.W.3d 39 (Mo. Ct. App. 2000).

Mr. Albanese was charged with felony-murder after an FBI drug sting went bad. This felony-murder case drew national attention because the FBI shot and killed Mr. Albanese's co-perpetrator in a motel room as Mr. Albanese waited outside in a get-away car. Mr. Albanese was charged with the death of his co-perpetrator even though an FBI agent was the shooter and Mr. Albanese was not present in the motel room during the shooting. The case was prosecuted under Missouri's felony murder law, which allows for accomplices to be held liable for any death that occurs during the commission of a felony, even if the deceased is another accomplice killed by law enforcement officials. Mr. Albanese was found guilty and sentenced to life. I served as a member of a three-attorney trial team and was equally responsible for pre-trial matters, exhibits and jury instructions. At trial, I conducted approximately half the direct examinations and cross examinations of the witnesses, and I presented half of the closing argument. This case received significant media attention and was broadcast live on *Court TV*.

Dates of Representation:	January 1997 – October 2001
Court:	Sixth Judicial Circuit Court of Missouri, Platte County
Judge:	Hon. Ward B. Stuckey
Co-Counsel:	Todd P. Graves (Formerly at the Platte County Prosecutor's Office, Platte City, Missouri) Graves Garrett, LLC 1100 Main, Suite #2700 Kansas City, Missouri 64105 (816) 256-3181 David M. Ketchmark (Formerly at the Platte County Prosecutor's Office, Platte City, Missouri) U.S. Attorney's Office Western District of Missouri 400 East 9th Street Kansas City, Missouri 64106 (816) 426-3122
Opposing Counsel:	John P. O'Connor Wagstaff & Cartmell 4740 Grand Avenue, Suite 300 Kansas City, Missouri 64112 (816) 701-1100

7. *State of Missouri v. Haley*, Crim. No. 99CF82015, 73 S.W.3d 746 (Mo. Ct. App.2002), 170 S.W.3d 429 (Mo. App. 2005).

Mr. Haley was convicted and sentenced to 27 years' incarceration for shooting a bouncer and a bystander at a nightclub, following a scuffle outside the club between nightclub bouncers and Mr. Haley, his cousin, and a friend. Both victims survived. Although the cousin confessed that he was the shooter to police, witnesses and victims identified Mr. Haley as the shooter, and the cousin eventually recanted his confession. I served as co-counsel in the case and was equally responsible for pre-trial matters, exhibits and jury instructions. During the trial, I conducted approximately half the direct examinations and cross examinations of the witnesses, and I presented the second half of the closing argument.

Dates of Representation:	October 1999 – October 2001
Court:	Sixth Judicial Circuit Court of Missouri, Platte County
Judge:	Hon. Owens Lee Hull
Co-Counsel:	David M. Ketchmark (Formerly at the Platte County Prosecutor's Office, Platte City, Missouri) U.S. Attorney's Office Western District of Missouri 400 East 9th Street Kansas City, Missouri 64106 (816) 426-3122
Defense Counsel:	Martin D. Warhurst Solo Practitioner 1125 Grand Boulevard #704 Kansas City, Missouri 64106 (816) 472-0325

8. *Patterson v. United States,* Civ. No. 08-0520-CV-W-FJG.

In this civil case, Mrs. Patterson brought an employment discrimination case against her former employer, the Department of Veteran Affairs, Kansas City Medical Center. Mrs. Patterson alleged disability discrimination and retaliation for filing a union grievance after her termination following a one-year probationary period. The government argued that the only adverse employment action that was within the meaning of the discrimination laws was the removal of Mrs. Patterson at the end of her probationary period. The trial court found for the government and ruled that Mrs. Patterson's employment was terminated because

she was found to be undependable, not because of her alleged disabilities, nor because of protected activity. I was responsible for all pre-trial and trial matters.

Dates of Representation:	January 2010 – October 2010
Court:	U.S. District Court, Western District of Missouri
Judge:	Hon. Fernando J. Gaitan, Jr.
Associate Counsel:	Thomas M. Larson U.S. Attorney's Office Western District of Missouri 400 East 9th Street Kansas City, Missouri 64106 (816) 426-3122
Opposing Counsel:	Mrs. Patterson, *Pro se* (816) 889-2099

9. *United States v. Simonson,* Crim. No. 11-00224-RV-W-DW, 563 Fed.Appx. 514 (8th Cir. 2014)

Mr. Simonson and Mrs. Simonson were convicted by a federal jury for commission of an $800,000 tax fraud scheme. I served as co-counsel in the case and focused my attention largely on Mrs. Simonson. At trial I was responsible for presenting the evidence uncovered during the investigation by the Treasury Inspector General for Tax Administration, while the lead attorney was responsible for presenting the evidence uncovered during the criminal investigation by the Internal Revenue Service. At the sentencing hearing, I was responsible for presenting evidence and arguments to justify Mrs. Simonson's 71-month prison term.

Date of Representation:	March 2012 – December 2012
Court:	U.S. District Court, Western District of Missouri
Judge:	Hon. Dean Whipple
Chief Counsel:	Daniel M. Nelson U.S. Attorney's Office Western District of Missouri 400 East 9th Street Kansas City, Missouri 64106 (816) 426-3122
Opposing Counsel:	Mr. Simonson, *Pro se* Mrs. Simonson, *Pro se*

10. *United States v. Montgomery,* Crim. No. 05-06002-01CR-SJ-GAF, 635 F.3d 1074 (8th Cir. 2011).

Mrs. Montgomery was found guilty and sentenced to death by a federal jury following a month-long trial. Mrs. Montgomery was found guilty of kidnapping an infant by cutting her from her mother's womb in order to claim her as her own child, and then taking the baby across the state line from Skidmore, Missouri, to Melvern, Kansas. The forensic computer evidence revealed that Mrs. Montgomery had targeted the mother for several months before the kidnapping. I served as a member of a three-attorney trial team, and was equally responsible for pre-trial matters, exhibits and jury instructions. At trial, I conducted the direct examinations and cross examinations of roughly half of the 92 witnesses. I also presented the first half of the closing argument during the guilt phase and the first half of the closing argument during the penalty phase. Additionally, I co-presented the government's appellate argument regarding Mrs. Montgomery's mental health issues at the Eighth Circuit. I am currently responding to the post-conviction motion for collateral relief pending before the district court. This case drew significant press attention because of the horrific nature of the crime and the use of computer forensics to demonstrate Mrs. Montgomery's state of mind, including her effort to learn how to perform a Caesarean section and her creation of a false Internet identity that she used to gain access into the victim's home.

Dates of Representation:	December 2004 – present
Court:	U.S. District Court, Western District of Missouri
Judge:	Hon. Gary A. Fenner
Chief Counsel:	Matt J. Whitworth, U.S. Magistrate Judge (Formerly at the U.S. Attorney's Office Western District of Missouri) United States Courts, Western District of Missouri 80 Lafayette, Room 3114 Jefferson City, Missouri 65101 (517) 634-3418
Co-Counsel:	Cynthia L. Cordes (Formerly at the U.S. Attorney's Office Western District of Missouri) Husch Blackwell, LLP 4801 Main Street Kansas City, Missouri 64112 (816) 983-8381
Opposing Counsel:	John P. O'Connor Wagstaff & Cartmell

4740 Grand Avenue, Suite 300
Kansas City, Missouri 64112
(816) 701-1100

Frederick A. Duchardt, Jr.
Solo Practitioner
P.O. Box 216
Trimble, Missouri 64492
(816) 213-0782

David Owen
(Formerly at the Federal Public Defender's Office
Western District of Missouri)
Solo Practitioner
718 Huntington Place
Highlands Ranch, Colorado 80126-4730
(303) 993-7092

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 First Assistant in Platte County Prosecutor's Office, my major management and supervisory duties and responsibilities included supervising seven attorneys and assisting the elected prosecutor in creating and implementing policies and procedures, such as interactions with the media, utilizing the grand jury, and prosecution guidelines. Similarly, as First Assistant United States Attorney for the Western District of Missouri I had management and supervisory duties including the supervision of the Chief of the Civil Division and the Chief of the Criminal Division. As First Assistant I also was responsible for authorizing higher threshold items such as civil settlements, criminal plea agreements, and litigation expenditures.

I have never performed lobbying or registered as a lobbyist.

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

I have not held a teaching position.

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 husband and I both have vested Thrift Savings Plans, from which we will be able to draw upon retirement. In addition, I expect to continue to receive income from Geffre's Travel Inn in Oakes, ND, in which I own a 50% interest, and Geffre's Travel Inn in LaMoure, ND, in which I also own a 50% interest.

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

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

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

    See 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.

       Should I be confirmed, I initially would have a conflict with cases and matters pending in the U.S. Attorney's office in which I have been involved. I would address any such conflict by working with the U.S. Attorney and the Clerk of the Court to ensure that I was not assigned any such cases. I also would have an ongoing conflict with any cases in which my husband, David Ketchmark, who is currently First Assistant in the U.S. Attorney's Office for the Western District of Missouri, is involved personally or has a supervisory role. It is unlikely that this

issue will arise frequently in his current position as First Assistant because he does not personally litigate or supervise many cases. I would address any such conflict by working with the U.S. Attorney and the Clerk of the Court to ensure that I was not assigned any such cases handled in any part by David Ketchmark. Finally, I would have a conflict with cases involving my brother-in-law, Michael Ketchmark, who is an attorney in the Kansas City Metropolitan area. I would address any conflict by working with the Clerk of the Court to ensure that I was not assigned any cases involving Michael Ketchmark and, if required by the Code of Conduct for United States Judges, also any cases involving his law firm Davis, Ketchmark, McCreight and Ivers, P.C.

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 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 served on the advisory board of Synergy Services Child Advocacy Center (CAC) since its inception in 2002. The CAC exists to lessen the ill effects of sexual assault and violence through intervention, advocacy, education, and treatment by providing services free of charge to the Kansas City Northland communities. I have provided suggestions and input on a variety of issues, including record retention, the proper way to respond to subpoenas, and agency policy and procedure.

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 18, 2014, I was contacted by Senator Claire McCaskill to discuss my candidacy for a federal judicial position. On August 19, 2014, a staffer from Senator McCaskill's office notified me that my name would be sent to the White

House. Since August 28, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 1, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 20, 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 86a
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
Ketchmark, Roseann A.	U.S. District Court Western District of Missouri	11/25/2014
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 - Nominee	☑ Nomination Date 11/20/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☑ Amended Report	01/01/2013 to 11/20/2014
7. Chambers or Office Address		
Charles Evans Whittaker U.S. Courthouse United States Attorney's Office 400 East 9th Street, Room 5510 Kansas City, Missouri 64106		

IMPORTANT NOTES: ***The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.***

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Advisory Board	Synergy Services Inc., Children's Advocacy Center
2.	Business Partner	Geffre Travel Inn
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 Ketchmark, Roseann A.	Date of Report 11/25/2014

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 Ketchmark, Roseann A.	Date of Report 11/25/2014

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	Credit Card	J
2.	Bank of America	Credit Card	J
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Ketchmark, Roseann A.	11/25/2014

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. Geffre Travel Inn (50% owner) Appraised May 2011									
2. -Business property #1 (Oakes, ND)	G	Distribution	M	Q	Exempt				
3. -Business property #2 (LaMoure, ND)	G	Distribution	M	Q	Exempt				
4. MOST 529 Plan - Vanguard Moderate Growth Portfolio	D	Interest	J	T	Exempt				
5. MOST 529 Plan - Vanguard Conservative Growth Portfolio	A	Interest	J	T	Exempt				
6. MOST 529 Plan - Vanguard Income Portfolio	A	Interest	L	T	Exempt				
7. Putnam Mutual Fund - Growth & Income Class A	A	Interest	J	T	Exempt				
8. Wells Bank (CD)	A	Interest	J	T	Exempt				
9. Equity Bank (IRA)(CD)	A	Interest	J	T	Exempt				
10. Commerce Bank		None	J	T	Exempt				
11. UMB Bank account		None	J	T	Exempt				
12. Equity Bank account		None	J	T	Exempt				
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 Ketchmark, Roseann A.	Date of Report 11/25/2014

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Ketchmark, Roseann A.	Date of Report 11/25/2014

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/ Roseann A. Ketchmark

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	280	Notes payable to banks (auto)		15	495
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		92	257	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		10	127
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable (personal residence)		284	000
Real estate owned – see schedule		737	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		43	800				
Cash value-life insurance							
Other assets itemize:							
- Thrift Savings Plan (self)		449	864				
- Thrift Savings Plan (spouse)		363	984				
				Total liabilities		309	622
				Net Worth	1	385	060
Total Assets	1	694	685	Total liabilities and net worth	1	694	685
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	
MOST 529 Plan – Vanguard Moderate Growth Portfolio	$ 14,130
MOST 529 Plan – Vanguard Conservative Growth Portfolio	67,082
MOST 529 Plan – Vanguard Income Portfolio	261
Putnam Fund for Growth & Income Class A	3,500
Equity Bank IRA (CD)	3,784
Wells Bank (CD)	3,500
Total Listed Securities	$92,257

Real Estate Owned	
Personal residence	$ 380,000
Business Property #1 (50% interest)	207,500
Business Property #2 (50% interest)	150,000
Total Real Estate Owned	$737,500

AFFIDAVIT

I, Roseann Ambrosia Ketchmark, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11/21/2014
(DATE)

RKetch
(NAME)

Doreen Rogers
(NOTARY)

DOREEN ROGERS
Notary Public - Notary Seal
State of Missouri
Commissioned for Jackson County
My Commission Expires: June 11, 2018
Commission Number: 14434620

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Kara Farnandez Stoll
   Kara Ann Farnandez

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

   United States Circuit Judge for the Federal Circuit

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

   Office: Finnegan, Henderson, Farabow, Garrett and Dunner, L.L.P.
   901 New York Avenue, NW
   Washington, D.C. 20001

   Residence: McLean, Virginia

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

   1968; Wilmington, Delaware

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, Georgetown University Law School; J.D., 1997

   1986 – 1991, Michigan State University; B.S.E.E., 1991

   Summer 1987, Oakland Community College (summer class); 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.

1998 – present
Finnegan, Henderson, Farabow, Garrett and Dunner, L.L.P.
901 New York Avenue, NW
Washington, D.C. 20001
Partner (2006 – present)
Associate (1998 – 2005)

2008 – present
George Mason University Law School
3301 Fairfax Drive
Arlington, Virginia 22201
Adjunct Professor

2004 – 2008
Howard University School of Law
2900 Van Ness Street, NW
Washington, D.C. 20008
Adjunct Professor

1997 – 1998
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, D.C. 20005
Law Clerk to Honorable Alvin A. Schall

1991 – 1997
United States Patent and Trademark Office
600 Dulany Street
Alexandria, Virginia 22314
Patent Examiner

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.

   Recognized as a Washington, D.C. "Super Lawyer" in Intellectual Property Litigation, Super Lawyers Magazine (2013)

   Committee Individual Leadership Award (CILA) from the Federal Circuit Bar

Association for contributions to the Rules Committee (2012)

Leon Robin Patent Award, gold medal for best work in courses in the field of patent law, Georgetown University Law School (1997)

Society of Women Engineers, scholarship recipient, Michigan State University (1987 – 1988)

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

American Bar Association (1998 – present)
Section of Intellectual Property Law
American Intellectual Property Law Association (1995 – present)
Amicus Committee
Hispanic National Bar Association (May 2014 – present)
HNBA/Microsoft Intellectual Property Law Institute
Federal Circuit Bar Association (1998 – present)
Vice-Chair, Rules Committee (2012 – 2013)
Co-Chair, Rules Committee (2014)

10. **Bar and Court Admission**:

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

District of Columbia, 2001
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 United States, 2002
United States Court of Appeals for the Federal Circuit, 1998
United States Court of Appeals for the Fourth Circuit, 1997
Registered Patent Attorney, United States Patent and Trademark Office, 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.

Chesterbrook Elementary School PTA (2012 – present)

Edward Coke Appellate Inn of Court (2001 – 2003)

Giles Rich American Inn of Court (1995 – 2001)

Girl Scouts of the United States of America (2010 – present)
Troop Leader

Highlands Swim and Tennis Club (2005 – present)

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

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

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

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

With Daniel C. Cooley, J. Derek McCorquindale, and Jason L. Romrell, "Navigating PTAB Appeals Before the Federal Circuit," IP Litigator (May/June 2014). Copy supplied.

With R. Jason Fowler, Chapters 4, 9, and 14 in "Federal Circuit Case Studies

2012 – 2014," for use at Patent Resources Group, Advanced Courses Conference (Apr. 2014). Copy supplied.

With R. Jason Fowler, Chapters 4, 9, and 14 in "Federal Circuit Case Studies 2011 – 2013," for use at Patent Resources Group, Advanced Courses Conference (Oct. 2013). Copy supplied.

With R. Jason Fowler, Chapters 4, 9, and 14 in "Federal Circuit Case Studies 2011 – 2013," for use at Patent Resources Group, Advanced Courses Conference (Apr. 2013). Copy supplied.

"'Commercially Available' Vacuum Sensor Satisfies Structural Disclosure Requirements for Means-Plus-Function Limitations," Last Month at the Federal Circuit, Finnegan, Henderson, Farabow, Garrett and Dunner (June 2001). Copy supplied.

"Failure to Renew JMOL Motion 'Convolutes' Appeal," Last Month at the Federal Circuit, Finnegan, Henderson, Farabow, Garrett and Dunner (July 2000). Copy supplied.

"Markman Did Not Disqualify Inventor as Witness on Claim Scope," Last Month at the Federal Circuit, Finnegan, Henderson, Farabow, Garrett and Dunner (February 1999). Copy supplied.

With Thomas L. Stoll, "Means for Functioning in a Vacuum," 76 J. Pat. and Trademark Off. Soc'y 239 (1994). Copy supplied.

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

None.

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

I signed a December 2002 letter in support of the nomination of John Roberts to the United States Court of Appeals for the D.C. Circuit. Copy supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions,

conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

July 31, 2014: Panel Member, "Recent and Upcoming Supreme Court Cases Addressing Indefiniteness and Appellate Deference," Finnegan, Henderson, Farabow, Garrett and Dunner, L.L.P., Washington, D.C. Video available at: http://www.finnegan.com/recentandupcomingsupremecourtcasesaddressingindefinitenessandappellatedeferencejuly312014/.

July 23, 2014: Panel Moderator, "Strategic Use of Covered Business Method and Inter Partes Review," World Congress Patents for Financial Services Summit, New York, New York. PowerPoint and notes supplied.

April 24, 2014: Panel Participant, "PTAB AIA Trial Roundtables," United States Patent and Trademark Office, Auburn Hills, Michigan. The panel was on the use of inter partes review and covered business method patent review, and I talked about best practices for trials before the Patent Trial and Appeal Board (PTAB) from a practitioner's point of view. I have no notes, transcripts, or recordings. The address of the United States Patent and Trademark Office is 401 Dulany Street, Alexandria, Virginia 22314.

April 3-5, 2014: Co-Lecturer, "Federal Circuit Law (2012 – 2014)," Patent Resources Group, Bonita Springs, Florida. PowerPoints supplied.

March 21, 2014: Panel Participant, "Managing Non-Practicing Entity (NPE) Patent Litigation for your Corporation," Hispanic National Bar Association (HBNA), Orlando, Florida. PowerPoint supplied.

October 30, 2013: Panel Participant, "Obviousness: Objective Evidence Redux," Intellectual Property Organization (IPO), Webinar. The presentation was on recent obviousness cases in patent law, and my role was to present a case summary of *Plantronics, Inc. v. Aliph, Inc.*, 724 F.3d 1343 (Fed. Cir. 2013). I have no notes, transcripts, or recordings. The address of the Intellectual Property Owners Association is 1501 M Street, NW, Washington, D.C. 20005.

October 16-18, 2013: Co-Lecturer, "Federal Circuit Law (2011 – 2013)," Patent Resources Group, Huntington Beach, California. PowerPoints supplied.

October 5, 2013: Co-presenter, "Divided Infringement in Patent Cases," Virginia State Bar IP Section, Williamsburg, Virginia. The presentation was on joint infringement, and I presented on Federal Circuit cases involving joint infringement. I have no notes, transcripts, or recordings. The address of the Virginia State Bar is 1111 East Main Street, Richmond, Virginia 23219.

April 26, 2013: Panel Member, "Patent Portfolio Monetization: Best Practices and Revenue Generating Strategies," Finnegan, Henderson, Farabow, Garrett and Dunner, L.L.P., Reston, Virginia. PowerPoint supplied.

April 11-13, 2013: Co-Lecturer, "Federal Circuit Law (2011 – 2013)," Patent Resources Group, Orlando, Florida. PowerPoints supplied.

April 4, 2013: Panel Member, "New Infringement Caselaw – Staying Ahead of the Curve," ABA Intellectual Property Law Section, Arlington, Virginia. The panel was on recent infringement case law and my role was to present case summaries of *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, 692 F.3d 1301 (Fed. Cir. 2012) (en banc) and *Centillion Data Systems v. Quest Communications*, 631 F.3d 1279 (Fed. Cir. 2011). I have no notes, transcripts, or recordings. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

February 4, 2013: Panel Member, "Joint Infringement Post-Akamai/McKesson," Practising Law Institute, New York, New York. The panel was on joint infringement and I presented on several Federal Circuit cases involving joint infringement. I have no notes, transcripts, or recordings. The address of the Practising Law Institute is 1177 Avenue of the Americas, New York, New York 10036.

January 22, 2013: Panel Participant, "Prior Art, Obviousness, and the Doctrine of Equivalents," Finnegan, Henderson, Farabow, Garrett and Dunner, L.L.P., Washington, D.C. Video available at: http://www.finnegan.com/priorartobviousnessandthedoctrineofequivalentsjanuary222013/.

November 10, 2012: Participant, mock argument before a panel of Federal Circuit judges, Institute of Continuing Legal Education in Georgia, Cancun, Mexico. I represented one side in a hypothetical case involving declaratory judgment jurisdiction. I have no notes, transcripts, or recordings. The address of the Institute of Continuing Legal Education in Georgia is 248 Prince Avenue, Athens, Georgia 30601.

April 19, 2012: Panel Participant, "Federal Circuit Rules on Broadening Resissues, Joint Inventorship, and Intervening Rights," Finnegan, Henderson, Farabow, Garrett and Dunner, L.L.P., Washington, D.C. Video available at:

http://www.finnegan.com/federalcircuitrulesonbroadeningreissuesjointinventorshipandinterveningrightsapril192012/.

March 22, 2012: Panel Moderator, "Part 2: Nuts and Bolts of Federal Circuit Practice Webinar," Federal Circuit Bar Association, Washington, D.C. The presentation was on the Federal Circuit's procedures and rules of practice. I have no notes, transcripts, or recordings. The address of the Federal Circuit Bar Association is 1620 I Street, NW, Washington, D.C. 20006.

March 14, 2012: presenter, "The Divide on Divided Infringement," New Jersey Intellectual Property Law Association, Iselin, New Jersey. PowerPoint supplied.

February 27, 2012: Panel Participant, "Career Paths," George Mason School of Law Intellectual Property Law Society, Arlington, Virginia. I talked about how to get a job and be successful at a law firm. I have no notes, transcripts, or recordings. The address of the George Mason School of Law Intellectual Property Law Society is 3301 North Fairfax Drive, Arlington, Virginia 22201.

February 15, 2012: Panel Participant, "The Future of Joint Infringement in the U.S.: A Review of Akamai and McKesson and Their Potential Impact on Claim Drafting and Enforcement Strategies," Finnegan, Henderson, Farabow, Garrett and Dunner, L.L.P., Washington, D.C. Video available at: http://www.finnegan.com/webinarthefutureofjointinfringementfebruary152012/.

January 19, 2012: Panel Moderator, "Nuts and Bolts of Federal Circuit Practice Webinar," Federal Circuit Bar Association, Washington, D.C. The panel was on the Federal Circuit's procedures and rules of practice. I have no notes, transcripts, or recordings. The address of the Federal Circuit Bar Association is 1620 I Street, NW, Washington, D.C. 20006.

November 2011: Participant, mock argument before a panel of Federal Circuit judges, Institute of Continuing Legal Education in Georgia, Cabo San Lucas, Mexico. I represented one side in a hypothetical case involving patent eligible subject matter and inequitable conduct. I have no notes, transcripts, or recordings. The address of the Institute of Continuing Legal Education in Georgia is 248 Prince Avenue, Athens, Georgia 30601.

November 3, 2011: Panel Participant, "The Divide on Joint Infringement," Biotechnology Industry Organization (BIO), New York, New York. I presented on several Federal Circuit cases involving joint infringement. I have no notes, transcripts, or recordings, but press coverage is supplied. The address of BIO is 1201 Maryland Avenue, SW, Suite 900, Washington, D.C. 20024.

June 3, 2009: Panel Participant, "Will There Be Any Software Patents to Litigate after Bilski, Comiskey, and Muniauction?," BNA LegalEDGE, Washington, D.C.. PowerPoint supplied.

April 19, 2007: Moot Court Judge, "34th Annual Giles Sutherland Rich Memorial Moot Court Competition," American Intellectual Property Law Association, Washington, D.C.. I have no notes, transcripts, or recordings. The address of the American Intellectual Property Law Association is 241 18th Street South, Suite 700, Arlington, Virginia 22202.

November 9-10, 2005: Co-Lecturer, "U.S. Patent Litigation for European Practitioners," IBC Global Conferences, London, United Kingdom. The course was a hands-on interactive course on discovery, motions, claim construction, and trials in district court, as well as appeals to the Federal Circuit. I have no notes, transcripts, or recordings. The address of IBC Global Conferences is 10 Fetter Lane, London EC4A 1BR United Kingdom.

April 14, 2005: Moot Court Judge, "32nd Annual Giles Sutherland Rich Memorial Moot Court Competition," American Intellectual Property Law Association, Washington, D.C. I have no notes, transcripts, or recordings. The address of the American Intellectual Property Law Association is 241 18th Street South, Suite 700, Arlington, Virginia 22202.

April 15, 2004: Moot Court Judge, "31st Annual Giles Sutherland Rich Memorial Moot Court Competition," American Intellectual Property Law Association, Washington, D.C. I have no notes, transcripts, or recordings. The address of the American Intellectual Property Law Association is 241 18th Street, Suite 700, Arlington, Virginia 22202.

November 6-7, 2003: Co-Lecturer, "U.S. Patent Litigation for European Practitioners," sponsored by IBC Global Conferences, London, United Kingdom. The course was a hands-on interactive course on discovery, motions, claim construction, and trials in district court, as well as appeals to the Federal Circuit. I have no notes, transcripts, or recordings. The address of IBC Global Conferences is 10 Fetter Lane, London EC4A 1BR United Kingdom.

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.

Kat Greene, *Federal Circuit Says Consumer Group Can't Fight Stem Cell Patent*, Law360, June 4, 2014. Copy supplied.

Ryan Davis, *Federal Circuit Makes Induced Infringement Easier to Prove*, Law360, August 31, 2012. Copy supplied.

Sarah-Jane Adams, *Breaking Through the Glass Ceiling*, Intellectual Asset Management, October/November 2008. Copy supplied.

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

I have not held any judicial office.

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

i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

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

I have not held any judicial office.

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

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

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

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

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

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

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

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

I have not held any memberships or offices or rendered any services to any political party or election committee. I have never held a position or played a role in a political campaign.

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

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

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

From 1997 to 1998, I served as a law clerk to the Honorable Alvin A. Schall, Circuit Judge of the United States Court of Appeals for the Federal Circuit.

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

I have never practiced law alone.

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

1998 – present
Finnegan, Henderson, Farabow, Garrett and Dunner, L.L.P.
901 New York Avenue, NW
Washington, D.C. 20001
Partner (2005 – present)
Associate (1998 – 2005)

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

I 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.

My practice throughout my career has focused predominantly on patent law and specifically on patent litigation. As an associate at Finnegan, I assisted partners in representing both plaintiffs and defendants in lawsuits in various federal district courts, in appeals before the Federal Circuit, and in several arbitration proceedings. Although the majority of my practice has been devoted to litigation, I also drafted and filed a dozen or so patent

applications in the United States Patent and Trademark Office, represented clients in post-grant proceedings (e.g., reissue, reexamination, and interference proceedings) before the Patent Trial and Appeals Board (formerly, the Board of Patent Appeals and Interferences) at the United States Patent and Trademark Office, and assisted clients with due diligence projects, patent opinions, and in drafting/negotiating intellectual property license agreements.

After I became a partner at Finnegan, my practice predominantly focused on district court and appellate litigation. I have served as lead counsel in over a dozen district court litigations and appeals. I also served as lead counsel in inter partes review proceedings, reexaminations, and an interference before the Patent Trial and Appeals Board (formerly, Board of Patent Appeals and Interferences) at the United States Patent and Trademark Office.

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

I have worked with an assortment of clients throughout my legal career. Because I have a technical background in electrical engineering, a significant amount of my work has been for clients in that field. For example, I have worked with companies specializing in consumer electronics, computers, and software, including Sony Computer Entertainment America, Inc., Autodesk, Inc., and General Instrument Corp. I also have worked with numerous companies specializing in medical devices, such as Cardiac Pacemakers, Inc., Guidant Corporation, Boston Scientific Corporation, Abbott Laboratories, Cochlear Corporation, and Zimmer, Inc. In addition to these two areas, I have worked with clients in a variety of other technical fields.

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

The majority of my practice has involved litigation, either in the Federal Circuit or in district courts. My litigation practice in the past two years has primarily focused on appellate litigation. Prior to that, my practice reflected a 50-50 mix of appellate and district court litigation. I have appeared in district court occasionally, including claim construction hearings, summary judgment hearings, and trial. I have presented argument in nine cases in the Federal Circuit. With the exception of two pro bono criminal proceedings, one pending in the Superior Court of the District of Columbia and one in the D.C. Court of Appeals, the courts in which I have appeared have all been federal district and appellate courts.

A small percentage of my work has involved non-litigation matters. My non-

litigation work as an associate included opinion work, due diligence work, patent prosecution, post-grant proceedings at the United States Patent and Trademark Office, and license drafting/negotiations. My non-litigation work as a partner included post-grant proceedings at the United States Patent and Trademark Office, opinion work, and license drafting/negotiations. I have argued before the Patent Trial and Appeals Board (formerly the Board of Patent Appeals and Interferences) at the U.S. Patent and Trademark Office five times.

i. Indicate the percentage of your practice in:
   1. federal courts: >89%
   2. state courts of record: <1%
   3. other courts: 0%
   4. administrative agencies: 10%

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

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

I have tried three cases to verdict, judgment, or final decision in federal district courts. I was associate counsel in all cases.

i. What percentage of these trials were:
   1. jury: 66%
   2. non-jury: 33%

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

I was primarily responsible for preparing a brief opposing certiorari and a supplemental brief in *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, No. 12-786 (S. Ct. June 2, 2014). Brief in Opposition available at 2013 WL 1366420; Supplemental Brief available at 2013 WL 7231551. I also prepared a conditional cross-petition and reply brief in support thereof in *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, No. 12-960 (petition filed Feb. 1, 2013). Conditional Cross-Petition for a Writ of Certiorari available at 2013 WL 417691; Reply to Brief in Opposition available at 2013 WL 2179306. After the Supreme Court granted certiorari in *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, No. 12-786, on January 10, 2014, I remained part of the litigation team and provided

review and comment on Akamai's brief. Brief for Respondents available at 2014 WL 1260422.

I also provided review and comment on a brief opposing certiorari and a brief on the merits in *Microsoft Corp. v. i4i Limited Partnership*, No. 10-290 (S. Ct. 2010). Brief in Opposition available at 2010 WL 4314336; Brief for Respondents available at 2011 WL 915094.

I provided review and comment on a petition for writ of certiorari in *Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.*, No. 09-596 (S. Ct. 2009). Petition for Writ of Certiorari available at 2009 WL 3865431.

I was principally responsible for preparing a brief opposing certiorari in *St. Jude Medical, Inc. v. Cardiac Pacemakers, Inc.*, No. 04-1171 (S. Ct. 2005). Respondents' Brief in Opposition available at 2005 WL 762463.

Finally, I prepared a brief opposing certiorari in *Gaus v. Conair Corp.*, No. 04-196 (S. Ct. 2004). Respondents' Brief in Opposition to Gaus's Petition for Writ of Certiorari available at 2004 WL 2070858.

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) *DataTreasury v. Fid. Nat'l Info. Servs., Inc.*, No. 13-432 (E.D. Tex); *In re Fid. Nat'l Info. Servs., Inc.*, No. 2014-138 (Fed. Cir. 2014).

This case addressed the standards and procedure for a district court's determination of whether to stay district court litigation pending post-grant review of covered business method ("CBM") patents by the Patent Trial and Appeal Board ("PTAB") under the America Invents Act ("AIA"). In this case, DataTreasury sued 128 parties for patent infringement. Fidelity National Information Services ("FIS") filed CBM petitions asserting that DataTreasury's patents-in-suit were invalid and also filed a motion to stay the district court litigation pending resolution of the CBM proceedings. The district court did not act on the motion to stay and instead entered a scheduling order setting trial for a

year later. FIS retained Finnegan for the CBMs and to seek a stay under the AIA. I served as lead counsel for FIS in preparing a petition for writ of mandamus asking the Federal Circuit to either grant FIS's motion to stay pending the CBM or order the district court to rule on FIS's motion. All 128 defendants joined the petition. Although the Federal Circuit denied the petition, it directed the district court to rule on petitioners' motions to stay "promptly." On August 15, 2014, the district court granted FIS's stay motion pending the PTAB's ongoing review of the CBM proceedings.

Dates of Representation: 2014 – present

Presiding Judge: U.S. District Judge Rodney Gilstrap
Panel: U.S. Circuit Judges Sharon Prost, Evan Wallach, and Raymond Chen

Co-Counsel:
Jay Utley
Baker and McKenzie
2300 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201
214-978-3036

Counsel for DataTreasury LLP:
Christian Hurt
Nix, Patterson and Roach, LLP
205 Linda Drive
Daingerfield, Texas 75638
903-645-7333

2) *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 692 F.3d 1301 (Fed. Cir. 2012) (en banc), *rev'd*, 134 S. Ct. 2111 (June 2, 2014).

This case addressed the issue of whether, and under what circumstances, a party can be liable for infringement of a method claim when that party performs some steps of the claim and another performs the remaining steps. Akamai had retained our firm to represent it on appeal following the district court's entry of judgment of no infringement. After a three-judge panel issued its decision affirming the district court, Akamai petitioned for en banc consideration by the full court. The Federal Circuit, sitting en banc, held that a party could be liable under 35 U.S.C. § 271(b) for inducing another party to perform the remaining steps of a claim even if no one party were liable for directly infringing the claim. The Supreme Court reversed and remanded to the Federal Circuit, where the case is currently pending for consideration of infringement under 35 U.S.C. § 271(a). I played a leading role in drafting the briefs before the Federal Circuit panel, the request for rehearing en banc, and the en banc briefs, as well as assisting in the briefing before the Supreme Court.

Dates of Representation: 2009 – present

Co-counsel:
Donald Dunner
Finnegan, Henderson, Farabow, Garrett and Dunner, LLP
901 New York Avenue, NW
Washington, D.C. 20001
202-408-4062

Jennifer Swan
Finnegan, Henderson, Farabow, Garrett and Dunner, LLP
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Robert Frank
Carlos Perez
Choate, Hall, and Stewart, LLP
Two International Place
Boston, Massachusetts 02110
617-248-5207

Seth Waxman
Thomas Saunders
Wilmer Hale
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006
202-663-6800

Counsel for Limelight:
Aaron Panner
Kellogg, Huber, Todd, Evans and Figel
1615 M Street, NW
Suite 400
Washington, D.C. 20036
202-326-7900

Alexander McKinnon
Kirkland and Ellis
333 South Hope Street
Los Angeles, California 90071
213-680-8432

3) *Consumer Watchdog v. Wis. Alumni Research Found.*, No. 2013-1377, 753 F.3d 1258 (Fed. Cir. 2014).

Consumer Watchdog appealed from a ruling from the Patent Trial and Appeal Board at the U.S. Patent and Trademark Office that Wisconsin Alumni Research Foundation's ("WARF's") patent was patentable. WARF retained me as lead counsel in this appeal, and I argued on its behalf. The appellate court raised the issue of whether Consumer Watchdog had standing to appeal the Board's ruling to an Article III court sua sponte, three weeks prior to oral argument. After argument, the court invited amicus briefs from the U.S. Government and the U.S. Patent and Trademark Office and scheduled a second argument to hear the views of the parties and the U.S. Government. The Federal Circuit concluded that Consumer Watchdog, a consumer-advocacy organization, had not identified any particularized, concrete interest in the patentability of WARF's patent as, for example, a competitor, licensee, or researcher. Because Consumer Watchdog did not identify any injury in fact flowing from the Board's decision, the Court dismissed Consumer Watchdog's appeal for lack of standing and WARF prevailed in the dispute.

Dates of Representation: 2012 – 2014

Panel: U.S. Circuit Judges Randall Rader, Sharon Prost, Todd Hughes

Co-Counsel:
William Raich
901 New York Avenue, NW
Washington, D.C. 20001
202-408-4210

Sarah Craven
United States Patent and Trademark Office
401 Dulany Street
Alexandria, Virginia 22314
571-272-9035

Counsel for Consumer Watchdog:
Daniel Ravicher
Sabrina Hassan
Public Patent Foundation
55 Fifth Avenue
New York, New York 10003
646-470-2641

United States and United States Patent and Trademark Office (amicus curiae):
Mark Freeman
United States Department of Justice
950 Pennsylvania Avenue, NW

Washington, D.C. 20001
202-514-2217

Solicitor Nathan Kelley
United States Patent and Trademark Office
401 Dulany Street
Alexandria, Virginia 22314
571-272-9035

4) *Plantronics, Inc. v. Aliph, Inc.*, 724 F.3d 1343 (Fed. Cir. 2013).

This case addressed issues of patent claim construction and obviousness, including a district court's proper evaluation of "secondary considerations" of non-obviousness. Plantronics, Inc. alleged that Aliph, Inc. infringed its patent and Aliph counterclaimed that Plantronics' patent was invalid and not infringed. Plantronics retained me on appeal after the district court had entered summary judgment of non-infringement and invalidity adverse to Plantronics. I served as lead counsel in briefing and arguing the case on appeal. The Federal Circuit reversed the district court and remanded for a trial on infringement and validity. The case settled on remand.

Dates of Representation: 2011 – 2013

Panel: U.S. Circuit Judges Randall Rader, Kathleen O'Malley, Evan Wallach

Co-counsel:
Jason Melvin
Finnegan, Henderson, Farabow, Garrett and Dunner, LLP
901 New York Avenue, NW
Washington, D.C. 20001
202-408-4124

Bruce Chapman
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333 South Hope Street, 43rd Floor
Los Angeles, California 90071
213-617-5573

David Bohrer
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5) *Markem-Imaje Corp. v. Zipher*, Nos. 07-06 and 10-112 (D.N.H. 2007), *rev'd*, 657 F.3d 1293 (Fed. Cir. 2011).

This case addressed issues of patent infringement, claim construction, and validity. Markem-Image Corporation alleged that it did not infringe Zipher's patent and that in any case Zipher's patent was invalid. I was lead counsel for Zipher during the district court and appellate proceedings. In the district court, I argued claim construction issues, summary judgment, and discovery. The district court granted summary judgment of noninfringement against Zipher. On appeal, I was principally responsible for Zipher's briefing, and I argued for Zipher. The Federal Circuit reversed the district court's claim construction, adopted Zipher's claim construction, and remanded to the district court. The case settled in 2012.

Dates of Representation: 2008 – 2012

Presiding Judge: U.S. District Judge Paul Barbadoro

Panel: U.S. Circuit Judges Pauline Newman, Raymond Clevenger, Richard Linn

Co-counsel:
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6) *Saffran v. Boston Scientific Corp.*, No. 09-256 (E.D. Tex. 2011), *appeal dismissed*, 331 F. App'x 728 (Fed. Cir. 2009); *Saffran v. Abbott Labs.*, No. 2:09-cv-256-TJW (E.D. Tex. 2011)

These are two cases, but they involve the same patent owner and the same patent. Dr. Saffran first sued Boston Scientific in the Eastern District of Texas, asserting that Boston Scientific's drug-eluting stents infringed his patent. A jury awarded Dr. Saffran over $430 million in damages and Boston Scientific retained my firm on appeal. I was principally responsible for drafting the appeal briefs. The case settled following oral argument.

Dr. Saffran later sued Johnson and Johnson, another manufacturer of drug-eluting stents, and subsequently sued Abbott Labs in a third lawsuit. Abbott retained my firm for its district court litigation in the Eastern District of Texas. I was principally involved in developing our non-infringement and invalidity positions for trial. I also advised Abbott regarding the *Saffran v. Johnson and Johnson* trial, at which the jury awarded Dr. Saffran over $480 million in damages. Johnson and Johnson appealed and I was principally responsible for preparing Abbott's amicus brief in support of Johnson and Johnson. On appeal, the Federal Circuit held that the patent claims, as properly interpreted, did not cover drug-eluting stents with large holes between the stent struts like the accused stents. In light of the Federal Circuit's decision, the district court dismissed Dr. Saffran's case against Abbott.

Dates of Representation: 2009 – 2012

Presiding Judge: U.S. District Judge T. John Ward (both cases)

Panel: Circuit Judges Alan Lourie, Kimberly Moore, and Kathleen O'Malley

Co-counsel for Boston Scientific:
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Counsel for Dr. Saffran:
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7) *Powell v. The Home Depot U.S.A., Inc.*, 663 F.3d 1221 (Fed. Cir. 2011).

This case involved issues of claim construction, validity, willful infringement, and damages. Mr. Powell had been a 20-year independent contractor with The Home Depot, servicing The Home Depot's in-store saws. The Home Depot alerted Powell of a safety issue with the saws. Powell developed a solution, a "Safe Hands" device, to protect Home Depot's employees. After a dispute about pricing, The Home Depot showed Safe Hands to another supplier and asked them to copy it. This device was installed in more than 2,000 Home Depot stores nationwide. In 2007, Powell sued The Home Depot for patent infringement. After a jury found in Powell's favor, The Home Depot appealed. Powell retained my firm on appeal, and I was principally responsible for drafting Powell's appeal brief. The Federal Circuit affirmed the judgment, finding that the district court had not erred in its claim construction and that substantial evidence supported the jury verdict.

Dates of Representation: 2009 – 2012

Panel: U.S. Circuit Judges Richard Linn, Timothy Dyk, Sharon Prost

Co-counsel:
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8) *In re: Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303 (Fed. Cir. 2011).

This case involved the question of whether a district court's decision to limit the number of asserted patent claims violates the patent owner's due process rights, as well as issues of indefiniteness, written description, and obviousness. I served as lead counsel for Federal Express Corp. ("FedEx") on appeal. Katz initially filed 25 separate actions asserting a total of 1,975 claims from 31 patents against 165 defendants. Defendants asked the district court to limit the number of asserted claims. After initially determining that many claims were duplicative, the district court limited the maximum number of assertable claims. The court added a proviso permitting Katz to add new claims if they "raise[d] issues of infringement/validity that [were] not duplicative" of previously selected claims. Instead of selecting additional claims, Katz moved the court to sever and stay the unselected claims on the ground that the district court's order violated its due process rights. The district court denied Katz's motion. On appeal, the Federal Circuit affirmed the denial of Katz's motion to stay and sever and approved the district court's claim selection procedure. The court also affirmed in part and vacated in part the district court's ruling that certain claims were invalid for indefiniteness, affirmed in part and vacated in part the district court's ruling that certain claims were invalid under the written description, and affirmed the district court's ruling that certain claims were invalid as being obvious. The case is currently pending on remand.

Dates of Representation: 2009 – 2011

Panel: U.S. Circuit Judges Pauline Newman, Alan Lourie, William Bryson

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9) *Medtronic, Inc. v. Guidant Corp.*, No. 03-848 (D. Del. 2004), *aff'd*, 465 F.3d 1360 (Fed. Cir. 2006).

This case involved the doctrine of reissue recapture and the broadening of claims. Medtronic, Inc. alleged that the patent-in-suit was invalid under the doctrine of reissue recapture. My firm represented Guidant, the exclusive licensee of the patent-in-suit, both at a bench trial and on appeal. I was principally involved in developing our legal arguments, as well as preparing key witnesses. Following the bench trial, the district court held that Guidant's patents were not invalid for reissue recapture. The Federal Circuit affirmed.

Dates of Representation: 2003 – 2006

Presiding Judge: U.S. District Judge Sue Robinson

Panel: U.S. Circuit Judges Paul Michel, Alvin Schall, Timothy Dyk

Co-counsel:
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10) *Baker Hughes, Inc., v. Davis-Lynch, Inc.*, No. 97-2905 (S.D. Tex. 2000), *aff'd in part, rev'd, in part*, 31 F. App'x 650 (Fed. Cir. 2002).

This case addressed issues of patent validity, including those related to an on-sale bar and obviousness. Baker Hughes, Inc. ("Baker"), alleged that Davis-Lynch, Inc. ("Davis-Lynch") infringed its patent. Davis-Lynch counterclaimed that it did not infringe and that in any case the patent was invalid. Davis-Lynch retained my firm on appeal from the district court's entry of summary judgment against it on both infringement and validity. I was responsible for drafting the appeal briefs. After the Federal Circuit reversed and remanded on validity, we continued to represent Davis-Lynch through the jury trial. I was responsible for developing our positions for trial, preparing witnesses, examining witnesses at trial, arguing jury instructions, and arguing motions in limine. Following the trial, the jury entered a verdict finding in favor of Baker that its patent was not invalid and the case settled.

Dates of Representation: 2001 – 2003

Presiding Judge: U.S. District Judge Melinda Harmon

Panel: U.S. Circuit Judges Raymond Clevenger, Randall Rader, William Bryson

Co-Counsel:
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801-532-1234

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 law practice has primarily involved litigation. One of the more significant cases that I worked on early in my legal career was an arbitration for General Instrument. The opposing party was Starsight Telecast. We tried the case before a three-member panel of arbitrators. The trial lasted four weeks and the issues at trial included trade secret misappropriation, patent infringement, and breach of contract.

I have worked on appeals throughout my legal career. One significant appeal that I worked on was *Harris Corp. v. Fed. Express Corp.*, No. 2012-1094 (Fed. Cir. 2013). I served as lead counsel for FedEx in this appeal from the United States District Court for the Middle District of Florida. The issues on appeal included claim construction, validity, and willful infringement. The Federal Circuit affirmed the denial of FedEx's invalidity defense, but reversed the district court's claim construction and remanded for a new determination of infringement under the proper claim construction.

I also have worked on numerous proceedings before the United States Patent Trial and Appeal Board (PTAB, formerly the Board of Patent Appeals and Interferences). One significant case that I worked on involved an inter partes reexamination. I was lead counsel for Boston Scientific Corporation before the PTAB, which held that Boston Scientific's patent was not invalid in view of the asserted prior art. The Federal Circuit affirmed on appeal.

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.

2008 – 2013: Seminar on "Federal Circuit Practice and Procedure," George Mason University School of Law. This course focused on the Federal Circuit's jurisdiction, rules of practice, brief writing, and oral advocacy. Spring 2007 and Spring 2012 syllabi supplied.

2004 – 2008: Seminar on "Patent Law and Public Policy," Howard University School of Law. This course focused on basic principles of patent law with a focus on public policy. Spring 2004 syllabus supplied.

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

    I have a Finnegan, Henderson, Farabow, Garrett and Dunner, LLP, capital account valued at approximately $260,000, which would be paid out to me in twelve equal monthly installments, beginning the last day of the month in which my partnership is terminated.

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

    If confirmed, I do not have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

    See the attached Financial Disclosure Report.

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

    See the attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest

when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I will recuse in any litigation where I have ever played a role. Cases in which my current law firm, Finnegan, Henderson, Farabow, Garrett and Dunner, L.L.P., represented a party or appeared would present a potential conflict. To avoid such a conflict, I would recuse myself for a period of time from cases in which Finnegan represented a party or appeared. My husband is a lawyer at The Boeing Company and I also would recuse myself from cases involving his employer.

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 careful application of the Code of Conduct for United States Judges, as well as other relevant canons and statutory provisions. I also would consult my judicial colleagues on these issues where appropriate.

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 represented pro bono clients in two criminal cases, one in trial court and one on appeal. I also have represented pro bono clients in veterans' appeals before the Federal Circuit. Finally, I have spent many hours helping attorneys at my firm to clarify their appellate arguments by actively participating in moot courts held in preparation for oral arguments in pro bono veterans' appeals, mostly before the Federal Circuit, but on one occasion before the Supreme Court of the United States.

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 have been in contact with officials from the White House Counsel's Office since July 2014, when I was asked whether I was interested in the possibility of serving

on the Federal Circuit. Since August 13, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 15, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 12, 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
Stoll, Kara F.	United States Court of Appeals, Federal Circuit	11/13/2014
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**
Nominee Circuit Judge - Active Status	☑ Nomination Date 11/12/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2013 to 11/10/2014
7. Chambers or Office Address		
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP 901 New York Avenue, NW Washington, DC 20001		

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	Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
2.	Co-Chair	Rules Committee for the Federal Circuit Bar Association
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 Stoll, Kara F.	Date of Report 11/13/2014

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	Finnegan - Partnership distribution	$677,297.00
2. 2013	Finnegan - Partnership distribution	$811,218.00
3. 2012	Finnegan - Partnership distribution	$787,435.00
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	The Boeing Company - salary
2. 2013	The Boeing Company - salary
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Stoll, Kara F.	Date of Report 11/13/2014

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 4 of 8	Name of Person Reporting Stoll, Kara F.	Date of Report 11/13/2014

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. PNC Bank - Accounts	A	Interest	M	T	Exempt				
2. Wells Fargo - Accounts	A	None	J	T	Exempt				
3. Finnegan Capital Accounts	A	None	N	T	Exempt				
4. Finnegan "LEO" Retirement Plan	A	Int./Div.	M	T	Exempt				
5. American Funds College 2027 Fund - 529	A	Int./Div.	L	T	Exempt				
6. American Funds College 2024 Fund - 529	A	Int./Div.	M	T	Exempt				
7. American Funds College 2021 Fund - 529	A	Int./Div.	M	T	Exempt				
8. College Counts Age-Based Moderate 9-12 Years C	A	Int./Div.	J	T	Exempt				
9. IRA #1	B	Dividend	K	T	Exempt				
10. - Vanguard 500 Index Fund Admiral Shares					Exempt				
11. 401(k) Account #1	C	Dividend	O	T	Exempt				
12. - Vanguard Retirement Savings Trust					Exempt				
13. - T Rowe Price New Horizons Fund					Exempt				
14. - Vanguard Windsor II Admiral Fund					Exempt				
15. - PIMCO Total Return Institutional Fund					Exempt				
16. - Vanguard Institutional Index Fund					Exempt				
17. - American Beacon Small Cap Value Institutional Fund					Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less P =$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 5 of 8	Name of Person Reporting Stoll, Kara F.	Date of Report 11/13/2014

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. - MainStay Large Cap Growth Fund					Exempt				
19. iShares Russell 2000 Growth ETF	A	Dividend	K	T	Exempt				
20. PowerShares FTSE RAFI US 1000 Portfolio Fund	A	Dividend	J	T	Exempt				
21. SPDR DJ Wilshire REIT ETF	A	Dividend	J	T	Exempt				
22. Vanguard Mid-Cap Value Index Fund	A	Dividend	J	T	Exempt				
23. Vanguard Growth Index Fund	A	Dividend	J	T	Exempt				
24. Franklin Small Cap Value Fund	A	None	J	T	Exempt				
25. Mainstay Epoch Global Equity Yield Fund	A	Dividend	J	T	Exempt				
26. Oppenheimer Developing Markets Fund	A	Int./Div.	J	T	Exempt				
27. Oppenheimer International Growth Fund	A	Dividend	J	T	Exempt				
28. T Rowe Price Mid-Cap Growth Fund	A	None	J	T	Exempt				
29. Fidelity Advisor Floating Rate High Income Fund	A	Dividend	J	T	Exempt				
30. PIMCO Unconstrained Bond Fund Instl	A	Dividend	J	T	Exempt				
31. T Rowe Price VA - Tax Free Bond	A	Dividend	K	T	Exempt				
32. Templeton Global Bond Fund	A	Dividend	J	T	Exempt				
33. Boeing Lifecyle 2030 Fund	A	Dividend	J	T	Exempt				
34. SSgA S&P 500 Index 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 Page 6 of 8	Name of Person Reporting Stoll, Kara F.	Date of Report 11/13/2014

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. PIMCO Global Bond Fund	A	Dividend	J	T	Exempt				
36. Boeing VIP Stable Value Fund	A	Dividend	J	T	Exempt				
37. Boeing International Companies Fund	A	Dividend	J	T	Exempt				
38. Boeing US Small/Mid Companies 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		

Name of Person Reporting	Date of Report
Stoll, Kara F.	11/13/2014

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Stoll, Kara F.	Date of Report 11/13/2014

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/ Kara F. Stoll

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		247	214	Notes payable to banks-secured (auto)		35	550
U.S. Government securities (Series EE Bonds)		1	000	Notes payable to banks-unsecured			
Listed securities – see schedule	1	275	026	Notes payable to relatives			
Unlisted securities – see schedule		524	430	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 (vacation home)		950	000
Real estate owned – see schedule	2	600	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		62	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		332	792				
				Total liabilities		985	550
				Net Worth	4	056	912
Total Assets	5	042	462	Total liabilities and net worth	5	042	462
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 500 Index Fund Admiral Shares	$ 16,896
Vanguard Retirement Savings Trust	29,096
PIMCO Total Return Institutional Fund	34,555
Vanguard Institutional Index Fund	220,564
T Rowe Price New Horizons Fund	54,262
Vanguard Windsor II Admiral Fund	170,502
American Beacon Small Cap Value Institutional Fund	47,303
MainStay Large Cap Growth Fund	289,708
Federated Prime Cash Obligations Fund	975
iShares MSCI EAFE Small-Cap ETF	975
iShares Russell 2000 Growth ETF	19,347
PowerShares FTSE RAFI US 1000 Portfolio Fund	1,875
SPDR DJ Wilshire REIT ETF	3,265
Vanguard Mid-Cap Value Index Fund	3,057
Vanguard Growth Index Fund	19,508
Franklin Small Cap Value Fund	891
Mainstay Epoch Global Equity Yield Fund	4,012
Oppenheimer Developing Markets Fund	1,947
Oppenheimer International Growth Fund	7,164
T Rowe Price Mid-Cap Growth Fund	2,969
Fidelity Advisor Floating Rate High Income Fund	4,788
PIMCO Unconstrained Bond Fund Instl	1,940
T Rowe Price VA-Tax Free Bond	21,239
Templeton Global Bond Fund	3,920
Boeing Lifecycle 2030 Fund	4,424
SSgA S&P 500 Index Fund	4,261
PIMCO Global Bond Fund	4,044
American Funds College 2021 Fund – 529	124,586
American Funds College 2024 Fund – 529	110,435
American Funds College 2027 Fund – 529	65,139
College Counts Age-Based Moderate 9-12 Years C	1,424
Total Listed Securities	$1,275,026

Unlisted Securities	
Boeing VIP Stable Value Fund	2,098
Boeing International Companies Fund	3,906
Boeing US Small/Mid Companies Fund	2,048

Finnegan, Henderson, Farabow, Garrett & Dunner, LLP Capital Accounts	$ 376,865
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP "LEO" Retirement Plan	141,561
Total Unlisted Securities	$ 524,430

Real Estate Owned	
Personal residence	$ 1,300,000
Vacation home	1,300,000
Total Real Estate Owned	$ 2,600,000

AFFIDAVIT

I, Kara Farnandez Stoll, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11/14/2014
(DATE)

Kara Farnandez Stoll
(NAME)

Catherine G DuBois
(NOTARY), District of Columbia

My commission expires November 30, 2014

Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing: Nominations
March 11, 2015

Good morning. I want to welcome everyone to the third nominations hearing this year.

Today we will hear from two nominees to the federal bench: Kara Stoll nominated to be a Circuit Judge for the Federal Circuit and Roseann Ketchmark nominated to be a District Judge for the Western District of Missouri.

Ms. Stoll is nominated to be a United States Circuit Judge for the Federal Circuit. She's currently a partner in the Washington D.C. office of Finnegan, one of the world's largest Intellectual Property firms.

Ms. Stoll graduated from Michigan State University in 1991 with a degree in electrical engineering. She worked as a patent examiner in the United States Patent and Trademark Office for 6 years.

In 1997, Ms. Stoll graduated from Georgetown University Law Center. After graduation, she clerked on the Federal Circuit for Judge Schall. Ms. Stoll joined Finnegan in 1998 as an associate and made partner in 2006. Her legal career has focused on the area of patent litigation. In addition to her patent litigation practice, she often appears on panels and gives lectures addressing recent developments in intellectual property law.

In 2013, she was named a Washington D.C. "Super Lawyer" in Intellectual Property Litigation. Ms. Stoll has also taught courses on Federal Circuit Practice and Procedure and Patent Law and Public Policy at Howard University School of Law and George Mason University School of Law.

QUESTIONS SUBMITTED TO ROSEANN A. KETCHMARK
AND KARA STOLL BY SENATOR CRUZ

Questions for Judicial Nominees
Senator Ted Cruz

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

4. Which sitting Supreme Court Justice do you most want to emulate?

5. 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, other)?

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

9. What is your favorite Supreme Court decision in the past 10 years, and why?

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Congressional Power

12. 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).

13. Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

14. What limits, if any, does the Constitution place on Congress's ability to condition the receipt and use by states of federal funds?

15. Is Chief Justice Roberts' decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Presidential Power

16. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Individual Rights

18. When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

19. When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

20. 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).

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Senator Grassley
Questions for the Record

Roseann Ketchmark,
Nominee, U.S. District Judge for the Western District of Missouri

1. What role, if any, do you believe a federal judge should play in balancing seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.

2. What improvements, if any, do you believe need to be made to our criminal justice system?

3. How much discretion do you think is appropriate for judges to have during sentencing?

4. The majority of your career has been spent handling criminal matters. How have you been preparing yourself to be able to handle complex civil matter, if you are 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. 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. 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?

18. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?

19. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

20. Please describe with particularity the process by which these questions were answered.

21. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Kara Stoll
Nominee, United States Circuit Judge for the Federal Circuit

1. In an April 1994 article entitled "Means for Functioning in a Vacuum?" which discusses a case decided by the Federal Circuit, you wrote "It is the court's responsibility to interpret the statutory provisions enacted by Congress . . . . [T]he court was simply adhering to the language in the statute enacted by Congress. But, having reversed such a long standing policy, the court should have at least attempted to provide sufficient guidelines for enforcing the new policy. Until the court further defines [the matter, it] will be applied with much confusion and frustration. Preferably, Congress will be persuaded to rewrite the statute . . ."

    a. Can you please explain when it is proper for a court to go beyond strictly interpreting statutory language?

    b. What do you mean by a court issuing "guidelines"?

    c. Is this a legitimate exercise of judicial authority?

    d. Are there any limitations to what a judge should properly issue in a decision?

2. Congress has consistently recognized the value of whistleblowers in the government and private sector. As one of the original sponsors of the Whistleblower Protection Act of 1989, I have always pushed for strong whistleblower protections for federal employees. The Court of Appeals for the Federal Circuit has exclusive appellate jurisdiction to hear appeals of federal employee whistleblower cases. Unfortunately, the Federal Circuit has repeatedly ruled against federal whistleblowers and in my view ignored the express intent of Congress.

    a. In reviewing your questionnaire, it appears you have little, if any, experience with whistleblower law or any federal personnel law. Considering that the Federal Circuit has exclusive jurisdiction over these cases, what, if any, experience do you have with the Whistleblower Protection Act?

    b. Does the Federal Circuit have the authority to circumvent the plain language of a statute and the stated Congressional intent of the Whistleblower Protection Act? May the Federal Circuit narrow the broad definitions Congress intended?

    c. If confirmed, will you continue to uphold Federal Circuit precedents that clearly conflict with the statute's plain language?

3. The Federal Circuit has continued to ignore the express will of Congress and has issued a number of decisions that have substantially limited the types of disclosures that are protected under the Whistleblower Protection Act. Specifically, the 1994 revision to the Act had significant legislative history in both the House and Senate. That legislative history

reaffirmed that ANY disclosure of a violation of law, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, would be protected. Despite this clear and express intent, the Federal Circuit has continually limited the types of disclosure that are protected. For instance, in 1995 the court ruled disclosures to co-workers or to the wrongdoer are not protected. In 1998 it held that disclosures made as part of an employee's normal job duties are not protected. And, the court also held that disclosures of information already known, but not acted on, are also not protected.

a. Do you agree with the plain language of the statute that any disclosure of violations of law, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety is a protected disclosure under the Whistleblower Protection Act? Why or why not?

b. Do you believe that a disclosure made by a federal employee as part of his or her normal job duties should be protected?

c. Do you believe that a disclosure made by a federal employee to a co-worker or to the wrong doer is a protected disclosure under the Act?

d. Do you believe verbal disclosures not written down would be protected under the Act?

4. Perhaps the most egregious example of the Federal Circuit placing hurdles in front of federal government whistleblowers is a 1999 decision in *Lachance v. White*. In that case, the Federal Circuit held that a whistleblower had to present "irrefragable proof" that wrongdoing actually occurred in order to prove the claim. Read literally, this "irrefragable proof" standard means a whistleblower must offer indisputable proof that the public official acted in bad faith or violated the law. This standard has been limited to only disclosures that evidence gross mismanagement. But, the standard is clearly contrary to the intent of the Congress.

   a. Have you ever heard of the irrefragable proof standard?

   b. What is your understanding of this standard?

   c. What does a whistleblower need to prove in order to meet this standard?

   d. Do you believe this standard or a substantial evidence standard should apply to whistleblower cases?

5. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.

6. What is the most important attribute of a judge, and do you possess it?

7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

8. 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. Please describe your understanding of the workload of the Federal Circuit. If confirmed, how do you intend to manage your caseload?

10. 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?

11. 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?

12. Please describe with particularity the process by which these questions were answered.

13. Do these answers reflect your true and personal views?

QUESTIONS SUBMITTED TO ROSEANN A. KETCHMARK
AND KARA STOLL BY SENATOR VITTER

Senate Committee on the Judiciary

Questions for the Record from Senator Vitter

"Nominations"

Wednesday, March 11, 2015

Kara Stoll, to be a United States Circuit Judge for the Federal Circuit

Roseann A Ketchmark, to be a United States District Judge for the Western District of Missouri

1. What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?
2. In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?
3. The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?
4. Do you agree that the ruling in Baker v. Nelson precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that US v. Windsor contradicts the Court's previous ruling in Baker?
5. What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?
6. How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?
7. Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?

Questions for Judicial Nominees
Senator Ted Cruz

Responses of Roseann Ketchmark
Nominee, U. S. District Judge for the Western District of Missouri

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

Response: My judicial philosophy is to fairly and impartially apply the law to the relevant facts. If I am fortunate enough to be confirmed, I would listen with an open mind to all the arguments presented by the litigants.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

Response: A responsible judge should follow the guidance and methodologies outlined in binding precedent of the Supreme Court of the United States when interpreting constitutional provisions without regard to any personal beliefs, values or opinions.

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

Response: I have not engaged in such an in-depth process involving a Supreme Court ruling from the Warren Court, Burger Court or Rehnquist Court to lead me to conclude a case was wrongly decided. If confirmed as a district court judge, I would faithfully follow all binding precedent of the United States Supreme Court and the Eighth Circuit regardless of my personal views.

4. Which sitting Supreme Court Justice do you most want to emulate?

Response: I am not sufficiently familiar with the individual characteristics of the sitting Supreme Court Justices to select one particular justice that I most want to emulate. I admire and would want to emulate judges who are devoted to carefully considering and studying the legal issues presented, and who fairly and efficiently apply the law to the facts.

5. 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, other)?

Response: The Supreme Court looked to original public meaning when interpreting a constitutional provision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I would faithfully follow the Supreme Court's precedent in applying originalist methodologies to the interpretation of constitutional provisions, including looking to the Constitution's text and original sources such as the Federalist Papers, consistent with the guidance in cases such as *Heller*.

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

Response: Foreign courts and international tribunals should not play any role in the interpretation of the United States Constitution and laws.

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

Response: Because federal courts are courts of limited jurisdiction, the role of the federal courts in administering institutions such as prisons, hospitals, and schools is limited by both the Constitution of the United States and federal law.

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

Response: The theory of a living Constitution is that the Constitution evolves and changes over time, without being formally amended. A potential problem with a judge employing the theory of a living Constitution is the possibility of injecting personal beliefs in determining how the Constitution should evolve. The doctrine of judicial restraint is a type of judicial interpretation that emphasizes the limited nature of the court's power, and stresses the need to only resolve the issues before the court. A judge is less likely to inject personal beliefs when practicing judicial restraint.

9. What is your favorite Supreme Court decision in the past 10 years, and why?

Response: I do not have a favorite Supreme Court decision. I would apply them all as binding precedent.

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

Response: I am not familiar enough with the full record of any Supreme Court case that I would feel comfortable characterizing one as an example of judicial activism.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Response: I define natural law as natural rules of moral behavior. I do not believe a judge should use natural law in interpreting the Constitution or statutes, but rather should rely on binding precedent.

Congressional Power

12. Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) is binding precedent in this area. If confirmed as a district court judge, I am committed to following the holding in *Garcia* and all other binding precedent of the United State Supreme Court and the Eighth Circuit.

13. Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The power of Congress' Commerce Clause extends to 1) the use of the channels of interstate commerce, 2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, and 3) those activities having a substantial relation to interstate commerce. *See United States v. Morrison*, 529 U.S. 598, 608 (2002). Moreover, in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), (Scalia, J., concurring) (citation omitted), Justice Scalia relied on the Necessary and Proper Clause in conjunction with the Commerce Clause to conclude that Congress' regulatory power may extend to "noneconomic local activity if the regulation is a necessary part of a more general regulation of interstate commerce." If confirmed as a district court judge, I would follow the binding precedent of the United States Supreme Court and the Eighth Circuit in determining issues under the Commerce Clause and the Necessary and Proper Clause.

14. What limits, if any, does the Constitution place on Congress's ability to condition the receipt and use by states of federal funds?

Response: The Supreme Court has "recognized limits on Congress' power under the Spending Clause to secure state compliance with federal objectives." *See NFIB v. Sebelius*, 132 S. Ct. 2566, 2602 (2012). The Court held Congress' power should not extend to the point that it undermines the ability of the States to maintain their independent sovereignty. *Id.* If confirmed as a district court judge, I would follow the ruling in *NFIB v. Sebelius* and all other controlling Supreme Court precedent.

15. Is Chief Justice Roberts' decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: It is a matter of dispute in the federal appellate courts whether Chief Justice Roberts' decision on the Commerce Clause and Necessary and Proper Clause is binding precedent because of the fragmented nature of the opinion. The Supreme Court provided guidance on how to view holdings of fragmented opinions in *Marks v. United States*, 430 U.S. 188 (1977). Under *Marks*, "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as the position taken by those Members who concurred in the judgments on the narrowest grounds." *Id.* at 193.

Presidential Power

16. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The ability of the President to issue executive orders or executive actions must be authorized by an act of Congress or from the Constitution. If confirmed, I would apply all Supreme Court and Eighth Circuit precedent in evaluating the legality of executive orders and executive actions.

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: All Presidential power must stem from either an act of Congress or from the Constitution itself. If confirmed, I would apply all Supreme Court and Eighth Circuit precedent in evaluating Presidential powers.

Individual Rights

18. When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has held that a right is "fundamental" for purposes of the substantive due process doctrine if it is "deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and internal quotation marks omitted). If confirmed, I would apply all Supreme Court and Eighth Circuit precedent in evaluating questions of fundamental rights.

19. 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 if the classification is seldom relevant "to the achievement of any legitimate state interest" or if it is not relevant to the "ability to perform or contribute to society." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985) (internal quotation marks omitted). If confirmed, I would follow Supreme Court and Eighth Circuit precedent regarding the application of heightened scrutiny under the Equal Protection Clause.

20. 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 whether racial preferences will no longer be necessary in public higher education in the future. If confirmed, I would apply all Supreme Court and Eighth Circuit precedent regarding issues of racial preference.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: The Supreme Court has held that under the Equal Protection Clause, "strict scrutiny must be applied to any . . . program using racial categories or classifications." *Fisher v. University of Austin*, 133 S.Ct. 2411, 2419 (2013). Under "strict scrutiny" the classification must be "narrowly tailored to further compelling government interests." *Id.* If confirmed, I would apply this and all other Supreme Court and Eighth Circuit precedent in evaluating whether the Equal Protection Clause tolerates public policies that apportion benefits or assistance on the basis of race.

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: The Supreme Court held in *District of Columbia v Heller*, 554 U.S. 570, 592 (2008) that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation," in self-defense in the home. The Supreme Court has yet to rule explicitly whether or not the guarantees of the Second Amendment extend to the right to keep and bear arms for self-defense in public. The scope of the right beyond the home, and the standards for determining whether and how the right can be regulated, are not uniform among the federal appellate courts. If confirmed as a district judge, I would faithfully apply all Supreme Court and Eighth Circuit precedent in evaluating Second Amendment issues.

Senator Grassley
Questions for the Record

Roseann Ketchmark,
Nominee, U.S. District Judge for the Western District of Missouri

1. **What role, if any, do you believe a federal judge should play in balancing seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.**

   Response: A federal judge should properly calculate the sentencing guideline range under the Federal Sentencing Guidelines Manual, including whether any departures from the guidelines are warranted or whether a variance from the correctly calculated sentencing guideline range is warranted under the authority of 18 U.S.C. Section 3553. Under Section 3553(a)(2) a sentencing judge should consider "the need for the sentence imposed . . . to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; and to provide the defendant with needed educational or vocational training."

2. **What improvements, if any, do you believe need to be made to our criminal justice system?**

   Response: While I am reluctant to comment on revisions to the criminal justice system since the legislature is responsible for formulating criminal justice policies, I have been an advocate of Children's Advocacy Centers in the Kansas City area for over 20 years. These centers play an important role in conducting non-leading, age appropriate interviews of children suspected of being physically or sexually abused, or children who have witnessed serious crimes. I believe our criminal justice system could be improved by ensuring that rural communities throughout the United States are aware of, and have better access to services such as those provided by Children's Advocacy Centers.

3. **How much discretion do you think is appropriate for judges to have during sentencing?**

   Response: Although the Sentencing Guidelines are now discretionary rather than mandatory, they remain a very important tool to provide uniformity, stability and predictability in our criminal justice system. Sentencing judges have discretion to vary upwards or downwards from the appropriately determined sentencing guideline range if such variance is warranted under the authority of 18 U.S.C. Section 3553(a). If confirmed as a district court judge, I would give substantial deference to the Sentencing Guidelines and follow the law and binding precedent of the Supreme Court and the Eighth Circuit regarding the application of judicial discretion in sentencing.

4. **The majority of your career has been spent handling criminal matters. How have you been preparing yourself to be able to handle complex civil matter, if you are confirmed?**

   Response: As First Assistant United States Attorney for six years, I supervised the Civil Division Chief in the United States Attorney's Office and was regularly briefed regarding important and complex civil matters within our office. Since my nomination I have reviewed materials which I received from the Federal Judicial Center regarding civil practice, including "Manual for Complex Litigation," "Managing Discovery of Electronic Information," "The Elements of Case Management: a Pocket Guide for Judges," and "Civil Litigation Management Manual." I am also reviewing slip opinions issued by the Eighth Circuit Court of Appeals in 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 to fairly and impartially apply the law to the facts. I believe I have this attribute, and if confirmed as a district court judge, I would set aside any personal beliefs and apply the law and binding precedent to the relevant facts of each case in a fair and unbiased manner.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: The appropriate temperament of a judge is to be respectful and courteous to all parties, and to listen patiently and with an open mind to the statements and arguments of the litigants. If I am fortunate enough to be confirmed, I am confident that I would meet this standard of judicial temperament.

7. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: If confirmed as district court judge, I would set aside any personal beliefs and views I may have, and will faithfully follow the law and binding precedent of the Supreme Court and the Eighth Circuit in all matters presented to me.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If confirmed and presented with a case of first impression, I would look to the text of the statute, regulation, or rule at issue. If the language were clear, I would apply the plain meaning of the text. If the language were ambiguous, I would look to analogous provisions of law and to applicable rules of construction, such as accepted canons of statutory construction. I would also look to the Supreme Court and Eighth Circuit for guidance on relevant interpretive methodologies.

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 set aside any personal views I might have, and I will faithfully follow binding precedent regardless of whether or not I agree with it.

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. Under the doctrine of constitutional avoidance, a district court should avoid declaring a statute unconstitutional if there is a plausible alternative interpretation. A federal court should declare a statute unconstitutional only in the rare circumstance when Congress has clearly exceeded its authority under the Constitution in enacting the statute or when the statute violates the Constitution and only if such ruling is necessary to the disposition of a case. If confirmed as a district judge, I would apply the standards established by the Supreme Court and the Eighth Circuit Court of Appeals in considering the constitutionality of a statute.

11. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: It is not proper for judges to rely on foreign law or the views of the "world community" in determining the meaning of the Constitution. Federal judges should rely on the law and binding precedent to determine 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 assure the Committee that if I am confirmed as a district judge my decisions would be grounded in precedent and the text of the law rather than any underlying political ideology or motivation. I have performed my responsibilities of enforcing criminal law as a prosecutor for the past 24 years without 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?

Response: If confirmed as a district court judge, I would be devoted to treating all litigants fairly. I would be committed to keeping an open mind, which necessarily entails setting aside any personal views and beliefs I may have on an issue, and carefully considering and analyzing the relevant laws and facts presented in each case.

14. If confirmed, how do you intend to manage your caseload?

Response: If confirmed as a district court judge, I would actively manage my caseload by utilizing early scheduling conferences in which discovery, motion practice, and unique case issues are discussed and realistic deadlines are set. I would continue to make myself available to the parties to resolve pretrial disputes, and utilize status conferences to ensure cases are progressing efficiently towards resolution. I would also seek advice and counsel from judicial colleagues to develop other caseload management tools.

15. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I believe that judges should have a role in controlling the pace and conduct of litigation. If confirmed as a district court judge, I would utilize the methods described in my previous answer to effectively move cases towards final disposition.

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: Although I have not served as a judge, if I am confirmed as a district court judge, I would reach decisions in cases that come before me by carefully analyzing and considering the legal issues presented; by listening with an open mind to the briefs, presentations and arguments of the litigants; by applying the law and binding precedent to the relevant facts; and ruling promptly.

17. Do you believe there is a right to privacy in the U.S. Constitution?

Response: Although the United States Constitution does not contain an express right to privacy, various provisions have been held by the United States Supreme Court to protect some rights of privacy. For example, the Supreme Court has held that the First Amendment protects rights of privacy in association. *See, e.g., NAACP v. Alabama*, 357 U.S. 449, 462 (1958) ("This Court has recognized the vital relationship between freedom to associate and privacy in one's associations."). The Supreme Court likewise has held that the Fourth Amendment protects privacy in the home. *See, e.g., Kyllo v. United States*, 533 U.S. 27, 34-40 (2001) (holding that thermal imagining of the interior of a home violates the prototypical privacy interest protected by the Fourth Amendment); *Missouri v. McNeely*,

133 S. Ct. 1552, 1558 (2013) (internal quotation marks omitted) (holding that search involving "a compelled physical intrusion beneath [suspect's] skin and into his veins to obtain a sample of his blood for use as evidence" constitutes "an invasion of bodily integrity [which] implicates an individual's most personal and deep-rooted expectations of privacy"). The Supreme Court also has held that the "liberty" interest protected by the Due Process Clause found in the Fifth Amendment and Fourteenth Amendment includes the right "to marital privacy, to use contraception, to bodily integrity, and to abortion." *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (identifying the liberty interests in the Due Process Clause, including the right to privacy).

a. Where is it located?

Response: Please see Response to Question 17 above.

b. From what does it derive?

Response: Please see Response to Question 17 above.

c. What is your understanding, in general terms, of the contours of that right?

Response: Please see Response to Question 17 above.

18. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?

Response: I am not familiar with the context of this statement. A federal district court judge should decide cases by following the law and binding precedent, and by fairly and impartially applying it to the relevant facts of each 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".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

20. **Please describe with particularity the process by which these questions were answered.**

Response: On March 18, 2015, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions and the cases referenced in the questions, and I then drafted my responses. After some discussions with an attorney from the Department of Justice, I finalized my responses and requested that the Department of Justice submit them on my behalf to the Senate Judiciary Committee.

21. **Do these answers reflect your true and personal views?**

Response: Yes.

Senate Committee on the Judiciary

Questions for the Record from Senator Vitter

"Nominations"

Wednesday, March 11, 2015

Roseann A. Ketchmark, to be a United States District Judge for the Western District of Missouri

1. **What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

   Response: In *National Labor Relations Board v. Noel Canning*, 573 U.S. ___ (2014), the Supreme Court held that for purposes of the Recess Appointments Clause, the Senate is in session when it says it is, provided that, under its own rules, it retains the capacity to transact Senate business. Therefore, the Senate determines when the Senate is in recess, provided the recess is of sufficient length. The Court held that the Recess Appointments Clause permits recess appointments during intra-session recesses that last 10 days or longer, as well as appointments to fill vacancies that existed prior to the recess. If confirmed as a district court judge, I would faithfully apply this binding precedent of the United States Supreme Court.

2. **In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?**

   Response: In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court imposed a new standard to determine the validity of laws restricting abortions. The new standard asks whether a state abortion regulation has the purpose or effect of imposing an "undue burden," which is defined as a "substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." *Id.* at 877. Under the "undue burden" standard, the Court invalidated the spousal notification requirement of the Pennsylvania Abortion Control Act of 1982, but upheld other provisions of the Act. Because the issue in question is being litigated in various federal courts, I do not believe it would be appropriate for me to address the issue in advance of a case that could come before me as a judge if I am confirmed. If confirmed as a district court judge, I would faithfully follow the binding precedent of the Supreme Court and the Eighth Circuit.

3. **The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?**

   Response: The Supreme Court opinion in *Roe v. Wade*, 410 U.S. 113 (1973), is over 40 years old and has not been overturned. The Supreme Court has reaffirmed the core holding that "[r]egardless of whether exceptions are made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." *Planned Parenthood v. Casey*, 505 U.S. 833, 879 (1992). In addition to *Roe v. Wade* and *Planned Parenthood v. Casey*, the Supreme Court holding in *Gonzales v. Carhart*, 550 U.S. 124 (2007), is binding precedent as well. These precedents of the Supreme Court are entitled to respect under the doctrine of *stare decisis*. If confirmed as a district court judge, I would faithfully follow the binding precedent of the Supreme Court and the Eighth Circuit.

4. **Do you agree that the ruling in Baker v. Nelson precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that US v. Windsor contradicts the Court's previous ruling in Baker?**

   Response: The Minnesota Supreme Court's holding in *Baker v. Nelson*, 291 Minn. 310, 191 N.W.2d 185 (1971), held that a state law limiting marriage to persons of the opposite sex did not violate the United States Constitution. When Baker appealed the U.S. Supreme Court dismissed the appeal "for want of a substantial federal question." *Baker v. Nelson*, 409 U.S. 810 (1972). In *United States v. Windsor,* 133 S. Ct. 2675 (2013), the U.S. Supreme Court held the federal Defense of Marriage Act to be unconstitutional but recognized the "virtually exclusive province of the States" to define and regulate marriage subject to Congress' authority "in enacting discrete statutes [to] make determinations that bear on martial rights and privileges" and "subject to constitutional guarantees." *Id.* at 2690-92 (internal quotation marks omitted). More recently the Supreme Court has granted certiorari in *Obergefell v. Hodges,* regarding whether the Constitution requires States to issue marriage licenses to same sex couples. The Supreme Court's resolution of that issue as well as all other issues will be binding on all lower court judges. If confirmed as a district court judge, I would faithfully follow the binding precedent of the Supreme Court and the Eighth Circuit Court of Appeals.

5. **What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?**

   Response: My philosophy on judicial precedent is that federal district court judges are sworn to follow the binding precedent of the Supreme Court and their corresponding Circuit Court of Appeals whether or not they agree with it. My personal views on any issues will play no role in my decision.

6. **How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?**

   Response: In *District of Columbia v. Heller*, 554 U.S. 571, (2008), the Supreme Court held that the Second Amendment protects the individual right to keep and bear arms for self-defense, and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), made clear that the Second Amendment was fully binding upon States. Because the precise scope of the individual, fundamental right to keep and bear arms as guaranteed by the Second Amendment is a matter currently in litigation, I do not believe it would be appropriate for me to address the issue in advance of a case that could come before me as a judge if I am confirmed. If confirmed as a district court judge, I would faithfully follow the precedent of the Supreme Court and the Eighth Circuit regarding Second Amendment issues.

7. **Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?**

   Response: Because the question calls for my opinion regarding a pending legal issue, I do not believe it would be appropriate for me to address the issue in advance of a case that could come before me as a judge if I am confirmed. I assure the Committee that if confirmed as a district court judge, I would adhere to the precedent of the Supreme Court and the Eighth Circuit regarding all issues of capital punishment.

Questions for Judicial Nominees
Senator Ted Cruz

Kara Stoll
Nominee, United States Circuit Judge for the Federal Circuit

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

Response: I would characterize my judicial philosophy as respect for the rule of law and the limited role of an appellate court. A judge should be unbiased and faithfully apply the rule of law embodied in the Constitution, statutes, and precedent to the facts of a case without regard to the identity of the parties. A judge should not substitute his or her own views for that of Congress or governing precedent. In addition, an appellate judge must apply the appropriate standard of review when considering a lower court's decision.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

Response: The doctrine of *stare decisis* is essential to our judicial system, ensuring predictability, stability, and even-handed application of the law. Circuit judges are bound by Supreme Court decisions on interpretation of constitutional provisions, such as due process or equal protection. By faithfully following precedent, a responsible judge will apply constitutional provisions, statutes, and other governing law to the facts of a case without imparting his own values to these provisions.

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

Response: If confirmed, I will faithfully follow the precedents of the Supreme Court regardless of whether I believe these precedents were wrongly decided.

4. Which sitting Supreme Court Justice do you most want to emulate?

Response: I respect all of the Supreme Court Justices for their dedication and devotion to public service. As a nominee to the Court of Appeals for the Federal

Circuit, I would emulate Judge Alvin A. Schall of the Federal Circuit, for whom I clerked. Judge Schall exemplifies an unwavering commitment to the rule of law. He is fair and unbiased, diligent in learning the record and the parties' positions, and writes clear and concise opinions narrowly tailored to the issues before the court. He is also respectful toward litigants, his colleagues, and staff.

5. 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, other)?

Response: In interpreting a constitutional provision, its original understanding can be a tool in determining its meaning. For example, in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008), the Supreme Court considered the public understanding of the words in the Second Amendment at the time it was ratified. If confirmed, I would follow Supreme Court precedent that prescribes the appropriate methodologies to interpret the Constitution.

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

Response: None.

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

Response: Under Article III, Section 2 of the United States Constitution, the role of the federal courts is limited to deciding cases and controversies that come before them.

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

Response: To the extent that some commentators define the theory of a living Constitution as courts changing the words or the meaning of the Constitution, I do not agree with that theory. Judges should employ judicial restraint by honoring precedent when deciding cases.

9. What is your favorite Supreme Court decision in the past 10 years, and why?

Response: I do not have a favorite Supreme Court decision. If confirmed, I would apply them all as binding precedent.

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

Response: I cannot identify a case that I would characterize as an example of judicial activism, where a judge relied on his or her personal views to decide a case as opposed to applying the rule of law. If confirmed, I would decide cases based on the rule of law without regard to any personal views.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Response: Commentators have defined natural law as a system of rights or justice held to be common to all humans and derived from nature. Natural law is not precedent, nor is it constitutional or statutory text. If confirmed, I would not rely on natural law to interpret the Constitution or statutes.

Congressional Power

12. 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* is binding precedent and has not been overturned. If confirmed, I would apply governing Supreme Court precedent to this and any other issue that came before me.

13. Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *United States v. Morrison*, 529 U.S. 598, 608 (2000), the Supreme Court identified "three broad categories of activity Congress may regulate under its commerce power." These categories include: (1) the use of channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce; and (3) activities having a substantial relation to interstate commerce. *Id.* at 609. In *Gonzales v. Raich*, 545 U.S. 1, 18 (2005), the Supreme Court held that Congress may regulate the local possession and use of marijuana because "failure to regulate that class of activity would undercut" a larger regulatory regime directed at economic activity. If confirmed, I would apply

governing Supreme Court precedent to this and any other issue that came before me.

14. What limits, if any, does the Constitution place on Congress's ability to condition the receipt and use by states of federal funds?

Response: The Supreme Court has recognized limits on Congress's ability to use its spending power to create incentives for states to act in accordance with federal policies. Supreme Court precedent characterizes Spending Clause legislation as "much in the nature of a contract" and explains that "[t]he legitimacy of Congress's exercise of the spending power 'thus rests on whether the State voluntarily and knowingly accepts the terms of the contract.'" *NFIB v. Sebelius*, 132 S. Ct. 2566, 2602 (2012) (citing *Barnes v. Gorman*, 536 U.S. 181, 186 (2002) and quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)). As the Supreme Court has explained, "[r]especting this limitation is critical to ensuring that Spending Clause legislation does not undermine the status of the States as independent sovereigns in our federal system." *Id.* If confirmed, I would apply governing Supreme Court precedent to this and any other issue that came before me.

15. Is Chief Justice Roberts' decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: In *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), five justices of the Supreme Court agreed that Congress could require certain individuals to pay a financial penalty for not obtaining health insurance pursuant to Congress's power under the Taxing Clause. In his decision, Chief Justice Roberts also stated that the Commerce Clause does not give Congress the power to require an individual to maintain health insurance. *Id.* at 2591. Circuit Courts have recognized the existence of "considerable debate about whether the statements about the Commerce Clause are dicta or binding precedent." *United States v. Henry*, 688 F.3d 637, 641-42 n.5 (9th Cir. 2013). While some Circuit Courts have treated this part of the decision as binding precedent, *see United States v. Rose*, 714 F.3d 362, 371 (6th Cir. 2012), others have declined to express an opinion on the issue, *see United States v. Roszkowski*, 700 F.3d 50, 58 n.3 (1st Cir. 2012). If confirmed, I would apply governing Supreme Court precedent to this and any other issue that came before me.

<u>Presidential Power</u>

16. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court has addressed the President's power to issue executive orders and take executive actions on numerous occasions. *See, e.g., Medellin v. Texas*, 552 U.S. 491 (2008); *Youngstown Sheet & Tube Co. v. Sawyer*, 72 S. Ct. 863 (1952). The President's power to issue executive orders "must stem either from an act of Congress or from the Constitution itself." *Youngstown*, 72 S. Ct. at 866. In *Medellin*, the Supreme Court stated that Justice Jackson's "tripartite scheme" as set forth in his concurring opinion in *Youngstown*, 72 S. Ct. at 863, "provides the accepted framework for evaluating executive action." *Medellin*, 552 U.S. at 524. "First, '[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum." *Id.* (quoting *Youngstown*, 72 S. Ct. at 863.) "Second, '[w]hen the President acts in the absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.'" *Id.* "Finally, 'when the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb' and the Court can sustain his actions 'only by disabling the Congress from acting upon the subject.'" *Id.* If confirmed, I would apply governing Supreme Court precedent to this and any other issue that came before me.

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 72 S. Ct. 863, 866 (1952), the Supreme Court held that the President's power to issue an order "must stem either from an act of Congress or from the Constitution itself." If confirmed, I would apply governing Supreme Court precedent to this and any other issue that came before me.

Individual Rights

18. 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 the Due Process Clause protects "those fundamental rights which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" If confirmed, I would apply governing Supreme Court precedent to this and any other issue that came before me.

19. When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: In *City of Cleburn v. Cleburn Living Center*, 473 U.S. 432, 440-41 (1985), the Supreme Court held that classifications based on race, alienage, national origin, gender, and illegitimacy, as well as classifications which burden a fundamental right, are subject to heightened scrutiny under the Equal Protection Clause. If confirmed, I would apply governing Supreme Court precedent to this and any other issue that came before me.

20. 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 view as to whether the use of racial preferences in higher education will be necessary in fifteen years. If confirmed, my personal views, if any, will not factor into my decision-making process.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: In *Grutter v. Bollinger,* 539 U.S. 306, 326 (2003), the Supreme Court held that "all racial classifications imposed by government 'must be analyzed by a reviewing court under strict scrutiny.'" (Internal citations omitted). "This means that such classifications are constitutional only if they are narrowly tailored to further compelling governmental interests." *Id.* The Supreme Court later explained that "[s]trict scrutiny is a searching examination, and it is the government that bears the burden to prove 'that the reasons for any racial classification are clearly identified and unquestionably legitimate.'" *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411, 2419 (2013) (internal citations omitted). If confirmed, I would apply governing Supreme Court precedent to this and any other issue that came before me.

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: The Supreme Court addressed the Second Amendment and an individual's right to keep and bear arms for self-defense in the home in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *Heller*, the Supreme Court held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense and struck down a District of Columbia law that banned the possession of handguns in the home. In *McDonald*, the Supreme Court held that the Second Amendment right is

fully applicable to the states under the Fourteenth Amendment and struck down a Chicago law that banned handguns in the home. The Supreme Court has not addressed the right to bear arms for self-defense in public. If confirmed, I would apply governing Supreme Court precedent to this and any other issue that came before me.

Senator Chuck Grassley
Questions for the Record

Kara Stoll
Nominee, United States Circuit Judge for the Federal Circuit

1. **In an April 1994 article entitled "Means for Functioning in a Vacuum?" which discusses a case decided by the Federal Circuit, you wrote "It is the court's responsibility to interpret the statutory provisions enacted by Congress . . . . [T]he court was simply adhering to the language in the statute enacted by Congress. But, having reversed such a long standing policy, the court should have at least attempted to provide sufficient guidelines for enforcing the new policy. Until the court further defines [the matter, it] will be applied with much confusion and frustration. Preferably, Congress will be persuaded to rewrite the statute . . ."**

    a. **Can you please explain when it is proper for a court to go beyond strictly interpreting statutory language?**

    Response: I prepared this article more than twenty years ago when I was a patent examiner and a first-year law school student in the evening program at Georgetown University Law Center. My views on the role of a court and statutory interpretation have evolved since that time. A court should look to the plain statutory language and follow binding precedent on the meaning of statutory language.

    b. **What do you mean by a court issuing "guidelines"?**

    Response: I no longer believe that a court should issue "guidelines" or provide advisory opinions. The proper role of a court is to resolve only the dispute before it. If confirmed, I will strive to write clear and concise opinions that are narrowly tailored to the dispute before the court.

    c. **Is this a legitimate exercise of judicial authority?**

    Response: No.

    d. **Are there any limitations to what a judge should properly issue in a decision?**

    Response: Yes. For example, federal courts cannot issue advisory opinions because of the case-or-controversy requirement in the Constitution.

2. **Congress has consistently recognized the value of whistleblowers in the government and private sector. As one of the original sponsors of the Whistleblower Protection Act of 1989, I have always pushed for strong whistleblower protections for federal employees. The Court of Appeals for the Federal Circuit has exclusive appellate jurisdiction to hear appeals of federal employee whistleblower cases. Unfortunately, the Federal**

Circuit has repeatedly ruled against federal whistleblowers and in my view ignored the express intent of Congress.

a. **In reviewing your questionnaire, it appears you have little, if any, experience with whistleblower law or any federal personnel law. Considering that the Federal Circuit has exclusive jurisdiction over these cases, what, if any, experience do you have with the Whistleblower Protection Act?**

   Response: I have no experience with the Whistleblower Protection Act. If confirmed, I will work diligently to familiarize myself with the Whistleblower Protection Act and faithfully apply its provisions to the facts of the cases that come before me.

b. **Does the Federal Circuit have the authority to circumvent the plain language of a statute and the stated Congressional intent of the Whistleblower Protection Act? May the Federal Circuit narrow the broad definitions Congress intended?**

   Response: No court has the authority to ignore the plain language of a statute. A court may not narrow definitions provided for in a statute.

c. **If confirmed, will you continue to uphold Federal Circuit precedents that clearly conflict with the statute's plain language?**

   Response: An appellate court is bound by its prior panel and en banc decisions, which the court can overrule when sitting en banc. En banc review is warranted when there are conflicting decisions in the court's precedent or the proceeding involves a question of exceptional importance. See Fed. R. App. P. 35(a).

3. **The Federal Circuit has continued to ignore the express will of Congress and has issued a number of decisions that have substantially limited the types of disclosures that are protected under the Whistleblower Protection Act. Specifically, the 1994 revision to the Act had significant legislative history in both the House and Senate. That legislative history reaffirmed that ANY disclosure of a violation of law, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, would be protected. Despite this clear and express intent, the Federal Circuit has continually limited the types of disclosure that are protected. For instance, in 1995 the court ruled disclosures to co-workers or to the wrongdoer are not protected. In 1998 it held that disclosures made as part of an employee's normal job duties are not protected. And, the court also held that disclosures of information already known, but not acted on, are also not protected.**

   a. **Do you agree with the plain language of the statute that any disclosure of violations of law, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety is a protected disclosure under the Whistleblower Protection Act? Why or why not?**

Response: The plain language of 5 U.S.C. § 2302(b)(8) states that prohibited personnel practice includes taking or failing to take, or threatening to take or failing to take, a personnel action with respect to any employee or applicant for employment because of "any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences— (i) any violation of any law, rule, or regulation or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety."

b. **Do you believe that a disclosure made by a federal employee as part of his or her normal job duties should be protected?**

Response: Yes, so long as that disclosure otherwise meets the requirements of the Whistleblower Protection Act, including the requirements set forth in 5 U.S.C. § 2302(b)(8) as set forth in my answer to part a above. If confirmed, I would be bound by the principle of *stare decisis* to follow binding Federal Circuit precedent.

c. **Do you believe that a disclosure made by a federal employee to a co-worker or to the wrong doer is a protected disclosure under the Act?**

Response: Yes, so long as that disclosure otherwise meets the requirements of the Whistleblower Protection Act, including the requirements set forth in 5 U.S.C. § 2302(b)(8) as set forth in my answer to part a above. If confirmed, I would be bound by the principle of *stare decisis* to follow binding Federal Circuit precedent.

d. **Do you believe verbal disclosures not written down would be protected under the Act?**

Response: Yes, so long as that disclosure otherwise meets the requirements of the Whistleblower Protection Act, including the requirements set forth in 5 U.S.C. § 2302(b)(8) as set forth in my answer to part a above. If confirmed, I would be bound by the principle of *stare decisis* to follow binding Federal Circuit precedent.

4. **Perhaps the most egregious example of the Federal Circuit placing hurdles in front of federal government whistleblowers is a 1999 decision in *Lachance v. White*. In that case, the Federal Circuit held that a whistleblower had to present "irrefragable proof" that wrongdoing actually occurred in order to prove the claim. Read literally, this "irrefragable proof" standard means a whistleblower must offer indisputable proof that the public official acted in bad faith or violated the law. This standard has been limited to only disclosures that evidence gross mismanagement. But, the standard is clearly contrary to the intent of the Congress.**

a. **Have you ever heard of the irrefragable proof standard?**

Response: I had not heard of the irrefragable proof standard until recently.

b. **What is your understanding of this standard?**

Response: In *Am-Pro Protective Agency v. United States*, 281 F.3d 1234 (Fed. Cir. 2002), a non-Whistleblower Protection Act case decided subsequent to *Lachance*, the Federal Circuit acknowledged "some confusion" about the term "irrefragable proof" and ruled that the term means "clear and convincing evidence."

c. **What does a whistleblower need to prove in order to meet this standard?**

Response: The clear-and-convincing standard of proof would be a more rigorous standard for a whistleblower to meet than the substantial evidence and preponderance of the evidence standards, but it is a less rigorous standard to meet than proving evidence beyond a reasonable doubt.

d. **Do you believe this standard or a substantial evidence standard should apply to whistleblower cases?**

Response: As set forth in 5 U.S.C. § 2302(b), "any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure . . . may be rebutted by substantial evidence." If confirmed, I would be bound by the principle of *stare decisis* to follow binding Federal Circuit precedent.

5. **Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: No. Diversity increases public confidence in the judiciary, but it should not impact the outcome of a case. A judge should apply the rule of law to the facts of the case to determine the correct outcome irrespective of his or her personal background.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: First and foremost, a judge should be unbiased and faithfully apply the rule of law embodied in the Constitution, statutes, and precedent to the facts of a case without regard to the identity of the parties. A judge may not substitute his or her own views for that of Congress or governing precedent. I possess this attribute and, if confirmed, I will be committed to these principles.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be respectful and courteous to litigants and fellow judges. A judge should also be hard-working and diligent in learning the record and the parties' positions. A judge should keep an open mind and understand and consider the parties' positions before reaching a decision. I believe that I meet these standards.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: If the matter involved interpretation of a statute, I would first consider the text of the statute. If the language is clear, I would follow its plain meaning. If the statutory language is ambiguous, I would follow the other canons of statutory interpretation prescribed by the Supreme Court. I would also carefully consider what other courts, in decisions not binding on the Federal Circuit, have said about the issue for their persuasive value, as well as precedents on closely-related issues.

9. **Please describe your understanding of the workload of the Federal Circuit. If confirmed, how do you intend to manage your caseload?**

   Response: I clerked at the Federal Circuit, taught a law school course on practice and procedure at the Federal Circuit, and represented parties in appeals before the Federal Circuit. Based on these experiences, I am familiar with the workload of the Federal Circuit. If confirmed, I would follow the example set by Judge Alvin A. Schall for whom I clerked. Judge Schall ran an efficient and organized chambers, diligently worked with his staff to learn the record and parties' positions prior to oral argument, and diligently worked with his fellow judges and staff to prepare well-written, clear and concise opinions in a timely manner. I would also follow the Federal Circuit's Internal Operating Procedures, which include provisions for managing one's caseload.

10. **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 apply the governing Supreme Court and Federal Circuit precedent to the facts of the cases before me without regard to the identity of the parties. With respect to the transition, after I clerked at the Federal Circuit, I represented parties in appeals before the Federal Circuit and, in that role, I would always try to see the case through the eyes of a judge so I could understand the strengths and weaknesses of the case, present the most meritorious positions and arguments, and properly counsel clients. While I have experience with the patent and veterans areas of the Federal Circuit's jurisdiction, I already have begun learning the other important areas of the court's jurisdiction and, if confirmed, I would devote a substantial amount of time to diligently continue those efforts.

11. **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 promotes judicial efficiency and allows appellate judges to come together to ideally produce one decision of the Court. If confirmed, I will carefully and

thoughtfully consider my colleagues' views, be respectful toward them and their views even if I disagree, and maintain an open and friendly dialogue.

12. Please describe with particularity the process by which these questions were answered.

Response: I considered each question, did research where necessary, and drafted answers. I reviewed my draft answers with the Office of Legal Policy of the Department of Justice, made some revisions, and then submitted my answers.

13. Do these answers reflect your true and personal views?

Response: Yes.

Senate Committee on the Judiciary

Questions for the Record from Senator Vitter

"Nominations"

Wednesday, March 11, 2015

Kara Stoll, to be a United States Circuit Judge for the Federal Circuit

1. **What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

   Response: The Supreme Court in *NLRB v. Canning,* 134 S. Ct. 2550 (2014), held that the Recess Appointments Clause empowers the President to fill any existing vacancy during any recess—intra-session or intersession—of sufficient length. The Supreme Court also addressed the question of how many days is "sufficient length." Specifically, the Court held that, "in light of historical practice, a recess of more than 3 days but less than 10 days is presumptively too short to fall within the Clause." *Id.* at 2567. The Court stated that it added the word "presumptively" in order "to leave open the possibility that some very unusual circumstance—a national catastrophe, for instance, that renders the Senate unavailable but calls for an urgent response—could demand the exercise of the recess-appointment power during a shorter break." *Id.* If confirmed, I would follow Supreme Court precedent in this case and all cases that came before me.

2. **In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?**

   Response: The Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), held that "an undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." *Id.* at 878. The question of whether a state requirement that doctors performing the procedures have admitting privileges at a hospital in the state and, as a result, all abortion clinics in the state are shut down is the subject of current litigation in lower courts. As such, as a judicial nominee, I believe that it would not be appropriate for me to opine on the matter. If confirmed, I would apply governing precedent to this issue and any other issue that came before me.

3. **The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?**

   Response: *Roe v. Wade,* 410 U.S. 113 (1973), is precedent of the Supreme Court and has not been overturned. In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court "reject[ed] the rigid trimester framework of *Roe v. Wade*" and adopted the undue burden standard instead, *id.* at 878, but also stated that "[o]ur adoption of the undue burden analysis does not disturb the central holding of *Roe v. Wade*, and we reaffirm that holding." *Id.* at 879. *Roe*, as modified by *Casey* and other Supreme Court precedents such as *Gonzales v. Carhart*, 550 U.S. 124 (2007), is settled precedent of the Supreme Court, entitled to deference under principles of *stare decisis*, and lower courts must follow it.

4. **Do you agree that the ruling in Baker v. Nelson precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that US v. Windsor contradicts the Court's previous ruling in Baker?**

   Response: In *Baker v. Nelson*, 291 Minn. 310 (Minn. 1971), *appeal dismissed*, 409 U.S. 810 (1972), the Minnesota Supreme Court ruled that a state law limiting marriage to persons of the opposite sex did not violate the Constitution. Baker appealed and the Supreme Court dismissed the case "for want of a substantial federal question." *United States v. Windsor,* 133 S. Ct. 2675 (2013), involved federal law. Specifically, the Supreme Court in *United States v. Windsor* held that it had jurisdiction to consider whether Windsor, as a taxpayer, was entitled to claim the federal estate tax exemption for surviving spouses or was barred from doing so under §3 of the federal Defense of Marriage Act. If confirmed, I would apply governing precedent to this and any other issue that came before me.

5. **What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?**

   Response: A judge should faithfully apply judicial precedent to the facts of a case. A judge may not substitute his or her own views for those of Congress or governing precedent. If confirmed, I would follow judicial precedent regardless of any personal views.

6. **How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to**

carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?

Response: The Supreme Court in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), stated: "In *Heller,* we held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense. Unless considerations of *stare decisis* counsel otherwise, a provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the Federal Government and the States. We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*." *Id.* at 791. I understand that there have been recent lower federal court rulings upholding gun control laws but, to my knowledge, the Supreme Court has not considered these lower federal court rulings. As a judicial nominee, I believe that it would be inappropriate for me to opine on the lower federal court rulings that might be appealed, even though, to the best of my knowledge, the Federal Circuit has never considered an appeal involving a Second Amendment issue. If confirmed, I would apply governing precedent to this and any other issue that came before me.

7. **Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?**

Response: The Supreme Court recently granted certiorari to address this question in *Glossip v. Gross* and set argument for April 29, 2015. The Supreme Court also "ordered that petitioners' executions using midazolam are stayed pending final disposition of this case." As a judicial nominee, I believe that it would not be appropriate for me to opine on the correctness of the Supreme Court's order or its pending decision. If confirmed, I would apply governing precedent to this and any other issue that came before me.

NOMINATIONS OF HON. DALE A. DROZD, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA; HON. ANN DONNELLY, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK; LAWRENCE J. VILARDO, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK; AND, LaSHANN DeARCY HALL, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

WEDNESDAY, MAY 6, 2015

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

The Committee met, pursuant to notice, at 2:18 p.m., in Room SD–226, Dirksen Senate Office Building, Hon. Thom Tillis presiding.

Present: Senators Tillis, Schumer, Klobuchar, and Franken.

OPENING STATEMENT OF HON. THOM TILLIS, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator TILLIS. Good afternoon, everyone. We are going to go ahead and get the Committee started. I want to welcome you all to what is, I believe, the fifth nominations hearing by the Judiciary Committee.

Today we will hear from four nominees to the Federal District Courts: Dale Drozd, to be United States District Judge for the Eastern District of California; Ann Donnelly, to be United States District Judge for the Eastern District of New York; Lawrence Vilardo, to be the United States District Judge for the Western District of New York; and, LaShann DeArcy Hall, to be the United States District Judge for the Eastern District of New York.

Welcome to you all and especially a welcome to Ms. Hall's little daughter out there. Thank you for joining us.

I know your family must be very proud. You should be. This is quite an honor for you to come before this Committee for the nominations process.

I do have a statement from the Chairman that I will submit for the record.

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

Senator TILLIS. At this time, I believe that we will go directly to Senator Boxer. So, Senator, if you would like to introduce your nominee.

STATEMENT OF HON. BARBARA BOXER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA, INTRODUCING HON. DALE A. DROZD, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA

Senator BOXER. Mr. Chairman, thank you so much, Members of the Committee, nice to be here. I am honored to be here.

Before I introduce, formally, Judge Drozd, and introduce you to his family, I want to thank you so much for this, because we have got a serious problem in the Eastern District. It has been declared a judicial emergency. Cases are piling up. We do not have enough judges to review them.

This is an area of the State that is growing rapidly. And according to the Judicial Conference, there are 1,000 cases per active judge in the Eastern District—1,000 cases per active judge—one of the highest caseloads in the Nation.

With only one acting judge sitting in Fresno, judges in Sacramento have had to take over some of the civil cases. Now, this is a district where the Judicial Conference has recommended doubling the number of judgeships to just handle the current caseload.

We just cannot allow this seat to be vacant any longer because as we all know, justice delayed is justice denied, and that is happening to too many Californians.

Fortunately, we have a real consensus candidate for this vacancy and I would ask Judge Drozd and his wife, Janette, and their two sons, Doug and Paul, to stand, please, and just wave to the Members.

We all know how important family members are to those who seek public office and we welcome them.

The Judge has been serving as a magistrate judge on the U.S. District Court for the Eastern District since 1997. Since 2011, he has served as Chief United States Magistrate Judge for the Eastern District.

Thirty-five years ago he served as a law clerk to Judge Lawrence Karlton, Judge of the United States District Court for the Eastern District. Prior to taking his position as a judge, he worked in private practice in our State's capital, Sacramento.

The Judge received his bachelor's degree in 1977 from Cal State University at San Diego and he won his law degree from the University of California at Los Angeles School of Law, where he was a member of the Order of the Coif.

His 18 years on the bench serving the people of the Eastern District and his previous years in private practice make him an excellent candidate to fill this vacancy.

In closing, I am proud to be here today with Judge Drozd, who received a unanimous "well qualified" rating from the American Bar Association. I would like, again, to thank this Committee for holding this hearing and moving forward on this important nomi-

nation, and I look forward to working with you as the process moves forward.

Mr. Chairman, thank you for your courtesy.

Senator TILLIS. Thank you, Senator Boxer. I know you have a very busy schedule. Of course, you are welcome to stay as long as you can, but feel free to leave when you deem it necessary.

Senator Schumer.

OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK, INTRODUCING LAWRENCE J. VILARDO, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK, AND HON. ANN DONNELLY, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Senator SCHUMER. Thank you. Good morning. Good afternoon. Time flies when you are having fun.

Thank you, Chairman Tillis, Senator Franken, Senator Gillibrand, my colleague in New York, and Senator Boxer, my dear friend since 1982 when we both were in Congress together.

I want to thank Chairman Grassley for scheduling this hearing. These nominees have been waiting patiently for a long time. I am thrilled that the Committee is finally moving forward with their nominations. It is important to them, but more important to the districts they serve, which need them desperately.

Three of the four nominees before our Committee have been nominated for seats designated as judicial emergencies. Now, that does not mean something like there are a whole lot of fires or robberies. It means we do not have enough judges on the bench to cover the cases and the backlogs are horrible.

The fourth, Mr. Vilardo, from my home State, from Buffalo, is nominated to the court where there are no currently active judges sitting. That is how bad this backlog is. Buffalo has one of the busiest Federal court systems in the country and also one of the worst backlogs of cases. It can take 5 years—5 years for a case to go to trial. Imagine how long you would have to wait for justice. It is a serious issue.

So I am grateful, Mr. Chairman, that we are taking a step forward and addressing it today. There are no more important values than the speedy application of justice and the right to petition the Government for redress of grievances and, frankly, neither of these can be achieved without judges on the bench.

Western New York has a backlog of cases and a current dearth of judges. We need a candidate of Mr. Vilardo's experience and quality to get approved by this body with all due speed so this issue can be addressed.

So now let me turn to the introduction of the two outstanding lawyers whom I have had the pleasure and privilege of recommending to the President for nomination.

First, Lawrence J. Vilardo, for the Western District, which is mainly Buffalo, Rochester, and the western section of New York. And many people from New York City and its area forget that we have a huge population Upstate and the Western District has millions, certainly over 2 million people who live there, bigger than some States.

Mr. Vilardo is a true Buffalonian, you can tell just by talking to him, and he is going to be a credit to the bench in his hometown. He received his bachelor's degree from Canisius College, a great Western New York Institution that I have had the pleasure of visiting many a time. He graduated summa cum laude.

He then attended Harvard Law School, graduated magna cum laude. Having gone there, I know how hard it is to graduate magna cum laude at Harvard Law School. I did not.

[Laughter.]

Senator SCHUMER. While in law school, he was an editor of the Harvard Law Review, a distinction he shares with our President.

Following his graduation from law school, Mr. Vilardo clerked for the Honorable Irving Goldberg of the Court of Appeals for the Fifth Circuit in Dallas, Texas, but fortunately for Western New York, he quickly went back home and founded one of the leading law firms of the region.

Throughout his distinguished career, Mr. Vilardo has always made time to give back and help mentor and inspire younger lawyers. Prior to starting his own firm, he served as an appellate practice faculty member at SUNY Buffalo School of Law and as a constitutional law faculty member at Canisius Law School.

He also served as a senior editor for the American Bar Association's litigation journal. He is a frequent speaker on appellate justice and legal ethics, among other topics, at law presentations and bar association seminars.

Mr. Vilardo's credentials are certainly excellent, something I look for in all judges. I look for three criteria when I choose judges. They are excellent, they should be legally excellent. I do not want too many political hacks or any political hacks on the bench. They should be moderate. As you might imagine, I do not like judges too far right, but I also do not like them too far left because judges at the extremes tend to want to make law rather than follow the law. And I look for diversity. When we can have a diverse bench, it is a great thing and young kids can look up to that bench and aspire to be on it one day themselves.

So he meets the criteria of excellence and of moderation and he is respected by practitioners and judges across the political and ideological spectrum for his even temperament and fair-minded way of thinking. And he is fundamentally a classic Buffalonian. I just love Buffalo. I love going up there.

What is a classic Buffalonian? Salt of the earth, honest, grounded. Buffalo is in Larry's bones. It is part of who he is. And like so many other people from the region, the city has made him tough, level-headed, fair, and decent.

So Western New York will be incredibly lucky to have him on the bench.

Now, let me turn to Judge Ann Marie Donnelly, who currently serves in the New York State Courts. Judge Donnelly is a graduate of the University of Michigan, received her JD from Ohio State University College of Law. Upon graduation, Judge Donnelly joined the New York County DA's office, one of the finest State Prosecutor Offices in the Nation.

She served for a quarter of a century and her reputation there is legendary. When you mention that you know Ann Donnelly to

anyone who has served in DA Morgenthau's office, one of the finest DA's offices in the country, they say she was one of the best. She is really admired, even though she has been out of that office for quite a while now. She accumulated recognitions and awards along the way. She worked in the Appeals Bureau and appeared regularly in the Appellate Division and the New York Court of Appeals.

In 1989, she was assigned to the Major Offense Career Criminal Program, a specialized bureau that targeted repeat offenders and violent felons. And 2 years later, Judge Donnelly was promoted to senior trial counsel and became a member of the Sex Crimes Prosecution Unit.

In 2005, she was named bureau chief of the Family Violence and Child Abuse Bureau; and, in 2009, she joined New York State's Court of Claims.

Over the past 6 years, her assignments have the supreme courts, which is what New York calls its trial courts, of three different counties, including New York County, where she currently serves hearing criminal cases.

Her stellar academic record, her lengthy career in public service, years she has spent honing her judicial acumen, all clearly qualify Judge Donnelly as an excellent candidate for the bench.

However, Judge Donnelly has more than just a brilliant resume. She is, at her core, a kind, thoughtful and compassionate person. Anyone who knows her or who has interacted with her even briefly knows she is fair and open-minded, has the temperament to make her well suited to be a Federal judge. She cares about the law and the legal profession. In addition, her many years of judicial and government service, in addition to those, she has helped cultivate the next generation of lawyers. She is a fellow in the American College of Trial Lawyers, regularly judges mock trials Moot Court competitions. She serves as a judge for the Jerome Prince Memorial Moot Court competition at Brooklyn Law School. She is even on the advisory board for the Thurgood Marshall mock trial program. That is for seventh and eighth grade students as they prepare and try a criminal case.

I also must add, Mr. Chairman, with the confirmation of Judge Donnelly and Ms. DeArcy Hall from the Eastern District, our bench will remain one of the most diverse judicial districts in the country.

I want to say one more thing. She has a great family, because I know Ann well, and she will introduce them, but it is a great sight to see them all from all over, Pennsylvania, Massachusetts. She was raised in Ohio. Her father was a mayor. He is looking down from heaven and very proud, I know that.

So I am going to ask just the whole greater Donnelly family to stand. You will see it is a great sight. Please get up, all you Donnellys. There they are in their glory and they are a great family. I know many of them. So nice to see them all here and so proud of Ann's great accomplishment today.

So let me just say, Mr. Chairman, you can see these are two immensely qualified candidates for the Federal bench. They are erudite, they are experienced, they are deeply respected throughout New York. Beyond that, each one has a spirit for public service that shines through in their respective roles as teachers and leaders in the legal community.

I hope, I pray that we can move quickly to move them through the Committee and onto the Senate floor.

Finally, I will leave the introduction to Senator Gillibrand, who nominated Ms. DeArcy Hall, but I just want to acknowledge that this is another terrific nominee and I commend Senator Gillibrand for recommending her.

Thank you, Mr. Chairman. Thank you to our judicial candidates and for their greater families that have come along to share their joy.

Senator TILLIS. Thank you, Senator Schumer.

Senator Gillibrand, you may introduce your nominee.

STATEMENT OF HON. KIRSTEN E. GILLIBRAND, A U.S. SENATOR FROM THE STATE OF NEW YORK, INTRODUCING LaSHANN DeARCY HALL, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Senator GILLIBRAND. Thank you, Mr. Chairman. Thank you to Senator Schumer for his excellent introduction of our nominees today.

I have the very special honor to be here to introduce LaShann DeArcy Hall and offer my strong support for her nomination to the United States District Court for the Eastern District of New York.

I would like to thank President Obama for acting on my recommendation and nominating another superbly qualified female jurist to the Federal bench.

Ms. DeArcy Hall's credentials are outstanding and her experiences as a lawyer are varied and diverse. Our country would be stronger with women like LaShann DeArcy Hall serving on the Federal bench.

Ms. DeArcy Hall is currently a partner at the international law firm of Morrison & Foerster, where she specializes in high stakes, complex commercial litigation. She has years of valuable experience as a public servant, including time serving as a commissioner with the New York State Joint Commission on Public Ethics, which oversees New York State's and executive and legislative branches' compliance with ethics and lobbying laws and regulations.

In 2011, Ms. DeArcy Hall was appointed by Mayor Bloomberg as a commissioner of the New York City Taxi and Limousine Commission. She also served as a member of the Board of Trustees for the Neighborhood Defender Service of Harlem and she is a member of the Howard University School of Law Board of Visitors.

She is a graduate of Howard University School of Law and she served as a member of the United States Air Force. In other words, LaShann DeArcy Hall is a highly accomplished lawyer who has chosen to use her intellect and skills for the greater good of public service.

For her work in promoting diversity in the legal profession, Ms. DeArcy Hall was honored by the New York City Bar Association as the recipient of the 2009 Diversity Champion Award. And if her nomination is approved, her presence would add much needed diversity, another female voice, to our Federal bench.

I have no doubts that Ms. DeArcy Hall's experience and qualifications make her a superb candidate for this judgeship. She is

dedicated to serving the citizens of New York and she is committed to making her city, State, and Nation more fair and just.

LaShann DeArcy Hall will be an excellent jurist on the Federal bench and I was very honored to recommend her for this position and I urge swift approval of her nomination.

Thank you, Mr. Chairman. Thank you, Committee Members.

Senator TILLIS. Thank you, Senator Gillibrand. Again, I know you are busy. So please feel free to leave when you need to.

If we could have the nominees come forward and stand. If you will please raise your right hand.

[Nominees are sworn in.]

Senator TILLIS. You may be seated.

Before we get started, we will provide you all with an opportunity, if you wish, to make an opening statement and to introduce your family. We will actually just start from left to right to make it easy. So we will start with you, Mr. Drozd.

STATEMENT OF HON. DALE A. DROZD, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA

Judge DROZD. Thank you, Senator.

I would first like to take the opportunity to thank Senator Boxer for her very gracious introduction, as well as her recommendation of my nomination to the President.

I would also like to thank Chairman Grassley and Ranking Member Leahy, as well as the rest of the Committee, for scheduling this hearing, as well as to Senator Boxer's staff, her judicial selection committee, and Senator Feinstein and her staff; and, finally, of course, to the President for bestowing on me the honor of the nomination itself.

I am lucky enough to have with me quite a few family and friends today, many of whom made their way all the way from California. The most important, of course, my wife of 32 years, Janet Vine, who has steadfastly supported me and our sons in everything that we have ever done.

Also, my son Doug, our oldest, who graduated from Claremont McKenna College and works in Sacramento, is here with us, as is my son, Paul, who was able to take a few days off of his final quarter at Cal-Poly Pomona and catch the red-eye flight and get in this morning.

I also have with me my sister-in-law and brother-in-law, Dave and Amanda Hall from West Sacramento; my cousin, Christine, and her husband, Rich, from Phoenix, Maryland; my niece, Lauren, who is attending graduate school here at Georgetown University; our cousin, Jennifer Nebo, who, along with our cousin, James, her husband, and their newborn, Carter, reside here in Washington, DC; and, finally, our longtime family friend from here in Washington, Bobby Masally, is also here with us.

Not here, but I know watching on the webcast today, are my brother, Don, in Orange County, California, and his entire extended family in the Pacific Northwest; my sister, Lisa Tobey, along with her family, from Minnetonka, Minnesota, I know is watching, as are all of them.

My brothers and sisters-in-law, Jimmy, Janice, Harry, and Diane back in Sacramento; and, all of my hardworking colleagues, chamber staff, and clerk's office staff in the Eastern District of California.

Finally, with me in spirit here today I know are my mom, who passed away in 2013, as well as my dad, who passed away in 2004. My dad was quite an accomplished individual. He served on a destroyer escort at the end of World War II, came out of the Navy in Southern California, went to work as a plumber at the LA County USC Medical Center and eventually became the executive director of the entire hospital. I know they would be proud.

Senator TILLIS. Thank you, Judge Drozd. I know that from time to time, when I am on C-SPAN, my mom still posts on Facebook how proud she is. So, I am sorry that your parents are not here to see this, but congratulations, Judge Drozd.

Judge Donnelly.

STATEMENT OF HON. ANN DONNELLY, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Judge DONNELLY. Thank you, Senator Tillis. I would like to thank Chairman Grassley and Ranking Member Leahy for scheduling this hearing.

Senator Schumer, I so appreciate that kind introduction.

I would like to thank the President for the honor of this nomination.

I would like to congratulate my fellow nominees on their nominations and their accomplished careers.

I am very lucky, as Senator Schumer said, to have quite a few people here with me today. First, is my husband of 30 years, Michael Toth. We are here with our—we are very proud of our two daughters, Rebecca Toth and Margaret Toth. They are here with their boyfriends. Maggie is here with Andy Worley and Becky Toth is here with Dan Jones.

My mother, my wonderful mother is here from Ohio, Mary Donnelly. My sister, Sarah Hopkins, is here with her husband, Dr. Jeffrey Hopkins, and their three wonderful girls, Callie Hopkins, Josie Hopkins and 5-year-old Jane Hopkins.

My brother, Dr. Thomas Donnelly, and his wife, Dr. Heidi Donnelly, my beloved sister-in-law, are here with their wonderful daughter, Imelda Donnelly. My dear friend, Audrey Moore, is here, as is my dear friend and mentor, Linda Fairstein.

My two brothers, Bill Donnelly and John Donnelly, are back in Ohio with their families. And my wonderful mother-in-law, Mary Toth, is in Michigan.

I would also like to acknowledge my wonderful colleagues on New York State Supreme Court and for all of their guidance and friendship in my time as a judge.

And finally, I would like to mention two people that I wish very much were here, my wonderful father-in-law, Edward Toth, and my father, Jack Donnelly, who would have had an excellent time at this hearing and I know that he is—I know that he is watching.

And I appreciate the opportunity to appear before you and I look forward to answering your questions.

Senator TILLIS. Thank you, Judge Donnelly.

Mr. Vilardo.

STATEMENT OF LAWRENCE J. VILARDO, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK

Mr. VILARDO. Thank you, Mr. Chairman. And thank you to the Members of the Committee, especially Chairman Grassley and Ranking Member Leahy, for giving me an opportunity today that until now I did not even dare to dream about.

I would like to thank the President for nominating me, and I would like to especially thank Senator Schumer for that very warm and generous introduction and also for having the confidence in me to recommend me to the White House.

With me today is the love of my life, my wife of 32 years, Jeanne Vilardo; our daughter, Dr. Brigid Vilardo Lyons, who is a child psychologist practicing in Western New York, and her husband, Patrick Lyons, who is more like a son than a son-in-law and is working with the Social Security Administration in Western New York.

Our daughter, Lauren Vilardo is here. After 2 years volunteering with the Jesuit Volunteer Corps, Lauren decided that she wanted to serve under-served populations by working in the medical profession. And so she is studying to be a doctor by taking the biology and chemistry classes that are required for that. She was a physics major in college at the University of Buffalo.

And also our son, Alexander Vilardo, who is working as a volunteer this year at his and my alma mater, Canisius High School, as part of their alumni volunteer corps. Alexander will attend law school at the University of Buffalo this fall.

Also, my nephew is here from New Jersey, Carroll Legg, and today is his birthday. So happy birthday, Carroll.

With me today are some of my very closest friends, former Ambassador Howard Gutman and his wife, Dr. Michelle Loewinger. From the class of 1973 at Canisius High School: Jim Shed, John McGrath and Bill Parachek.

And a recognition of a few people who are not here. First and most important, my parents. Both of them are no longer with us. Neither of them had any more than a high school education, but both of them had an appreciation of how important education is, so that they insisted that their four children attend college and they encouraged us to go even further than that. I know they are watching from a better place.

I would also like to acknowledge, in that regard, my brothers, Mark Vilardo, Dr. Joe Vilardo, and Dr. Michael Vilardo.

I would also like to acknowledge my in-laws, Mr. and Mrs. Carroll Gambino, who are watching on the Internet, if they can figure how the computer works.

[Laughter.]

Mr. VILARDO. And I would also like to acknowledge all my family and friends back in Buffalo who are watching, especially my partners, our associates, and the staff at the best law firm anyone could dream about working at, Connors & Vilardo.

Thank you, Mr. Chairman.

Senator TILLIS. Thank you, Mr. Vilardo. And I know I speak on behalf of all Americans for thanking Buffalo for the chicken wing.

[Laughter.]

Senator TILLIS. Football has never been the same.

Ms. Hall.

STATEMENT OF LaSHANN DeARCY HALL, NOMINEE TO BE A U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Ms. HALL. Thank you, Senator Tillis. I would like to thank Chairman Grassley, Ranking Member Leahy, and the entire Committee for scheduling this hearing today.

My heartfelt thanks go to Senator Gillibrand for her recommendation and for her kind introduction, and as well to Senator Schumer for his support.

Of course, I must extend my thanks, as well, to President Barack Obama for the honor of his nomination.

I hope that you will indulge me just a few minutes more as I recognize my family and friends.

Thank you to my husband, Courtney Caesar Hall, for his unyielding support through all of my endeavors, personally and professionally. To my greatest gift, my daughter, Jayden Hall, who reluctantly missed chess class to be here today.

To my inspiration and my best friend, my mother, Patricia DeArcy. To my stepchildren, Terrence, Rachel, and Alexander Hall. My sister, Motique Iudeli, and my mother-in-law, Doris Hall.

I would also like to say thank you to my dear friends who are here today, Kedric Payne, Monica Azare, and Saee Muzumdar. As well, to my partners and colleagues at the wonderful law firm of Morrison & Foerster, including my friend and partner, Jamie Levitt, my colleagues, Monica Castro and Joanna Zdanys, who are each here today.

I must also extend a thank you to the entire Howard University School of Law family, many of whom came here today to support me, including my classmates, Eugene Akers, Aaron Taylor, Brandy Harden, Zahai Marshall, and Tamika Taylor, as well as Dean Coombs, Dean Mageahy, and my trial ad professor, Professor Goode.

Finally, a thank you to all of my friends and family who have supported me personally and professionally throughout the years, many of whom are watching these proceedings from home.

Thank you.

Senator TILLIS. Thank you all. And I would tell all the family and friends, again, welcome. I know it is a proud moment for you. It should be.

Judge Drozd, I am going to start with you on questions. You presided over *Greene v. Solano County Jail*, a case where the maximum security inmate claimed that not being allowed to attend religious services was a violation of his religious liberty under the Religious Land Use and Institutionalized Persons Act and the First Amendment.

I would like to have you focus your analysis under that Act. You held that not being allowed to attend religious services was not a substantial burden on an inmate's practice of religion, but the Ninth Circuit disagreed and also remanded to find whether a ban on group worship was the least restrictive means under the RLU—

I hate acronyms—Religious Land Use and Institutionalized Persons Act.

Do you agree with the Ninth Circuit's reasoning?

Judge DROZD. Senator, of course, I was reversed in—my finding and recommendation was adopted and I was reversed.

Senator TILLIS. I know going into it you did not agree with them.

Judge DROZD. I was reversed in that instance and, of course, I am bound by the decisions of the Ninth Circuit and would apply the holding in *Greene* and all future cases—and have and do.

Senator TILLIS. Where would you have disagreed on the reasoning?

Judge DROZD. Senator, in *Greene*, I will say this. My recollection of that case is that the pro se plaintiff's pleadings were relatively challenging to characterize and to decipher, and that is quite often the case. I did my best to characterize what I believed to be the arguments and when the case went up on appeal, the Court of Appeals was able to discern a somewhat different argument, I felt, than what I believed that I had been presented with at the time.

I am bound by their determination and would follow it. Beyond that, I have no other thoughts.

Senator TILLIS. Thank you.

Ms. Hall, in your questionnaire, you stated that you worked on a pro bono death penalty case early in your career. Can you describe the work you did on that case?

Ms. HALL. Thank you for the question, Senator. My role on that case involved an argument with regard to jury selection and the argument specifically went to the ineffective assistance of counsel in the jury selection, as well as the improper conduct of the prosecutor in that case. And in that role, I was an advocate advocating on behalf of my client.

Senator TILLIS. And could you give me an idea of your views on the constitutionality of the death penalty?

Ms. HALL. I believe that the constitutionality of the death penalty is well settled and it is deemed constitutional.

Senator TILLIS. And if confirmed, would you be able to impose the death penalty on a criminal defendant, if required by law?

Ms. HALL. Yes, I would.

Senator TILLIS. Thank you.

Mr. Vilardo, I think throughout your career you have had some involvement with supporting members of political parties as an advisor, donor or fundraiser. There is, of course, nothing wrong with that.

This said, should you be confirmed, your political history might concern some litigants who appear before you. So what assurances can you give this Committee, if confirmed, your decisions will be grounded in legal precedent and the text of the law rather than any political ideology?

Mr. VILARDO. Thank you for that question, Senator. I really have been involved in politics precious little in Western New York. It has usually been when a friend has asked me to get involved.

I am proud to say that I have support from both sides of the aisle in Western New York and the Republican support is every bit as strong as the Democratic support. And I can assure you that once confirmed, if I am fortunate enough to be confirmed, lifetime ten-

ure means that you owe nothing to anyone and I would owe no debts, I would follow the law, I would follow the rule of law, I would follow the precedent from controlling jurisdictions by which I am bound and apply the law as dispassionately as possible.

Senator TILLIS. Thank you. And, Judge Donnelly, from your questionnaire, it appears that you have limited experience with civil matters either in practice or as a judge.

If confirmed as a Federal district court judge, you will be presiding over both civil and criminal matters. What have you done or will you do to prepare yourself for that side of the law?

Judge DONNELLY. Thank you for that question, Senator Tillis. In my 25 years as an Assistant District Attorney and in my 6 years as a State court judge, I have been lucky to have been challenged by very complicated cases and have been required to get up to speed quickly on issues that I was not previously familiar with, such as complex securities fraud, white-collar cases, and violent crime, as well.

With respect to getting up to speed on civil matters, I am committed to hitting the ground running. I plan to take advantage of all of the resources that are offered by the Federal Judicial Center, as well as consulting with my colleagues on the Federal bench, and I look forward to that challenge.

Senator TILLIS. Thank you.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman, and congratulations on your meteoric rise.

[Laughter.]

Senator TILLIS. Say that again, my mom is listening.

[Laughter.]

Senator FRANKEN. Mrs. Tillis, congratulations on having a son who is Chairman this early in his Senate career.

You are welcome.

[Laughter.]

Senator FRANKEN. I do not think we have had this much family and friends here at a hearing. So congratulations to all of you for having a lot of friends.

[Laughter.]

Senator FRANKEN. Ms. Hall, in addition to your considerable experience in civil litigation and commercial law, your background also reelects a commitment to public service.

Former Mayor Bloomberg appointed you to serve on the New York City Taxi and Limousine Commission, for example. But one experience in particular caught my eye, which is your service on the New York State Joint Commission on Public Ethics, which is tasked with ensuring compliance with New York State ethics and lobbying laws.

Can you tell us how your experience on that commission, where you participated in confidential hearings and considered sensitive information, will influence your work as a judge?

Ms. HALL. Thank you, Senator. I believe that my work on the New York State Joint Commission on Public Ethics, as well as my public service on the Taxi and Limousine Commission and my service in the United States Air Force, has helped me develop the tem-

perament that I think is important and necessary for a district court judge.

In particular, I believe that I had to demonstrate fairness, integrity, thoughtfulness, and hard work in my service on both of the commissions, as well as my time in the United States Air Force, and I believe that I would take that temperament, if given the opportunity, in my service on the Eastern District of New York.

Senator FRANKEN. So I take it that you think that fairness, integrity, thoughtfulness and hard work are good qualities to have in a judge.

Ms. HALL. Yes, I do.

Senator FRANKEN. I was trying to trick you.

[Laughter.]

Senator FRANKEN. Mr. Vilardo, I would like to find out more about your experience as it relates to judging. My understanding is that you clerked for Judge Irving Goldberg on the Fifth Circuit Court of Appeals.

Mr. VILARDO. Yes, sir.

Senator FRANKEN. What did that perspective teach you about sitting behind the bench and weighing the arguments of two sides equally? What other experiences put you in a position of arbiter rather than advocate?

Mr. VILARDO. Thank you for that question, Senator. Yes. The experience clerking for Judge Goldberg was a fabulous experience. It taught me about fairness and impartiality. It taught me about waiting and listening to everything that the litigants had to say and making a decision afterwards.

It taught me about making decisions, too. It is so important to make decisions quickly, not so quickly that you have not given consideration to all the arguments, but quickly enough that you move cases along, because as Senator Schumer said earlier, there is quite a backlog in the court. So I was taught that by my clerkship experience.

I have also been fortunate enough to have served as a hearing officer and as an arbitrator in a number of cases and that has taught me the perspective of not being an advocate, of looking down the middle and being fair to both sides, and, again, not making up your mind until everybody has said everything that they had to say, and then deciding.

Thank you.

Senator FRANKEN. Thank you. Judge Donnelly, as the Chair said, you have a lot of experience in criminal cases, not just in your current role as judge, but in your career as a prosecutor. But nonetheless, I would imagine that sentencing convicted defendants must be one of the most difficult jobs that you face as a judge.

Could you talk about the approach you take to sentencing and how that has been informed by your time as a prosecutor and, looking forward, how you would balance the need for sentencing with the need for rehabilitation in particular cases?

Judge DONNELLY. Thank you for that question, Senator Franken. Yes, you are correct that imposing sentence in a criminal case is among the most difficult parts—difficult tasks that a judge faces and the factors the judge is obligated to consider when determining the sentence to impose includes many factors, the severity of the

crime, the effect on the community where I am currently sitting in Manhattan, the effect on the particular victim, and the defendant's background, as well.

The cases that I have been presiding over most recently often involve devastating crimes to our communities, involving gang violence and murders, and the sentences are necessarily heavy.

But frequently in our courts we see very young defendants and that is the place where I believe that our judicial system has the opportunity to perhaps turn someone around.

In New York, you have the opportunity of affording a defendant youthful offender treatment, which I have done on many occasions. It is certainly a risk to the—that a judge takes when you do that, but it is certainly one of the tools that you have to perhaps save someone from what is bound to be a life of crime if they are not turned around.

Senator FRANKEN. Thank you very much. Sorry, I did not get to you, Judge, but——

Senator KLOBUCHAR. I will deal with him.

Senator FRANKEN [continuing]. Senator Klobuchar—I do not envy you.

[Laughter.]

Senator FRANKEN. Thank you, Mr. Chairman.

Senator TILLIS. Senator Klobuchar, would you mind—we have no Republican Members present now—if I maybe ask just a couple more questions before you proceed?

Senator KLOBUCHAR. That is fine.

Senator TILLIS. Thank you.

Judge Drozd, when you were a defense attorney, you were quoted in an article saying—I believe this is the correct quote—"Now the judge is almost irrelevant. You can bargain around the judge. You almost have to. When drug defendants plead guilty in Federal court, prosecutors usually drop some of the counts charged in an indictment, a move that frequently lowers the maximum possible sentence. In some cases, they drop all counts and substitute a charge carrying a lesser sentence."

Does that accurately reflect your opinion and do you believe there is any value in mandatory minimums? And if confirmed, will you apply the mandatory minium sentences?

Judge DROZD. Let me start with the end of the question first, Senator. I most definitely will apply all applicable mandatory minimum sentences where called upon by the law.

In terms of that quote in that newspaper article from probably 20-some years ago, I was speaking as an advocate. That was my job at the time. And I certainly understand the difference between my job at the time and the job that I have served for the last 18 years as a United States magistrate judge and I think my record shows that.

But I think actually what I was addressing in those comments, in large part, had to do with application of what was then the brand new United States sentencing guidelines; a little bit less on mandatory minimums, although to an extent it was.

And my comment was meant to just point out that charge bargaining at the outset was affecting judicial discretion in terms of addressing an appropriate sentence in an entire case and that the

discretion had, at that point, seemed to have been moved more into the hands of the Assistant United States Attorney who is electing what charges to bring, then being left to the judge at the end of the case when we knew what the result was going to be, and I expressed some concern about that.

Senator TILLIS. Ms. Hall, do you believe a judge's background has an impact on their judicial decisionmaking and how will your background inform decisions that you will make as a judge?

Ms. HALL. Thank you for the question, Senator. I believe that a variety of experiences that we all have will inform the viewpoint with which or the lens with which we view the world.

I do not believe, however, that my background will have any direct impact on any determination that I make, if I were fortunate enough to be confirmed as a judge.

Instead, what would guide me as a judge would be the rule of law and I pledge today that if I have the opportunity to be confirmed, that I would adhere to the rule of law.

Senator TILLIS. Thank you, Ms. Hall.

Judge Donnelly, can you identify any mistakes you made early in your judicial career that will help you as you transition into the Federal judgeship?

Judge DONNELLY. Well, the transition from advocate to a judge is definitely a learning curve and I have not catalogued the mistakes that I have made. I am sure they are—I am sure they exist.

But my judicial philosophy in my 6 years on the New York Supreme Court has been one of a fidelity to the rule of law, a respect for the people who appear before me, according every witness, litigant, juror dignity, making sure that my rulings are transparent so that the reasoning is clear, and a work ethic which involves a thorough knowledge of the applicable law and the factual record, and I believe that adherence to that philosophy minimizes the mistakes that a judge is apt to make.

Senator TILLIS. Thank you, Judge Donnelly.

Finally, Mr. Vilardo, you have represented numerous targets or witnesses in False Claims Act investigations. While attorneys must diligently and zealously represent their clients, your practice involving the False Claims Act has been focused on defending against whistleblowers' allegations.

If confirmed, how will you handle such actions if they are brought before your bench?

Mr. VILARDO. Thank you, Mr. Chairman, for that question. I will handle them the same way I handle all cases brought before me; that is, fairly and impartially by applying the rule of law.

District judges are not elected by anyone. They do not sit on a panel with other judges who can hold them in check. They do not have en banc courts to look at what they do. They decide cases based on what the law is, not on what the law should be, not on what they think the law ought to be or what they wish the law should be.

So handling whistleblower cases would be just like handling any other case; that is, applying the rule of law, applying precedent, and doing so fairly and impartially.

Senator TILLIS. Thank you, Mr. Vilardo.

Senator Klobuchar, thank you for your indulgence.

Senator KLOBUCHAR. Thank you.

I will start with you, as I promised Senator Franken, Judge Drozd. I actually nominated—my first Federal judge here that I recommended to the President was also a magistrate. So I know how important that job is and I also know that you are the chief magistrate in one of the busiest districts in the country.

So my question is just more about how you see the judicial system right now with your vast experience, what you see as some of the biggest challenges facing our judicial system.

Judge DROZD. Well, Senator, thank you for that question. Maybe a little bit more of a parochial focus.

Senator KLOBUCHAR. That is allowed.

Judge DROZD. Since our nose stays close to the grindstone in the Eastern District of California. We really are in a crisis situation. We have had one of the heaviest weighted caseloads in the country per active judge for over a decade now.

That leaves us with an average pending caseload per active district court judge of—my understanding is over 1,300 cases pending per active district court judge right now. That has tremendous impact on our ability to deliver justice within our district.

We have done the best we can with the assistance of the administrative offices and resources that we have been provided and we are doing pretty well. We are the second most productive district court in terms of dispositions per year in the country and we have been in the top five, I think, for most of the last decade, as well.

So we are doing well, but that—we are performing well in terms of efficiency. I do not think we can perform any more efficiently. We have maxed out on that score. And the situation can only get better with additional resources.

So for us, in our district, that is the biggest challenge and the biggest problem with our ability to deliver justice.

Senator KLOBUCHAR. Thank you. And I know that actually Chairman Grassley has been trying to make some changes to get the judges where the work is and I have actually joined in some of those efforts with Senator Feinstein. Minnesota has actually had one of the heavier caseloads in past years. I do not know where we are right now. But when we were trying to get temporary judges in place or other things, looking at it that way. So thank you for your point.

Judge Donnelly, thank you for your service. I know that you actually, also, in your very extensive background here, you were chief of the Family Violence and Child Abuse Bureau in the New York District Attorney's Office and you saw firsthand the challenges we face in this country with the scourge of domestic violence and child abuse.

I worked on those as a prosecutor for 8 years, those issues. I know your docket will be different now, but how does that experience inform your future as a Federal judge, if and when, and we hope you will be, confirmed?

Judge DONNELLY. Thank you for that question, Senator Klobuchar. You are right that these are among the most difficult cases to prosecute. With domestic violence victims and with child abuse victims, challenges in identifying the victims, many of whom are fi-

nancially dependent on their abusers, challenges with very young victims, and many steps have been taken.

It has been some time since I have been active in that role, but the use of child advocacy centers, where a child abuse victim gets all services at one location without the need for multiple interviews, and having the opportunity to work with those children was one of the most meaningful and affecting experiences of my life, to see children who have suffered so much to have been so resilient and so able to survive unimaginable situations.

I hope that it will make me a better judge. I feel that it has in my 6 years on the supreme court. I am very lucky to have had that chance. I thank you for the question.

Senator KLOBUCHAR. Mr. Vilardo, I see that you served on the Harvard Law Review and Chief Justice Roberts was the editor. So, who do you think is the better editor of the Harvard Law Review, President Obama or—I am kidding, do not go there.

[Laughter.]

Senator KLOBUCHAR. Do not answer that question.

Senator TILLIS. I will provide you extra time, Senator Klobuchar.

[Laughter.]

Senator KLOBUCHAR. So I was just thinking of your experience as a civil litigator and a lot of times people that go into the Federal judgeships, but sometimes they also are criminal prosecutors, sometimes they are defenders. But what do you think you will bring to the table here as a civil litigator? I think we know a lot of the cases are civil and not everyone knows that.

Mr. VILARDO. Sure. My experience actually is civil and criminal. I have done a good deal of criminal work, as well. But the broad experience that I have had, in addition, as an advocate, as an arbitrator and a mediator and a law clerk, I think position me well to do a good job as a district job, at least, I hope so.

Senator KLOBUCHAR. Very good. I am not going to bring up the Vikings-Buffalo Bills game. I do not know if you remember this, when your fans threw snowballs at our players during a playoff game.

Mr. VILARDO. I apologize.

[Laughter.]

Mr. VILARDO. On behalf of the people of Western New York, I apologize.

Senator KLOBUCHAR. Thank you, thank you. I do not think I will hold it against you, but it did hit Chuck Foreman in the eye, but that is okay. It was a long, long time ago. But we remember those games when we were quite the contenders for the Super Bowl.

My last question of you, Ms. Hall, is just—I would ask it of everyone, but I think we have a good panel here that have given some good answers.

But I think one of the challenges for all judges is just you have litigants that come before you, some are rich, some are poor, some can afford really good lawyers and some cannot. And how will you assure them that you will treat them fairly?

Ms. HALL. Thank you for the question, Senator. I believe that in my private practice, as well as in my service publicly on the Joint Commission for Public Ethics and the Taxi and Limousine Commission, that I have developed a reputation of treating people fairly at

the Joint Commission on Public Ethics and the TLC, specifically those who appeared before the commission.

I also believe that the way in which I would conduct my courtroom, if given the opportunity, would, I hope, let the litigants know that they are heard, that their cases have been given the adequate thoughtfulness and deliberation. And I also believe that if I adhere to the rule of law and apply the law to the facts in the case unbiasedly, that that should give litigants the assurance that they need that they were treated fairly.

Senator KLOBUCHAR. Thank you very much. And thank you, Mr. Chairman. I know I went a little over, but thank you for running a good hearing here.

Senator TILLIS. Thank you. That discussion about the Bills games reminds me of a Patriots game that I have yet to get an apology for. That was the snowplow game back in the 1980s. So I share your concerns.

But I want to thank the panelists. Again, I want to congratulate you for being before us and having the honor to be nominated. You and your families should be very proud. We look forward.

We are going to hold the hearing record open for 1 week for information to be submitted to the record. There may be some follow-up questions. But we appreciate your time today and I personally wish you the very best of luck.

Thank you.

[Whereupon, at 3:30 p.m., the hearing 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, May 6, 2015
Dirksen Senate Office Building, Room 226
2:15 p.m.

Dale A. Drozd, to be a United States District Judge for the Eastern District of California

Ann Donnelly, to be a United States District Judge for the Eastern District of New York

Lawrence J. Vilardo, to be a United States District Judge for the Western District of New York

LeShann DeArcy Hall, to be a United States District Judge for the Eastern District of New York

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Ann Marie Donnelly

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

   United States District Judge for the Eastern District of New York

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

   Office: New York Supreme Court
   100 Centre Street
   New York, New York 10013

   Residence: Brooklyn, New York

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

   1959; Royal Oak, Michigan

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

   1981 – 1984, Ohio State University College of Law; J.D., 1984
   1977 – 1981, University of Michigan; B.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.

   September 2014 – present
   New York County Supreme Court, Criminal Term
   100 Centre Street

New York, New York 10013
Judge

2013 – 2014
Kings County Supreme Court, Criminal Term
320 Jay Street
Brooklyn, New York 11201
Judge

September 2013
Special Term for Election Matters
320 Jay Street
Brooklyn, New York 11201
Judge

2009 – 2013
Bronx Supreme Court, Criminal Term
265 East 161st Street
Bronx, New York 10451
Judge

1984 – 2009
New York County District Attorney's Office
1 Hogan Place
New York, New York 10013
Bureau Chief of the Family Violence Child Abuse Bureau (2005 – 2009)
Senior Trial Counsel (1997 – 2005)
Assistant District Attorney (1984 – 1997)

Summer 1983
Chadbourne Parke Whiteside & Wolff (now Chadbourne & Parke)
30 Rockefeller Plaza, 31st Floor
New York, New York 10112
Summer Associate

Summer 1982
Bieser Greer & Landis, LLP
6 North Main Street
Dayton, Ohio 45402
Summer Associate

Summer 1981
Estabrook Finn & McKee (now Porter Wright)
Fifth Third Center
1 South Main Street

Dayton, Ohio 45402
Paralegal

Other affiliations (uncompensated)

2009 – present
Thurgood Marshall Junior Mock Trial Program
New York, New York
Advisory Board

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

   I have not served in the 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.

   Manhattan District Attorney's Association Award (2014)

   American College of Trial Lawyers Fellow (2008)

   St. Luke's Roosevelt Crime Victims Treatment Center Honoree (2007)

   Ohio State University Law Journal (1982 – 1984)
   Staff Member (1982 – 1983)
   Note and Comment Editor (1983 – 1984)

   American Jurisprudence Award, Criminal Law (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 College of Trial Lawyers (2008 – present)
   Fellow
   Outreach Committee (2011 – 2012)
   Mayor's Advisory Committee on Child Abuse (2005 – 2009)
   Mayor's Task Force on Internet Crime (2005 – 2009)
   National Association of Women Judges (2010 – present)
   New York City Bar Association (2010 – present)

New York State District Attorneys Association Subcommittee on Sexual Assault (2005 – 2009)
Project Safe Childhood (2006 – 2008)

10. **Bar and Court Admission**:

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

New York State, 1985

There has been no lapse in membership.

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

United States Court of Appeals for the Second Circuit, 1986
United States District Court for the Southern District of New York, 1985

There have been no lapses in membership.

11. **Memberships**:

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

New York Road Runners (2013 – present)
Prospect Park Track Club (2011 – present)
Thurgood Marshall Junior Mock Trial Program (2009 – present)
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.

To the best of my knowledge, the organizations listed in response to Question 11a do not currently, and did not formerly discriminate on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

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.

March 10, 2009: Confirmation Proceeding, New York State Senate Judiciary Committee. As part of the confirmation process for appointment to the New York Court of Claims, I appeared before the New York Senate Judiciary Committee and answered questions posed by some of the committee members. I have no notes, transcript, or recording.

December 2002: During my tenure with the Manhattan District Attorney's Office, I worked on an investigation into sexual abuse by clergy members in New York County. In addition to the criminal investigation, I worked with representatives of the Archdiocese of New York to develop and implement a reporting protocol whenever a clergy member or archdiocesan employee is accused or suspected of sexually abusing a minor. I no longer have a copy of the protocol itself, but I am providing correspondence that includes the language of the protocol from the General Counsel to the Archdiocese.

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 represents my best efforts, through searches of my files, records, calendars and Internet databases to identify occasions on which I made public remarks.

September 18 – 21, 2014: Faculty, International Criminal Court Trial Advocacy Training Program, International Criminal Court, The Hague, The Netherlands. I taught basic trial advocacy to groups of young attorneys. I have no notes, transcript, or recording. The address for the International Criminal Court is Maanweg 174, 2516 AB, The Hague, The Netherlands.

April 29, 2014: Honoree, Acceptance Speech, Manhattan District Attorneys' Association, New York, New York. Notes supplied.

May 2014, May 2013, May 2012, May 2011, May 2010, May 2009: Mock Trial Judge, Thurgood Marshall Junior Mock Trial Program, Bronx, New York. I have no notes, transcript, or recording. The Thurgood Marshall Junior Mock Trial Program has no physical address.

February 12, 2014 and January 28, 2013: Moot Court Judge, National Moot Court Competition, New York City Bar Association, New York, New York. I have no notes, transcript, or recordings. The address for the New York City Bar Association is 42 West 44th Street, New York, New York 10036.

April 6, 2013 and March 31, 2012: Moot Court Judge, Jerome Prince Memorial Evidence Competition, Brooklyn Law School, Brooklyn, New York. I have no notes, transcript, or recording. The address for Brooklyn Law School is 250 Joralemon Street, Brooklyn, New York 11201.

February 5, 2012: Moot Court Judge, American College of Trial Lawyers National Trial Competition, Hofstra Law School, Hempstead, New York. I have no notes, transcript or recording. The address for American College of Trial Lawyers is 19900 MacArthur Boulevard, Suite 530, Irvine, California 92612.

April 19, 2010: Presenter, Civic Spirit Award, Women's City Club of New York, New York, New York. Notes supplied.

November 28, 2007: Honoree, Acceptance Speech, St. Luke's Roosevelt Crime Victims Treatment Center, New York, New York. I thanked the organization for the award and the members of the Child Abuse and Family Violence Bureau for

the work they did. I have no notes, transcript, or recording. The address for the organization is 432 West 58th Street, Ground Floor, New York, New York 10019.

October 28, 2000: Presenter, CLE Criminal Law Procedure and Evidence Seminar, Brooklyn Law School, Brooklyn, New York. I gave a presentation on legal and practical issues in prosecutions for depraved indifference homicide and the defense of extreme emotional disturbance in homicide cases. I have no notes, transcript, or recording. The address for Brooklyn Law School is 250 Joralemon Street, New York, NY 11201.

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.

Eaton, Leslie, *Domestic Violence Stirs Debate in Race for Prosecutor*, New York Times, August 21, 2005. 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 Governor David Paterson to the New York Court of Claims on March 10, 2009. Upon my appointment, I was assigned to the New York Supreme Court for Bronx County, where I had jurisdiction over criminal matters in Bronx County. In January 2013, I was transferred to the Supreme Court for Kings County, where I had jurisdiction over criminal matters in Kings County. In September 2013, in addition to my duties in the criminal term, I was designated the judge to hear applications and proceedings in the Special Term for Election Matters for any issues that arose city-wide. In September 2014, I was assigned to the Supreme Court for New York County, where I have jurisdiction over criminal matters in New York County.

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

I have presided over approximately 48 trials.

i. Of these, approximately what percent were:

jury trials:	90%
bench trials:	10%
civil proceedings:	0%
criminal proceedings:	100%

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

The following is a list my opinions that are reported:

People v. Oliver, __ Misc.3d __, 991 NYS2d 260, 2014 NY Misc. Lexis 3734, 2014 Slip Op. 24228 (Kings Co. Supreme Court, July 9, 2014)

People v. Styles, 40 Misc.3d 1205(A), 975 NYS2d 369 (Kings Co. Supreme Court, June 13, 2013)

People v. Britton, 39 Misc.3d 1225(A), 971 NYS2d 73 (Kings Co. Supreme Court, February 11, 2013)

People v. Martinez et al., 36 Misc.3d 1225(A), 959 NYS2d 91 (Bronx Co. Supreme Court, August 1, 2012)

People v. Diaz, 34 Misc.3d 1211(A), 943 NYS2d 793 (Bronx Co. Supreme Court, December 22, 2011)

People v. Santiago, 32 Misc.3d 1244(A), 938 NYS2d 229, 2011 NY Slip Op. 51701(U) (Bronx Co. Supreme Court, July 26, 2011)

People v. Santiago, 32 Misc.3d 1244(A), 938 NYS2d 229, 2011 NY Slip Op. 51698(U) (Bronx Co. Supreme Court, July 18, 2011)

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

1. *People v. Alphonso*, Indictment Number 167/13, Kings County Supreme Court

The defendant was charged with attempted murder in the second degree and assault in the first and second degrees. The defendant, enraged because he thought the victim was cheating him, drove his car into the victim, pinning him up against a fence and fracturing his leg in several places. The defendant then got out of his car and pursued the injured victim, who was trying to crawl away. A bystander prevented the defendant from inflicting further injury. The jury acquitted the defendant of the most serious charges, second degree attempted murder and first degree assault. They convicted him of assault in the second degree. I sentenced the defendant as a predicate felon to a determinate sentence of six years, with five years of post-relief supervision.

Trial dates: March 24 – April 7, 2014

Counsel for the Defendant:
Harry Dusenberry
Solo Practitioner
107 Smith Street
Brooklyn, New York 11201
(718) 625-1777

Counsel for the Prosecution:
Emily Dean
Kings County District Attorney's Office
350 Jay Street
Brooklyn, New York 11201
(718) 250-3980

2. *People v. Mena*, Indictment Number 8960/11, Kings County Supreme Court

The defendant was charged with kidnapping in the second degree and related charges. The evidence established that the defendant and an accomplice plotted the kidnapping and robbery of a man who had a bread route in Brooklyn. The defendant and his accomplice ambushed the victim at gunpoint, tried to force him to get money from his apartment, and finally pistol-whipped him, tied him up and threw him in the back of his own van. The police stopped the defendant and his accomplice before they could drive away, and found the victim in the back of the van. The jury convicted the defendant of kidnapping in the second degree. I sentenced the defendant to 17 years, with five years of post-release supervision.

Trial Dates: April 15 – May 3, 2013

Counsel for the Defendant:
Edward Mandery
Mandery & Mandery
300 Old Country Road
Suite 341
Mineola, New York 11501
(516) 741-6009

Counsel for the Prosecution:
Lindsey Gerdes
Kings County District Attorney's Office
350 Jay Street
Brooklyn, New York 11201
(718) 250-3728

3. *People v. Fountain*, Indictment Number 3527/08, Bronx County Supreme Court

The defendant was charged with stabbing a young man to death. The State presented evidence that the defendant was part of a large group that was attacking people at random. The deceased, a complete stranger to the defendant, was stabbed multiple times on his own doorstep. Much of the attack was captured on videotape, although the stabber's face was not visible. In addition, the deceased's blood was on the defendant's sweatshirt. One of the eyewitnesses refused to testify, because he feared retaliation from the defendant's gang. I held a hearing to determine whether the defendant could be linked to efforts to intimidate the witness; recorded telephone calls from the prison on Rikers Island revealed that the defendant was in contact with associates, and was directing attempts to silence the witness. I ruled that the State could introduce the witness' grand jury testimony because the evidence established that the defendant was responsible for the witness' unavailability. The defense was misidentification. The jury acquitted the defendant. The defendant subsequently pled guilty before me to a second indictment, which charged him with stabbing and injuring another person. Pursuant to a negotiated plea, I sentenced the defendant to eight years in prison.

Trial Dates: July 24 – August 7, 2012

Counsel for the Defendant:
Javier Solano
Law Office of Javier A. Solano, PLLC
350 Fifth Avenue
Suite 5900
New York, New York 10118
(212) 714-6600

Counsel for the Prosecution:
John Morabito
Bronx County District Attorney's Office
198 East 161st Street
Bronx, New York 10451
(718) 838-7258

4. *People v. Gay*, Indictment Number 787/2008, Bronx County Supreme Court

The defendant was charged with murder in the second degree and related charges for shooting an unarmed man in the back of the head. I presided over the jury trial. Identification was the critical issue in the case. The State sought to preclude the defense from eliciting evidence that the weapon used to kill the victim also was used to murder a second person at a time when the defendant was incarcerated. I denied the People's application in a written decision, which is supplied. The defendant was convicted of murder in the second degree and

related charges. After the verdict, the defendant retained new counsel, who filed a motion to set aside the verdict, claiming that the defendant's trial attorney was ineffective. I denied that application in a written decision, which is supplied. I sentenced the defendant to 25-years-to-life.

Trial Dates: July 3 – July 24, 2012

Counsel for the Defendant:
Edward Dudley
Solo Practitioner
370 East 149th Street
Office C
Bronx, New York 10455
(718) 292-9600

Counsel for Prosecution:
Joshua Gradinger
Bronx County District Attorney's Office
198 East 161st Street
Bronx, New York 10451
(718) 838-7351

5. *People v. Galarza,* Indictment Number 4542/08, Bronx County Supreme Court

The defendant was charged with murder in the second degree and related charges for shooting and killing an unarmed young man. The evidence established that the defendant was playing pool with the deceased and others. The defendant started arguing with the deceased and threatened to kill him. The defendant left the room and returned shortly thereafter, holding a gun. One of the witnesses begged her not to shoot, but the defendant shot the victim, killing him instantly. The jury convicted the defendant of murder in the second degree and related charges. I sentenced her to 25-years-to-life.

Trial Dates: March 9 – April 2, 2012

Counsel for the Defendant:
David Segal
Solo Practitioner
7 Dey Street
Room 1401
New York, New York 10007
(212) 406-9200

Counsel for the Prosecution:
Dominic DiMaggio (formerly employed at Bronx County District Attorney's Office at time of trial)

Nassau County Attorney's Office
1 West Street
Mineola, New York 11501
(516) 571-3056

6. *People v. Hamilton,* Indictment Number 1703/2009, Bronx County Supreme Court

The defendant was charged with murder in the second degree and related charges for the shooting death of a young man. I presided over the pre-trial hearing related to the admissibility of police-arranged identification procedures and the trial. At trial, the prosecution introduced evidence that the defendant, angry over money he claimed he was owed, shot the victim in the back of the head. The defendant asserted a justification defense, claiming that he was defending his grandmother from an attack by the deceased. It was necessary to charge the jury on the defense of justification, a complicated charge with multiple definitions. The jury deliberated for four days, and convicted the defendant of the top count, as well as lesser offenses. I imposed the maximum sentence of 25-years-to-life for the murder, and a concurrent 15-year term for the lesser charges. The defendant's conviction was affirmed. *People v. Hamilton,* 116 AD3d 614 (1st Dep't 2014).

Trial Dates: November 28 – December 16, 2011

Counsel for the Defendant:
Deveraux Cannick
Aiello & Cannick
6906 Grand Avenue
Maspeth, New York 11378
(718) 426-0444

Counsel for the Prosecution:
Donald Levin
Bronx County District Attorney's Office
198 East 161st Street
Bronx, New York 10451
(718) 590-2000

7. *People v. Santiago,* Indictment Number 4595/2008, Bronx County Supreme Court

The defendant, a member of the Crips gang, opened fire on a crowd of teenagers, killing a young girl and wounding two young men. At the pre-trial hearing, the defense claimed that the search of the defendant's prison cell and subsequent seizure of his personal documents were unconstitutional, and that the police employed unfairly suggestive identification procedures. I denied the motion in a

written decision. *People v. Santiago*, 32 Misc.3d 1244(A), 938 NYS2d 229, 2011 NY Slip Op. 51701(U) (Bronx Co. Supreme Court, 2011). The trial posed significant security risks and legal issues. Prior to trial, the defendant, through his associates, attempted to intimidate witnesses and ordered their executions from prison. During the trial itself, members of the defendant's gang made repeated efforts to intimidate witnesses, including in the courtroom. Shortly before one witness was to testify, the defendant's associates lured him to a secluded location and shot him. He survived, but was too terrified to testify. Prison officials searched the defendant's prison cell and found further evidence of threats. I held a mid-trial hearing to determine whether to admit the witness' prior statements into evidence. I also heard applications from the prosecution to close the courtroom for the hearing, as well as from members of the press, who wanted to be present for the hearing. I closed the courtroom for the witness' testimony on the intimidation issue, and ruled that the State could introduce the witness' prior testimony. *People v. Santiago*, 32 Misc.3d 1244(A), 938 NYS2d 229, 2011 NY Slip Op. 51698(U) (Bronx Co. Supreme Court, 2011). The defendant was convicted of murder in the second degree, two counts of attempted murder in the second degree, and criminal possession of a weapon in the second degree. I imposed consecutive sentences on the murder and attempted murder counts, totaling 75-years-to-life, and a concurrent 15-year term for the weapons possession count.

Trial Dates: May 23 – July 7, 2011

Counsel for the Defendant:
Cesar Gonzalez Jr.
Solo Practitioner
840 Grand Concourse
Suite 1BB
Bronx, New York 10451
(718) 292-3154

Counsel for the Prosecution:
Nancy Borko
Bronx County District Attorney's Office
198 East 161st Street
Bronx, New York 10451
(718) 838-7262

8. *People v. Joseph Sanchez*, Indictment Number 1793/2007, Bronx County Supreme Court

The defendant, a gang member and drug dealer, shot and killed a fellow drug dealer, and seriously injured a second man, also a drug dealer. I conducted hearings, at which the defense contended that the defendant's statements and evidence of his gunshot wound should be suppressed. I denied the motion in a

written decision, which is supplied. I then presided over the trial. From his prison cell, the defendant attempted to have the surviving victim killed. Because of the defendant's gang affiliation, the case presented security risks, especially when the surviving victim testified. The defendant was convicted of murder in the second degree, attempted murder in the second degree, and criminal possession of a weapon in the second degree. I imposed consecutive sentences of 25-years-to-life on the murder count, and a determinate term of 25 years for the attempted murder, as well as a concurrent sentence of 15 years for criminal possession of a weapon in the second degree.

Trial dates: April 25 – May 11, 2011

Counsel for Joseph Sanchez:
Geoffrey Stewart
Solo Practitioner
139 Fulton Street
Suite 508
New York, New York 10038
(212) 625-9696

Counsel for the Prosecution:
David Greenfield
Bronx District Attorney's Office
198 East 161st Street
Bronx, New York 10451
(718) 838-7224

9. *People v. Panton,* Indictment Number 3237/2007, Bronx County Supreme Court

The 28-year-old defendant and her co-defendant were charged with murder in the first degree for the murder of the co-defendant's 91-year-old neighbor. Because both defendants made statements implicating each other, they were tried separately. Another judge presided over the co-defendant's trial. The defendant and the co-defendant convinced the elderly victim to let them into her house. Once inside, they tied her up, and demanded that she give them money. Over the course of the next hour, they forced her to drink wine, rubbing alcohol, and some kind of cleaner. They then put a plastic bag over her head, and tied it with a belt. The victim died of asphyxiation. The crime went unsolved for several years, until an associate to whom the co-defendant confessed called the police. The defendant was acquitted of first degree murder, and convicted of murder in the second degree. I imposed a prison sentence of 25-years-to-life. The conviction was affirmed on appeal. *People v. Panton*, 114 AD3d 450 (1st Dep't 2014).

Trial dates: November 29 – December 8, 2010

Counsel for Nadine Panton:
Robert Johnston
Solo Practitioner
3139 Arnow Place
Bronx, New York 10461
(917) 826-0910

Counsel for the Prosecution:
Christine Scaccia
Bronx District Attorney's Office
198 East 161st Street
Bronx, New York 10451
(718) 590-2232

10. *People v. A. Santana and C. Santana*, Indictment Number 698/2008, Bronx County Supreme Court

The defendants are brothers, and were charged with murder in the second degree for the stabbing death of a 17-year-old boy. In the early morning hours of January 1, 2008, the deceased, who was intoxicated, and a group of teenagers were throwing bottles at the defendants' building. The defendants' family members came outside, and a fight broke out, during which the defendants' mother was injured. The defendants armed themselves with butcher knives, and their mother pointed out the victim, who attempted to flee. The defendants chased him down, and stabbed him to death. The defendants were acquitted of intentional murder, and convicted of manslaughter in the first degree. I imposed determinate sentences of 20 years for each defendant. Both convictions were affirmed. *People v. Alexander Santana*, 114 AD3d 557 (1st Dep't 2014); *People v. Charles Santana*, 113 AD3d 504 (1st Dep't 2014).

Trial dates: May 12 – June 9, 2010

Counsel for Alexander Santana:
Fred Bittlingmaier
Tibaldi & Bittlingmaier
445 Hamilton Avenue
Suite 1102
White Plains, New York 10601
(914) 220-8385

Counsel for Charles Santana:
Robert Laureano
Solo Practitioner
910 Grand Concourse
Suite 1F

Bronx, New York 10451
(718) 588-8017

Counsel for the Prosecution:
Daniel McCarthy (deceased)

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

1. *People v. Williams*, Indictment Number 280/2011, Kings County Supreme Court. Decision supplied.

Defense Counsel:
Jacob Rolls
The Legal Aid Society
111 Livingston Street
9th Floor
Brooklyn, New York 11201
(718) 243-6829

Counsel for the Prosecution:
Elizabeth Doerfler
Kings County District Attorney's Office
350 Jay Street
Brooklyn, New York 11201
(718) 250-2120

2. *People v. Oliver*, __ Misc.3d __, 991 NYS2d 260, 2014 NY Misc. Lexis 3734, 2014 Slip Op. 24228 (Kings Co. Supreme Court, July 9, 2014)

Defense Counsel:
David Roche
Solo Practitioner
160 Broadway, Suite 708
New York, New York 10038
(212) 430-6380

Counsel for the Prosecution:
Elizabeth Doerfler
Kings County District Attorney's Office
350 Jay Street
Brooklyn, New York 11201
(718) 250-2120

3. *People v. Styles*, 40 Misc.3d 1205(A), 975 NYS2d 369 (Kings. Co. Supreme Court, June 13, 2013)

Defense Counsel:
Adrian Lesher
The Legal Aid Society
10th Floor
111 Livingston Street
Brooklyn, New York 11201
(718) 243-6219

Counsel for the Prosecution:
Theresa Robitaille
Kings County District Attorney's Office
350 Jay Street
Brooklyn, New York 11201
(718) 250-2000

4. *People v. Trevor Mann,* Indictment Number 11211/2010, Kings County Supreme Court. Decision supplied.

Defense Counsel:
Lawrence E. Wright
Solo Practitioner
32 Court Street
Suite 707
Brooklyn, New York 11201
(718) 643-6161

Counsel for the Prosecution:
Jacqueline Kagan (formerly employed by King's County District Attorney's Office at time of hearing)
New York State Justice Center
161 Delaware Avenue
Delmar, New York 12054
(518) 549-0200

5. *People v. Britton*, 39 Misc.3d 1225(A), 971 NYS2d 73 (Kings. Co. Supreme Court, February 11, 2013)

Defense Counsel:
Benjamin Zeman
Brooklyn Defender Services
177 Livingston Street, 5th Floor
Brooklyn, New York 11201
(718) 254-0700

Counsel for the Prosecution:
Perry Cerrato (formerly employed at King's County District Attorney's Office at time of decision)
New York State Justice Center
161 Delaware Avenue
Delmar, New York 12054
(518) 549-0227

6. *People v. William Gay,* Indictment Number 787/2008, Bronx County Supreme Court. Decision previously supplied in response to 13c.

Defense Counsel (trial):
Edward Dudley
Solo Practitioner
370 East 149th Street
Office C
Bronx, New York 10455
(718) 292-9600

Defense Counsel (post-judgment motion):
Richard Langweber
The Blanch Law Firm, PC
261 Madison Avenue
New York, New York 10016
(212) 736-3938

Counsel for the Prosecution:
Joshua Gradinger
Bronx County District Attorney's Office
198 East 161st Street
Bronx, New York 10451
(718) 838-7351

7. *People v. Martinez et al.*, 36 Misc.3d 1225(A), 959 NYS2d 91 (Bronx Co. Supreme Court, August 1, 2012)

Counsel for Defendant Martinez:
Pierre Sussman
Solo Practitioner
903B Sheridan Avenue
Bronx, New York 10451
(718) 588-8122

Counsel for Defendant Paige:
Michael S. Berardino

Mangliardi & Berardino
111 North Central Avenue
Hartsdale, New York 10530
(914) 618-4167

Counsel for Defendant McCrae:
Lauren Roberts
The Legal Aid Society
260 East 161st Street
Bronx, New York 10451
(718) 579-8906

Counsel for the Prosecution:
Adam Petitt (formerly employed at Bronx County District Attorney's Office at time of decision)
White & Williams, LLP
250 West 34th Street
Suite 4110
New York, New York 10119
(646) 766-1351

8. *People v. Diaz*, 34 Misc.2d 1211(A), 943 NYS2d 793 (Bronx Co. Supreme Court, December 22, 2011)

Defense Counsel:
Matthew Kluger
Solo Practitioner
184 East 161st Street
Floor 2
Bronx, New York 10451
(718) 293-4900

Counsel for the Prosecution:
Brenna Zortman, Esq. (formerly employed at Bronx District Attorney's Office at time of hearing)
(business contact information unavailable)

9. *People v. Santiago*, 32 Misc.3d 1244(A), 938 NYS2d 229, 2011 NY Slip Op. 51701(U) (Bronx Co. Supreme Court, July 26, 2011)

Defense Counsel:
Cesar Gonzalez Jr.
Solo Practitioner
840 Grand Concourse Suite 1BB
Bronx, New York 10451
(718) 292-3154

Counsel for the Prosecution:
Nancy Borko
Bronx County District Attorney's Office
198 East 161st Street
Bronx, New York 10451
(718) 838-7262

10. *People v. Santiago*, 32 Misc.3d 1244(A), 938 NYS2d 229, 2011 NY Slip Op. 51698(U) (Bronx Co. Supreme Court, July 18, 2011)

Defense Counsel:
Cesar Gonzalez Jr.
Solo Practitioner
840 Grand Concourse
Suite 1BB
Bronx, New York 10451
(718) 292-3154

Counsel for the Prosecution:
Nancy Borko
Bronx County District Attorney's Office
198 East 161st Street
Bronx, New York 10451
(718) 838-7262

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 granted or requested.

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

To the best of my knowledge, none of my decisions have been reversed by an appellate court, nor have there been affirmances with significant criticism of any of my 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.

I have issued approximately 800 written decisions. Approximately 99% of them are unpublished. Hard copies of the decisions are stored in the files for the cases

in which they were issued, which are maintained in the county clerks' offices.

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 federal and state constitutional issues are almost always a factor in the cases over which I preside, I have not written any significant opinions that deal with the interpretation of state or federal constitutional law.

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.

Under New York law, a judge may not take part in any matter in which she is a party, in which she has been counsel, in which she is "interested," or in which she is related "by consanguinity or affinity to any party to the controversy within the sixth degree." Judiciary Law §14. In addition, a judge is required to disqualify herself in any proceeding in which her "impartiality might reasonably be questioned." 22 NYCCR §100.3(E). I have always complied with these mandates by making a determination on a case-by-case basis. I have never recused myself sua sponte, nor have I ever been asked to 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 offices, other than a judicial office. I have never been a candidate for elected office, nor have I had any 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 office nor given any 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.

1984 – 2009
New York County District Attorney's Office
1 Hogan Place
New York, New York 10013
Bureau Chief, Family Violence Child Abuse Bureau (2005 – 2009)

Senior Trial Counsel (1997 – 2005)
Assistant District Attorney (1984 – 1997)

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

I have never served as a mediator or 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 joined the New York County District Attorney's Office in 1984. I was selected to work in the Appeals Bureau, where I wrote briefs both as an appellant and a respondent. I also responded to federal habeas petitions in the Southern District of New York and in the Court of Appeals for the Second Circuit, as well as two petitions for writs of certiorari to the United States Supreme Court. From approximately 1987 to 1989, in addition to writing briefs, I edited appellate briefs written by other lawyers.

In 1989, I was assigned to the Major Offense Career Criminal Program, a specialized bureau that targeted repeat offenders and violent felons. I investigated and prosecuted violent felonies including homicides, robberies, kidnappings, and assaults. I appeared in New York Supreme Court on a regular basis, responding to motions, doing hearings and trying cases. In 1997, I was promoted to Senior Trial Counsel, a title held by fewer than 15 lawyers in the office. I also was a member of the Sex Crimes Prosecution Unit, where I investigated and tried sexual assault cases. As part of that unit, I headed the investigation into allegations of sexual abuse by clergy members.

In 2005, I was named the Bureau Chief of the Family Violence and Child Abuse Bureau. I supervised the investigations and prosecutions of all felony child abuse cases including homicides, physical and sexual assaults and Internet predators. In this role, I oversaw a bureau of 13 lawyers and nine support staff members. In addition, I supervised approximately 100 lawyers throughout the office whenever they were assigned to domestic violence cases. I also supervised the assistants in my bureau when they worked on homicides of adults. As Bureau Chief, I was a member of committees that discussed proposed legislative reforms in the area of child abuse and sexual assault.

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

While at the New York County District Attorney's Office, I represented the people of New York.

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

As an assistant district attorney, my entire practice was in litigation in both appellate and trial courts. When I was in the Appeals Bureau, I appeared perhaps twice a month in state appellate courts, and less frequently in federal court. As a trial assistant and then as Senior Trial Counsel, I appeared in state court almost every day. When I became a Bureau Chief in 2005, my court appearances were less frequent, and I appeared in court primarily to observe and assist attorneys in my bureau.

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: 0%
   2. criminal proceedings: 100%

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

I tried approximately 40 felony cases to verdict. On all but two of them, I was the sole counsel. On the other two, I was one of the chief attorneys.

i. What percentage of these trials were:
   1. jury: 98%
   2. non-jury: 2%

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

I responded to two petitions for writs of certiorari. *People v. Thomas*, 68 NY2d 194 (1986), *cert. denied sub nom. Thomas v. New York*, 480 US 948 (1987). I have been unable to obtain a copy.

Saldana v. New York, 665 F.Supp. 271 (SDNY 1987), *rev'd*, 850 F.2d 117 (2d Cir. 1988), *cert. denied*, 488 US 1029 (1989). I have been unable to obtain a copy.

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

    a. the date of representation;

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

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

    1. *People v. Kozlowski and Swartz,* New York County Supreme Court

    The defendants, formerly the CEO and CFO of Tyco International, were charged with multiple counts of grand larceny, conspiracy, securities fraud, and related crimes. They had stolen millions of dollars from Tyco through a variety of complex schemes. I joined the prosecution team shortly before jury selection in the first trial. My responsibilities in that six-month trial included presenting evidence and delivering half of the closing argument for the prosecution. The first trial ended in a mistrial after a juror reported receiving a threatening letter. My role increased at the second trial, which also lasted for six months. I presented many of the major witnesses, I cross-examined one of the defendants, and I delivered half the closing argument. The defendants were convicted of multiple counts of grand larceny, falsifying business records, securities fraud and conspiracy. I also handled half of the sentencing presentation. Each defendant was sentenced to indeterminate prison terms ranging from 8 1/3 to 25 years in prison and ordered to pay almost $240 million in fines and restitution. Their convictions were affirmed on appeal. *People v. Kozlowski and Swartz*, 47 A.D. 3d 111(1st Dep't 2007), *aff'd*, 11 N.Y.3d 223 (2008), *cert. denied sub nom. Kozlowski v. New York*, 556 U.S. 1282 (2009).

    First Trial: September 2003 – April 2004
    Second Trial: January – June 2005

    Judge: Hon. Michael Obus

    Co-counsel:
    Owen Heimer (formerly at New York County District Attorney's Office at time of trial)
    Marsh, Inc.

1166 Avenue of the Americas
New York, New York 10036
(212) 345-1890

Connie Fernandez
New York County District Attorney's Office
1 Hogan Place
New York, New York 10013
(212) 335-4059

Marc Scholl
New York County District Attorney's Office
1 Hogan Place
New York, New York 10013
(212) 335-9324

Kenneth Chalifoux (formerly at New York County District Attorney's Office at time of trial)
State Oil
31366 North Route 45
Libertyville, Illinois 60048
(847) 680-5831

Counsel for Defendant Kozlowski:
Stephen E. Kaufman.
Stephen E. Kaufman, P.C.
277 Park Avenue
47th Floor
New York, New York 10172
(212) 826-0820

Austin V. Campriello
Bryan Cave LLP
1290 Avenue of the Americas
New York, New York 10104
(212) 541-2065

Counsel for Defendant Swartz:
Charles Stillman
Stillman & Friedman, P.C. (now Ballard Spahr Stillman & Friedman)
425 Park Avenue
New York, New York 10022
(212) 223-0200

2. *People v. Farrell*, New York County Supreme Court

The defendant, a predicate violent felon, committed multiple gunpoint robberies of small newsstands and grocery stores on Manhattan's Upper East Side. Police officers saw him driving a car he had stolen at gunpoint earlier that day and attempted to pull him over. The defendant sped away, colliding with a livery car, seriously injuring the driver and two passengers. The most gravely injured, a young woman from Israel, suffered serious brain damage, and never regained consciousness. I was the only prosecutor on the case, conducting the pre-trial suppression hearing and the trial. Approximately 30 witnesses testified, including the robbery victims, police officers and detectives, and two of the people in the car that the defendant struck. The defendant testified at the trial, claiming that he was the victim of mistaken identity and police brutality. The defendant was convicted of multiple counts of first degree robbery, weapons possession, assault and reckless endangerment. He was sentenced to serve an aggregate sentence of 125-years-to-life in prison. The defendant's conviction was affirmed on appeal. *People v. Farrell*, 28 AD3d 244 (1st Dep't 2006).

Trial: January, 2003

Judge: Hon. Budd Goodman (retired)

Defense counsel:
Howard Meyer (deceased)

3. *People v. Madera*, New York County Supreme Court

The defendant, a predicate felon, forced his way into the apartment of an 89-year-old woman and assaulted her. Neighbors heard her screams and called the police, who arrived within minutes. They forced open the door, and stopped the defendant as he was attempting to climb out the window. The victim, who was traumatized, was unable to remember certain details of the assault. The defendant's guilt was established by the testimony of the neighbors and the officers. The defendant testified, admitting that he went into the victim's apartment, but claimed that he was in the throes of a cocaine-induced psychosis, and that the victim let him into her apartment. The defense called additional witnesses to testify about his drug use. The defendant was convicted of burglary and sentenced to a determinate prison term of ten years. I tried this case by myself. The defendant's conviction was reversed on appeal; the appellate court ruled that the trial court improperly denied the defendant's request to call a psychiatrist. *People v. Madera*, 24 AD3d 278 (1st Dep't 2005). Although I did not handle the plea, I understand that the defendant subsequently pled guilty in exchange for a reduced sentence.

Trial: March, 2002

Judge: Hon. Carol Berkman (retired)

Defense Counsel:
Renee Leviton
The Legal Aid Society
49 Thomas Street
New York, New York 10013
(212) 298-5000

4. *People v. S. Kimes and K. Kimes*, New York County Supreme Court

Mr. and Ms. Kimes, a mother and son team responsible for at least three other homicides in California, the Bahamas and Hawaii, murdered an 82-year-old woman in her home on the Upper East Side of Manhattan, and successfully disposed of her body. Because there was no body, no DNA from the victim or the defendants, and no admission from the defendants, it was necessary to build a trial case entirely from circumstantial evidence. The process was a painstaking one: we gathered evidence from scores of sources around the city, across the country and overseas, often in partnership with other law enforcement agencies, including the FBI, ATF, and law enforcement personnel in Los Angeles, Nevada, Utah, Bermuda and the Bahamas. I was responsible for handling many of the unique legal issues in the case, which included the sufficiency of the circumstantial evidence, the constitutionality of seizing Ms. Kimes' personal diaries, and the legality of compelling the defendants' private investigator to testify before the grand jury and at trial. At the trial, I presented many of the major witnesses, including detectives, experts, and civilian witnesses. I prepared the cross-examinations of both defendants, although ultimately neither testified. I delivered half of the closing argument. The defendants were convicted after a lengthy trial, and both defendants were sentenced to prison terms totaling over 120 years. The case was affirmed on appeal. *People v. Kimes*, 37 A.D.3d 1(1st Dep't 2006).

Trial: January – May, 2000

Judge: Hon. Rena Uviller (retired)

Co-counsel:
Hon. John Carter (formerly at New York County District Attorney's Office at time of trial)
Bronx Supreme Court
265 East 161st Street
Bronx, New York 10451
(718) 618- 3635

Connie Fernandez
New York County District Attorney's Office
1 Hogan Place
New York, New York 10013
(212) 335-4059

Owen Heimer (formerly at New York County District Attorney's Office at time of trial)
Marsh, Inc.
1166 Avenue of the Americas
New York, New York 10036
(212) 345-1890

Counsel for Defendant S. Kimes:
Michael Hardy
National Action Network
106 West 145th Street
New York, New York 10039
(212) 690-3070

Jose Muniz
(current contact information unavailable)

Counsel for Defendant K. Kimes:
Mel Sachs
(Deceased)

5. *People v. Moyd*, New York County Supreme Court

Within days of his release from state prison, the defendant, a persistent violent felony offender, raped and robbed one victim at knifepoint, and robbed a second woman as she walked into her building. The first victim was walking to her car in lower Manhattan. The defendant held a knife to her side, ordered her into her car, and forced her to drive to a deserted location where he raped her. Shortly thereafter, he robbed a second woman in the lobby of her apartment building. After his arrest, he gave written and videotaped confessions to the crimes. I handled the suppression hearing and the trial by myself. The defendant pled guilty during the trial to kidnapping in the first degree, rape in the first degree and robbery in the first degree, and he was sentenced to 23-years-to-life in prison. He did not appeal his conviction.

Trial: October, 1997

Judge: Hon. Rena Uviller (retired)

Defense Counsel:
William J. Alford III
Solo Practitioner
325 Broadway
Room 404
New York, New York 10007
(347) 423-6397

6. *People v. Givens,* New York County Supreme Court

The defendant, after spending the day drinking, drove his car in a busy neighborhood in West Harlem. At one intersection, he turned his car into oncoming traffic and collided with a motorcycle; both the driver and his passenger were thrown from the motorcycle. The defendant sped away and was stopped by the police several blocks away from the scene of the collision. The driver of the motorcycle suffered serious brain damage and was unable to remember the incident. The passenger, a mother of a six-week-old baby, lived for about five weeks, but she ultimately died from her injuries. I tried this case by myself and called approximately 15 witnesses. The defendant was acquitted of manslaughter, but convicted of criminally negligent homicide and leaving the scene of an incident without reporting, as well as some misdemeanor counts. He was sentenced as a predicate felon to consecutive terms of two to four years for the felonies, to run concurrently with one year terms for the misdemeanors. The conviction was affirmed on appeal, although the appellate court reduced the sentence on the leaving the scene count to one and a third to four years because it did not qualify as a predicate felony conviction under New York law. *People v. Givens*, 268 AD2d 240 (1st Dep't 2000).

Trial: March – April, 1997

Judge: Hon. Renee White (retired)

Defense Counsel:
Oleh Dekajlo
Dekajlo Law Offices
1975 Hempstead Turnpike
Suite 101
New York, New York 11554
(516) 542-9300

7. *People v. Bradley,* New York County Supreme Court

The defendant and an accomplice went into a sporting goods store in West Harlem, pulled out guns, and ordered the employees into a bathroom. They tied up the employees, and began stealing money and merchandise. A neighborhood resident who was familiar with the store saw the defendant and the accomplice, realized something was wrong, and telephoned the police. The defendant managed to get away before the police arrived, but the accomplice was arrested. The defendant was subsequently arrested and identified in line-ups by several witnesses. I was the only prosecutor on the case. I handled the suppression hearings and the trial. The defendant was convicted of first and second degree robbery and sentenced to concurrent, determinate prison terms of 12 years and ten years. The conviction was affirmed on appeal. *People v. Bradley,* 250 AD2d 502 (1st Dep't 1998).

Trial: November – December, 1996

Judge: Hon. Bonnie Wittner

Defense Counsel:
Franklyn Gould
(deceased)

8. *People v. Rowe,* New York County Supreme Court

The defendant was standing outside a high school in Harlem, waiting for his girlfriend. The victim and several friends were also outside. The defendant took offense at something one of the victim's friends said or did. He pulled out a gun and started firing at the group of young men, all of whom ran away. One of his bullets struck the 19-year-old victim in the lower back, killing him. The defendant fled to Baltimore, Maryland, and was not apprehended for several years. I prosecuted this case by myself. I handled the pre-trial suppression hearings, as well as the trial. Multiple witnesses testified for the prosecution, and the defendant also called witnesses. The defendant was acquitted of second degree murder, and convicted of manslaughter in the first degree and criminal possession of a weapon in the second degree. He was sentenced to consecutive prison sentences of 8 1/3 to 25 years for the manslaughter, and five to 15 years for the weapons possession. He subsequently pled guilty to murder in the second degree for another shooting, and was sentenced to 20-years-to-life in prison. His conviction was affirmed on appeal. *People v. Rowe*, 271 AD2d 217 (1st Dep't 2000).

Trial: August – September 1994

Judge: Hon. John A.K. Bradley (retired)

Defense Counsel:
Bruce Menken
Beranbaum & Menken, LLP
80 Pine Street
Floor 33
New York, New York 10005
(212) 509-1616

9. *People v. Boddie and Randall,* New York County Supreme Court

The defendants were smoking crack cocaine with the victim, a 27-year-old woman from New Jersey. At one point, Mr. Randall pulled out a shotgun, pointed it at the woman, and ordered her to undress. He and Mr. Boddie took turns raping and sodomizing her before finally letting her leave. The victim immediately reported the attack to the police, who arrested the defendants. I was the sole prosecutor on this case and conducted the pre-trial suppression hearings and the trial. Multiple

witnesses testified for the prosecution, including the victim, detectives and medical professionals. Both defendants also testified. Mr. Boddie claimed he had never seen the victim, while Mr. Randall claimed that the victim consented to have sex with him. Both defendants were convicted of multiple counts of rape, sodomy and sexual abuse. Randall was sentenced as a predicate violent felon to an indeterminate sentence of 11 to 22 years. Boddie was sentenced to an indeterminate sentence of six to 18 years. Both convictions were affirmed on appeal. *People v. Randall*, 227 AD2d 131 (1st Dep't 1996); *People v. Boddie*, 226 AD2d 120 (1st Dep't 1996).

Trial: January – February 1993

Judge: Hon. Howard Bell (deceased)

Counsel for Defendant Boddie:
Frank Davis
(current contact information unavailable).

Counsel for Defendant Randall:
Stanley Siegal
(deceased)

10. *People v. Feliz,* New York County Supreme Court

The defendant and an accomplice went into an exclusive boutique on Manhattan's Upper East Side, where two sisters were shopping. They ordered the clerk and one of the women to lie on the ground. The accomplice pistol-whipped the customer and stole her diamond ring. Unbeknownst to the assailants, the woman's sister had crawled into a dressing room with the store's telephone and called 911. Both men fled the store. One defendant ran through Central Park and was apprehended there, while the second man escaped. I was the sole prosecutor on the case and did the pre-trial suppression hearings and the trial. The defendant was convicted of robbery in the first degree and related crimes. He was sentenced as a predicate violent felon to eight to 16 years in prison. His conviction was affirmed on appeal. *People v. Feliz*, 251 AD2d 134 (1st Dep't 1998).

Trial: May – June, 1992

Judge: Hon. Rena Uviller (retired)

Defense Counsel:
Raymond Sussman
Solo Practitioner
4523 Avenue H
Brooklyn, New York 11234
(718) 338-3302

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.)

    Investigation into Allegations of Sexual Abuse by Clergy Members:

    Between April and November 2002, during my tenure in the Manhattan District Attorney's Office, I was assigned to investigate allegations of child sexual abuse by clergy members in New York County. The Archdiocese of New York provided the District Attorney's Office with extensive information regarding past allegations of sexual abuse, some dating back to the 1960s. I oversaw a team of prosecutors who reviewed these complaints and established a hotline for victims of sexual abuse. Although prosecution was barred in most of the cases by New York's then-existing statute of limitations, we were able to establish a reporting policy whenever a clergy member or archdiocesan employee is accused or suspected of sexually abusing a minor. That protocol has been a model for other jurisdictions.

    Legislative Reforms:

    As a member of the New York State District Attorneys Association Subcommittee on Sexual Assault and of the Mayor's Advisory Committee on Child Abuse, I was involved in discussions regarding possible legislative recommendations and sometimes helped draft proposed language. The recommendations addressed issues in the areas of child abuse and sexual assault. The New York State District Attorneys Association Subcommittee on Sexual Assault forwarded any recommendations to the New York State District Attorneys Association. In addition, sometime in the spring of 2006, other Subcommittee members and I provided an informal briefing to staff members of New York State legislators on a proposal to make the crime of endangering the welfare of a child a felony in certain circumstances. The proposed reforms were not ultimately adopted. I have never performed lobbying or registered as a lobbyist.

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

    I have not taught any courses.

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 benefit I expect to receive is my pension. I have no deferred income arrangements from any business relationships, former employers, clients, customers, or professional services.

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

    I have no plans, commitments or agreements to pursue outside employment during my service with the court.

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

    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 not participate in any cases in which I had played a role, either as a state court judge or as a prosecutor. My husband and I have investments in accounts that might reasonably be perceived as presenting a conflict. Similarly, if my husband's employer were involved in any way in any litigation, that could also pose a conflict. I am not aware of any other associations of mine or of the members of my family that would present 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.

       If confirmed, I will be guided by 28 U.S.C. section 455 and Canon 3 of the Code

of Conduct for United States Judges, as well as any other relevant ethical canons, statutes or rules. I will take steps to ensure that I am well informed about any financial or professional interest of mine or of any of my family members that might present a conflict or create the appearance of partiality or impropriety. I will recuse myself from any matter in which my impartiality could reasonably be questioned.

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 my graduation from law school, I have been employed in public service, first as an assistant district attorney, and now as a judge. As a prosecutor, I was not permitted to engage in any outside legal work. Similarly, as a judge, I am not permitted to practice law. I have, however, provided educational classes. In September 2014, I was part of a group of lawyers and one federal judge who taught trial advocacy at the International Criminal Court in The Hague. As a fellow in the American College of Trial Lawyers, I judge mock trial and moot court competitions. I also serve as a judge for the Jerome Prince Memorial Moot Court Evidence Competition at Brooklyn Law School. I am on the advisory board for the Thurgood Marshall Junior Mock Trial Program, in which 7th and 8th grade students, primarily from Bronx public schools, prepare and try a criminal case. As a board member, I recruit lawyers to coach the teams, and judge rounds of the competition.

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 2007, I submitted a judicial application to Senator Schumer's screening committee, met with the committee, and interviewed with Senator Schumer. In September 2007, I was informed by Senator Schumer that my name would not be submitted to the White House at that time. In December 2011 and February 2014, I submitted updated applications to Senator Schumer's screening committee. On June 6, 2014, I received a telephone call from Senator Schumer's counsel informing me that my name would be submitted to the White House. Since that date, I have been in contact with officials from the Office of Legal Policy at the

Department of Justice. On October 28, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 20, 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.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Dale Alan Drozd

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

   United States District Judge for the Eastern District of California

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

   Office: United States District Court
   Eastern District of California
   Robert T. Matsui United States Courthouse
   501 I Street, Suite 8-240
   Sacramento, California 95814

   Residence: Clarksburg, California

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

   1955; Long Beach, 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.

   1977 – 1980, U.C.L.A. School of Law; J.D. (Order of the Coif), 1980
   1975 – 1977, San Diego State University; B.A. (*magna cum laude*), 1977
   1973 – 1975, University of Southern California; no degree received

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

1997 – present
United States District Court for the Eastern District of California
Robert T. Matsui United States Courthouse
501 I Street, Suite 8-240
Sacramento, CA 95814
United States Magistrate Judge (1997 – present)
Chief Magistrate Judge (2011 – present)

1986 – 1997
Blackmon, Drozd & Snellings (formerly Blackmon & Drozd (1986 – 1995), Blackmon & Associates (1986))
(since dissolved)
Sacramento, CA
Partner (1986 – 1997)
Associate (1986)

1982 – 1985
Hallinan, Osterhoudt & Poplack (since dissolved)
San Francisco, CA
Associate

1980 – 1982
United States District Court for the Eastern District of California
650 Capitol Mall
Sacramento, CA 95814
Law Clerk for Judge Lawrence K. Karlton

1979 – 1980
Hugh R. Manes, Esq.
3435 Wilshire Boulevard
Los Angeles, CA 90010
Law Clerk/Legal Researcher (part-time)

Summer 1979
United States Department of Interior
Office of Surface Mining Enforcement
1951 Constitution Avenue, N.W.
Washington, D.C. 20240
Summer Legal Intern

June – December 1978
National Prison Project
1346 Connecticut Avenue, N.W., Suite 1031
Washington, D.C. 20036
Legal Intern

Other Affiliations (volunteer/uncompensated)

2005 – 2010
Christian Brothers High School
Boosters Club
4315 Martin Luther King Jr. Boulevard
Sacramento, CA 95820
President (2008 – 2010)
Executive Board (2005 – 2010)

1997 – 2005
West Sacramento Little League
P.O. Box 155
West Sacramento, CA 95691
Board Member

1993 – 1994
Team Tisdale
801 K Street, Suite 2124
Sacramento, CA 95814
Secretary

1993
Criminal Defense Lawyers of Sacramento
(no longer in existence)
Sacramento, California
President

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

   I have not served in the military. I did timely 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.

   A-V Rating in Martindale – Hubbell (1990 – 1997)

   Listed in The Best Lawyers in America (1995 – 1997)

   Karen Dory Book Award, U.C.L.A. School of Law (1980)

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

American Bar Association
Anthony M. Kennedy American Inn of Court at McGeorge School of Law
California Attorneys for Criminal Justice
Criminal Defense Lawyers of Sacramento (1993)
President
Federal Bar Association
Federal Magistrate Judges Association
National Association of Criminal Defense Lawyers
Sacramento County Bar Association
United States Court of Appeals for the Ninth Circuit
Ninth Circuit Judicial Conference Executive Committee (2012 – present)
Magistrate Judges Executive Board (2009 – 2012)
Lawyer Representative Coordinating Committee (1997)
Lawyer Representative (Eastern District of California) to the Circuit Conference (1996 – 1997)
Merit Selection Committee – Federal Defender for Eastern District of California (1991)
United States District Court for the Eastern District of California
Budget Committee (2011 – present)
Judicial Advisory Committee (2011 – present)
District Conference Planning Committee (2011 – present, 1987 – 1997)
Ad Hoc Committee on Space Allocation & Planning (2010 – present)
Chief Probation Officer Selection Screening Committee (2009)
Ad Hoc Committee on Temporary Staff Attorney Hiring (2008 – present)
Chief Pretrial Services Officer Selection Screening Committee (2008, 2011)
Committee on Ninth Circuit Resource Committee Report (2008 – 2012)
Word Conversion Subcommittee (2012)
Judicial Liaison for Naturalization Ceremonies (2004 – 2011)
Federal Defender Criminal Justice Act Panel Screening Committee (1996 – 1997)
Civil Justice Reform Act Advisory Committee (1996 – 1997)
Death Penalty Habeas & Prisoner Litigation Subcommittees (1996 – 1997)
Local Rules Committee (1995 – 1997)
Magistrate Judge Selection Screening Panel (1989)

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, 1980 (inactive)

In California, a person serving as a judge is placed on inactive status.

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

Supreme Court of the United States, 1988
United States Court of Appeals for the Ninth Circuit, 1981
United States District Court for the Eastern District of California, 1981
United States District Court for the Northern District of California, 1982
United States District Court for the Southern District of California, 1984
United States District Court for the Central District of California, 1997
United States Tax Court, 1985

There have been no lapses in membership in the bars of these courts. The United States District Court for the Northern District of California cross references with California State Bar records and therefore also lists my membership as in inactive status due to my position as a magistrate 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.

Operation Protect & Defend (2002 – present)
Christian Brothers High School Boosters Club (2005 – 2010)
Executive Board (2005 – 2010)
President (2008 – 2010)
West Sacramento Little League (1997 – 2005)
Board Member
Team Tisdale (1993 – 1994)
Secretary

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.

"U.S. District Judge Lawrence K. Karlton Steps Down From the Bench," *Sacramento Lawyer* (September/October 2014). Copy supplied.

Prisoners' Rights, Volumes I and II, Practicing Law Institute, New York, NY (1979) (compiled and edited under attorney supervision). Copy supplied.

"The Therapeutic Communities Act of 1978," 1 *Prison Law Monitor* 68 (1978). 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 of which I am aware.

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.

Sometime between August 1991 and May 1992, I submitted written comments opposing a proposed amendment that would have allowed the electronic recording of depositions to the Judicial Conference of the United States, Standing Committee on Rules of Practice and Procedure regarding Proposed Amendments to the Federal Rules of Civil Procedure and the Federal Rules of Evidence. I have been unable to obtain a copy of those written comments.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports

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

I have searched both my paper and electronic files, my calendars and publicly available information in seeking to list below all speeches, talks, remarks and lectures I have delivered, as well as all panel discussions and question-and-answer sessions in which I have participated. There may, however, be others I have been unable to recall or identify as a result of my search. Finally, I should note that at many of the events listed below, I speak contemporaneously or with the aid of a few notecards which I discard afterward.

1998 – present: I have given courthouse tours to elementary, middle school and high school students approximately three times a year. Those tours always involve remarks regarding the work of the federal courts and a question-and-answer period. However, I do not normally keep records of the schools which I have provided tours to and do not speak from notes. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

September 30, 2014: Speaker, "Planned Federal Residential Reentry Center in the Sacramento Area – View from the Bench," United States Attorney's Office for the Eastern District of California, Sacramento, California. I spoke at this informational meeting of the need for a Federal Residential Reentry Center in the Sacramento area, after a 13-year absence of such a facility, from the perspective of the court's judges. I have no notes, transcript or recording, but press coverage is supplied. The address for the United States Attorney's Office for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 10th Floor, Sacramento, California 95814.

June 26, 2014: Speaker, read short speech by Justice Sandra Day O'Connor on the topic of judicial independence, American Legion – California Boys' State Inauguration Ceremony at Sacramento State University, Sacramento, California. Notes supplied.

May 1, 2014: Master of Ceremonies, Annual Law Day Student Awards Dinner, Sacramento Chapter of the Federal Bar Association, Sacramento County Bar Association and Operation Protect and Defend, Sacramento, California. Notes and PowerPoint supplied.

March 6, 2014: Presiding Judge, U.S. District Court for the Eastern District of California's Open Doors Program, Sacramento, California. For this annual program at our court, I hosted a high school class in my courtroom for a mock trial, involving lawyers and courtroom personnel with the students serving as

witnesses and jurors, followed by a discussion and a question-and-answer session regarding careers in the legal field. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

February 19, 2014: Speaker, "Criminal Due Process in 2014: Taking the Fifth – Reasonable Doubt – Impartial Juries in the Social Media Age," Operation Protect and Defend at Luther Burbank High School, Sacramento, California. Following the students' completion of a lesson plan on these subjects, a lawyer and I led a classroom discussion of principles of due process in criminal proceedings. I have no notes, transcript or recording. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

October 5, 2013: Panel Moderator, "ADR and Access to Justice," Eastern District Conference, Olympic Valley, California. Notes of introductory remarks supplied.

July 29, 2013: Panelist, "Relief for Pro Se Headaches," Federal Judicial Center, Workshop for U.S. Magistrate Judges II, San Diego, California. Outline and notes supplied.

June 27, 2013: Speaker, read short speech by Justice Sandra Day O'Connor on the topic of judicial independence, American Legion – California Boys' State Inauguration Ceremony at Sacramento State University, Sacramento, California. Notes previously supplied in response to the event on June 26, 2014.

June 5, 2013: Presiding Judge, administering oath to new members of the Bar of the Eastern District of California, Sacramento, California. I spoke generally about professional responsibility and the importance of maintaining credibility with clients, opposing counsel and the court. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

April 24, 2013: Panelist, "Relief for Pro Se Headaches," Federal Judicial Center, Workshop for U.S. Magistrate Judges I, New Orleans, Louisiana. Outline and notes supplied in response to the event on July 29, 2013.

April 17, 2013: Panelist, "CJA Panel Training Program on Detention Hearings," Office of the Federal Defender for the Eastern District of California, Sacramento, California. I appeared with the court's Chief Pretrial Services Officer to provide information to CJA panel lawyers regarding initial appearances and detention hearings. I have no notes, transcript or recording. The address of the Office of the

Federal Defender for the Eastern District of California is 801 I Street, Third Floor, Sacramento, California 95814.

March 6, 2013: Presiding Judge, U.S. District Court for the Eastern District of California's Open Doors Program, Sacramento, California. For this annual program at our court, I hosted a high school class in my courtroom for a mock trial, involving lawyers and courtroom personnel with the students serving as witnesses and jurors, followed by a discussion and a question-and-answer session regarding careers in the legal field. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

February 27, 2013: Speaker, "The Fourteenth Amendment: Equal Protection and Education," Operation Protect and Defend, Sacramento, California. Following the students' completion of a lesson plan on these subjects, a lawyer and I led a classroom discussion at McClatchy High School of equal protection principles and the extent of one's right to an education. I have no notes, transcript or recording. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

June 21, 2012: Speaker, read short speech by Justice Sandra Day O'Connor on the topic of judicial independence, American Legion – California Boys' State Inauguration Ceremony at Sacramento State University, Sacramento, California. Notes previously supplied in response to the event on June 26, 2014.

June 7, 2012: Presiding Judge, administering oath to new members of the Bar of the Eastern District of California, Sacramento, California. I spoke generally about professional responsibility and the importance of maintaining credibility with clients, opposing counsel and the court. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

March 6, 2012: Presiding Judge, U.S. District Court for the Eastern District of California's Open Doors Program, Sacramento, California. For this annual program at our court, I hosted a high school class in my courtroom for a mock trial, involving lawyers and courtroom personnel with the students serving as witnesses and jurors, followed by a discussion and a question-and-answer session regarding careers in the legal field. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

February 22, 2012: Speaker, classroom lesson plan entitled, "Immigrants and the Constitution," Operation Protect and Defend, Sacramento, California. Following the students' completion of a lesson plan on these subjects, a lawyer and I led a classroom discussion at McClatchy High School of equal protection principles and the extent of immigrants' right to an education. I have no notes, transcript or recording. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

December 21, 2011: Presiding Judge, Naturalization Ceremony for new citizens at Memorial Auditorium, Sacramento, California. Since January 2008, I have conducted 13 ceremonies at that location on the following dates, including the one indicated above: August 24, 2011, March 16, 2011, October 20, 2010, April 21, 2010, November 18, 2009, June 11, 2009, March 18, 2009, September 17, 2008, July 2, 2008, May 28, 2008, February 20, 2008, and January 24, 2008. In my remarks at these ceremonies I administered the oath and typically congratulated the new citizens on their accomplishment, and I used the story of a particular immigrant group from our nation's history to make the point that the greatness of the United States stems in part from its elimination of barriers to success and its placement of all of its citizens on a level field, free from discrimination of any kind. I also encouraged the new citizens to become active participants in our constitutional democracy. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

December 2, 2011: Panelist, "Section 1983 Training Prisoner Litigation Fundamentals: Introduction to the Pro Bono Panel, How the Court Manages Its Prisoner Case Docket, Appointment of Counsel, Engagement Letters and Motion to Withdraw," co-sponsored by the U.C. Davis School of Law and the Sacramento Chapter of the Federal Bar Association, Davis, California. The panel discussed how the court handles its prisoner case docket. I have no notes, transcript or recording. The address for the U.C. Davis School of Law is 400 Mrak Hall Drive, Davis, California 95616.

November 29, 2011: Presenter, Retirement Ceremony of Senior United States District Judge Frank C. Damrell, Jr., United States District Court for the Eastern District of California. Upon his retirement from the bench I presented Judge Damrell with a gift on behalf of the Magistrate Judges of the court and thanked him for being our colleague. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

October 6, 2011: Speaker, Retirement Ceremony of U.S. Magistrate Judge Sandra M. Snyder, United States District Court for the Eastern District of California. In my remarks I recounted Judge Snyder's accomplishments on behalf of our court and thanked her for being our colleague. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California in Fresno is Robert E. Coyle United States Courthouse, 2500 Tulare Street, Room 1501, Fresno, California 93721.

June 23, 2011: Speaker, "Remarks on Judicial Independence by Justice Sandra Day O'Connor." American Legion – California Boys' State Inauguration Ceremony at Sacramento State University, Sacramento, California. Notes previously supplied in response to the event on June 26, 2014.

March 11, 2011: Speaker, "Investiture of United States District Judge Kimberly J. Mueller – History of the Magistrate Judge System and Judge Mueller's Contributions as a Magistrate Judge," Sacramento, California. Transcript supplied.

March 10, 2011: Presiding Judge, U.S. District Court for the Eastern District of California's Open Doors Program, Sacramento, California. For this annual program at our court, I hosted a high school class in my courtroom for a mock trial, involving lawyers and courtroom personnel with the students serving as witnesses and jurors, followed by a discussion and a question-and-answer session regarding careers in the legal field. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814

March 2, 2011: Speaker, classroom lesson plan entitled, "Constitutional Rights on Campus: How Free?," Operation Protect and Defend, Sacramento, California. Following the students' completion of a lesson plan on these subjects, a lawyer and I led a classroom discussion at Kennedy High School of the First Amendment rights of students. I have no notes, transcript or recording. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

February 17, 2011: Speaker, "Annual Federal Day in Court – Dos and Don'ts in Federal Court," Sacramento Legal Secretaries Association, Sacramento, California. Notes supplied.

February 5, 2011: Panel Member, "2010-11 Asylum and Refugee Law, National Moot Court Competition, Finals hosted by U.C. Davis School of Law," Sacramento, California. I have no notes, transcript or recording. The address for the U.C. Davis School of Law is 400 Mrak Hall Drive, Davis, California 95616

December 6, 2010: Presiding Judge, administering oath to new members of the Bar of the Eastern District of California, Sacramento, California. I spoke generally about professional responsibility and the importance of maintaining credibility with clients, opposing counsel and the court. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

June 24, 2010: Speaker, read short speech by Justice Sandra Day O'Connor on the topic of judicial independence, American Legion – California Boys' State Inauguration Ceremony at Sacramento State University, Sacramento, California. Notes previously supplied in response to the event on June 26, 2014.

June 1, 2010: Presiding Judge, administering oath to new members of the Bar of the Eastern District of California, Sacramento, California. I spoke generally about professional responsibility and the importance of maintaining credibility with clients, opposing counsel and the court. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

February 23, 2010: Speaker, classroom lesson plan entitled, "Constitutional Rights on Campus: How Free?," Operation Protect and Defend, Sacramento, California. Following the students' completion of a lesson plan on these subjects, a lawyer and I led a classroom discussion at Sacramento High School of the First Amendment rights of students. I have no notes, transcript or recording. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

February 18, 2010: Speaker, "Annual Federal Day in Court – Dos and Don'ts in Federal Court," Sacramento Legal Secretaries Association, Sacramento, California. Notes previously supplied in response to the event on February 17, 2011.

February 11, 2010: Presiding Judge, U.S. District Court for the Eastern District of California's Open Doors Program, Sacramento, California. For this annual program at our court, I hosted a high school class in my courtroom for a mock trial, involving lawyers and courtroom personnel with the students serving as witnesses and jurors, followed by a discussion and a question-and-answer session regarding careers in the legal field. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

June 25, 2009: Speaker, read short speech by Justice Sandra Day O'Connor on the topic of judicial independence, American Legion – California Boys' State Inauguration Ceremony at Sacramento State University, Sacramento, California. Notes previously supplied in response to the event on June 26, 2014.

May 7, 2009: Co-Master of Ceremonies, "Annual Law Day Student Awards Dinner," Operation Protect and Defend, Sacramento, California. As co-master of ceremonies, I read excerpts from the winning essays and provided background regarding the students who wrote them, while presenting them with their scholarships and awards. I have no notes, transcript or recording. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

February 26, 2009: Speaker, classroom lesson plan entitled, "Constitutional Rights on Campus: How Free?," Operation Protect and Defend, Sacramento, California. Following the students' completion of a lesson plan on these subjects, a lawyer and I led a classroom discussion at Sacramento High School of the First Amendment rights of students. I have no notes, transcript or recording. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

February 10, 2009: Presiding Judge, U.S. District Court for the Eastern District of California's Open Doors Program, Sacramento, California. For this annual program at our court, I hosted a high school class in my courtroom for a mock trial, involving lawyers and courtroom personnel with the students serving as witnesses and jurors, followed by a discussion and a question-and-answer session regarding careers in the legal field. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

May 1, 2008: Co-Master of Ceremonies, "Annual Law Day Student Awards Dinner," Operation Protect and Defend, Sacramento, California. As co-master of ceremonies, I read excerpts from the winning essays and provided background regarding the students who wrote them, while presenting them with their scholarships and awards. I have no notes, transcript or recording, but press coverage is supplied. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

February 25, 2008: Speaker, classroom discussion based on Mark Curriden's lesson plan entitled, "Contempt of Court: The Turn-of-the-Century Lynching that Launched 100 Years of Federalism," Operation Protect and Defend, Sacramento, California. Following the students' completion of a lesson plan on this subject, I led a classroom discussion at Rio Americano High School of the role of the federal courts in ensuring equal protection under the Fourteenth Amendment. I have no notes, transcript or recording. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

February 13, 2008: Presiding Judge, U.S. District Court for the Eastern District of California's Open Doors Program, Sacramento, California. For this annual program at our court, I hosted a high school class in my courtroom for a mock trial, involving lawyers and courtroom personnel with the students serving as witnesses and jurors, followed by a discussion and a question-and-answer session regarding careers in the legal field. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

December 19, 2007: Presiding Judge, Naturalization Ceremonies for new citizens held at the Crest Theater, Sacramento, California. Since March 1998, I have conducted 99 ceremonies at that location including many that were held back-to-back on the same day. I presided over ceremonies on the following dates, including two on the date indicated above: October 24, 2007, September 19, 2007, March 14, 2007, August 30, 2006, June 29, 2006, January 18, 2006, December 14, 2005, October 27, 2005, September 14, 2005, July 27, 2005, January 19, 2005, December 15, 2004, July 21, 2004, March 15, 2004, January 7, 2004, October 22, 2003, July 9, 2003, May 21, 2003, February 5, 2003, November 12, 2002, July 17, 2002, June 19, 2002, May 22, 2002, March 13, 2002, January 23, 2002, December 5, 2001, October 3, 2001, September 5, 2001, July 11, 2001, June 13, 2001, April 25, 2001, February 28, 2001, January 24, 2001, September 6, 2000, August 2, 2000, July 26, 2000, July 5, 2000, June 28, 2000, May 31, 2000, April 12, 2000, February 9, 2000, January 5, 2000, December 15, 1999, December 8, 1999, October 27, 1999, September 15, 1999, September 8, 1999, July 14, 1999, April 28, 1999, January 27, 1999, November 18, 1998, September 9, 1998 and March 25, 1998. In my remarks at these ceremonies I administered the oath and typically congratulated the new citizens on their accomplishment, and I used the story of a particular immigrant group from our nation's history to make the point that the greatness of the United States stems in part from its elimination of barriers to success and its placement of all of its citizens on a level field, free from discrimination of any kind. I also encouraged the new citizens to become active participants in our constitutional democracy. I have no notes, transcript or recording, but press coverage is supplied where available. The

address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

December 3, 2007: Presiding Judge, administering oath to new members of the Bar of the Eastern District of California, Sacramento, California. I spoke generally about professional responsibility and the importance of maintaining credibility with clients, opposing counsel and the court. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

November 27, 2007: Presiding Judge, Naturalization Ceremony for new citizens held at the Robert T. Matsui United States Courthouse, Sacramento, California. Since March 2006, I have conducted 15 ceremonies at that location on the following dates, including the one indicated above: July 26, 2007, June 26, 2007, May 25, 2007, April 24, 2007, February 23, 2007, January 26, 2007, December 22, 2006, October 27, 2006, September 22, 2006, September 21, 2006, May 25, 2006, May 12, 2006, March 28, 2006 and March 15, 2006. In my remarks at these ceremonies I administered the oath and typically congratulated the new citizens on their accomplishment, and I used the story of a particular immigrant group from our nation's history to make the point that the greatness of the United States stems in part from its elimination of barriers to success and its placement of all of its citizens on a level field, free from discrimination of any kind. I also encouraged the new citizens to become active participants in our constitutional democracy. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

May 10, 2007: Co-Master of Ceremonies, "Annual Law Day Student Awards Dinner," Operation Protect and Defend, Sacramento, California. As co-master of ceremonies I read excerpts from the winning essays and provided background regarding the students that wrote them, while presenting them with their scholarships and awards. I have no notes, transcript or recording. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

February 27, 2007: Speaker, classroom discussion based on Mark Curriden's lesson plan entitled, "Contempt of Court: The Turn-of-the-Century Lynching that Launched 100 Years of Federalism," Operation Protect and Defend, Sacramento, California. Following the students' completion of a lesson plan on this subject, a lawyer and I led a classroom discussion at Kennedy High School of the role of the federal courts in ensuring equal protection under the Fourteenth Amendment. I have no notes, transcript or recording. The address for Operation Protect and

Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

November 15, 2006: Panelist, "CJA Panel Training Program on Detention Hearings," Office of the Federal Defender for the Eastern District of California, Sacramento, California. I appeared with the court's Chief Pretrial Services Officer to provide information to CJA panel lawyers regarding how to prepare for and present detention hearings. I have no notes, transcript or recording. The address of the Office of the Federal Defender for the Eastern District of California is 801 I Street, Third Floor, Sacramento, California 95814.

June 22, 2006: Speaker, read short speech by Justice Sandra Day O'Connor on the topic of judicial independence, American Legion – California Boys' State Inauguration Ceremony at Sacramento State University, Sacramento, California. Notes previously supplied in response to the event on June 26, 2014.

February 17, 2006: Presiding Judge, U.S. District Court for the Eastern District of California's Open Doors Program, Sacramento, California. For this annual program at our court, I hosted a high school class in my courtroom for a mock trial, involving lawyers and courtroom personnel with the students serving as witnesses and jurors, followed by a discussion and a question-and-answer session regarding careers in the legal field. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

March 4, 2005: Presiding Judge, U.S. District Court for the Eastern District of California's Open Doors Program, Sacramento, California. For this annual program at our court, I hosted a high school class in my courtroom for a mock trial, involving lawyers and courtroom personnel with the students serving as witnesses and jurors, followed by a discussion and a question-and-answer session regarding careers in the legal field. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

February 2004: Speaker, classroom discussion based on Mark Curriden's lesson plan entitled, "Contempt of Court: The Turn-of-the-Century Lynching that Launched 100 Years of Federalism," Operation Protect and Defend, Sacramento, California. Following the students' completion of a lesson plan on this subject, a lawyer and I led a classroom discussion at Kennedy High School of the role of the federal courts in ensuring equal protection under the Fourteenth Amendment. I have no notes, transcript or recording. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center

Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

May 6, 2003: Speaker, classroom discussion based on Mark Curriden's lesson plan entitled, "Contempt of Court: The Turn-of-the-Century Lynching that Launched 100 Years of Federalism," Operation Protect and Defend, Sacramento, California. Following the students' completion of a lesson plan on this subject, a lawyer and I led a classroom discussion at Kennedy High School of the role of the federal courts in ensuring equal protection under the Fourteenth Amendment. I have no notes, transcript or recording. The address for Operation Protect and Defend is c/o Sacramento Federal Judicial Library and Learning Center Foundation, Justice Anthony M. Kennedy Library and Learning Center, Robert T. Matsui United States Courthouse, 501 I Street, Suite 1-400, Sacramento, California 95814.

November 27, 2001: Presenter, "Won't You Be My (Free) Lawyer?," Anthony M. Kennedy American Inn of Court at McGeorge School of Law, Sacramento, California. I served as the narrator for this satirical sketch, which touched upon both the need for and duty of lawyers to provide voluntary pro bono public service, as well as the pitfalls for lawyers to avoid in doing so. I have no notes, transcript or recording. The address for the Anthony M. Kennedy Inn of Court is c/o the University of the Pacific, McGeorge School of Law, 3200 Fifth Avenue, Sacramento, California 95817.

October 11, 2001: Speaker, "Dos and Don'ts in Federal Court," Capital City Legal Secretaries Association, Sacramento, California. I provided practical suggestions for legal assistants regarding local rules and requirements applicable in federal court. I have no notes, transcript or recording. The Capital City Legal Secretaries Association has no physical address.

April 17, 2001: Presenter, "Total Recall – I Thought I Deleted That," Anthony M. Kennedy American Inn of Court, McGeorge School of Law, Sacramento, California. I introduced the two guest speakers at this presentation, noting their qualifications and commenting on the timeliness of their presentation for lawyers and judges. The speakers were computer forensics and security experts, one from law enforcement and the other from the private sector. I have no notes, transcript or recording. The address for the Anthony M. Kennedy American Inn of Court is c/o the University of the Pacific, McGeorge School of Law, 3200 Fifth Avenue, Sacramento, California 95817.

March 20, 2001: Luncheon Speaker, "The Role of a United States Magistrate Judge," West Sacramento Kiwanis Club, West Sacramento, California. I spoke regarding the role Magistrate Judges play in the administration of justice in the federal courts and my work in particular. I have no notes, transcript or recording.

The address of the West Sacramento Kiwanis Club is 2902 Angel Street, West Sacramento, California 95691.

May 25, 2000: Speaker, "Clerks on Karlton at Dinner Honoring U.S. District Judge Lawrence K. Karlton on his taking of Senior Status," Sacramento Chapter of the Federal Bar Association, Sacramento, California. Video supplied.

February 16, 2000: Lecturer, "Fourth Amendment and the Exclusionary Rule," Christian Brothers High School (A.P. Government Class), Sacramento, California. Outline supplied.

February 15, 2000: Presenter, "Getting Into Your Genes – The Trial of DNA," Anthony M. Kennedy American Inn of Court at McGeorge School of Law, Sacramento, California. Handout and video supplied.

June 23, 1999: Panelist, "Nuts & Bolts: An Introduction to Federal Practice in Sacramento," The Sacramento Barristers' Club & the Sacramento Chapter of the Federal Bar Association, Sponsored by the Daily Recorder, Sacramento, California. Handout upon which my comments were based is supplied.

June 7, 1999: Presiding Judge, administering oath to new members of the Bar of the Eastern District of California, Sacramento, California. I spoke generally about professional responsibility and the importance of maintaining credibility with clients, opposing counsel and the court. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

January 19, 1999: Presenter, "What's Truth Got to Do with It: The Lessons of Whitewater," Anthony M. Kennedy American Inn of Court at McGeorge School of Law, Sacramento, California. Notes supplied.

March 3, 1998: Guest Lecturer, Civil Rights Litigation, U.C. Davis Law School, Davis, California. I discussed civil rights litigation practice before the federal court at Professor Margaret Johns' class on that subject. I have no notes, transcript or recording. The address of U.C. Davis Law School is 400 Mrak Hall Drive, Davis, California 95616.

September 4, 1997: Speaker, Investiture Ceremony of United States Magistrate Judge Dale A. Drozd, Sacramento, California. In my remarks I thanked all of those who had given me the opportunity to succeed as lawyer, as well as my entire family, and thanked the district judges of the court for the confidence they had shown in me by their selection. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

July 21, 1997: Luncheon Speaker, "Life as a Trial Lawyer," South Sacramento Rotary Club, Sacramento, California. I spoke about my career as a practicing attorney and of my then-recent appointment as a United States Magistrate Judge. I have no notes, transcript or recording. The address of the South Sacramento Rotary Club is 937 Piedmont Drive, Sacramento, California 95822.

February 18, 1997: Panelist, "Conflicts of Interest," U.C. Davis School of Law, Professor Jill C. Peterson's Professional Responsibility class, Davis, California. The panel discussed how conflicts of interest may arise in the actual practice of law. I have no notes, transcript or recording. The address for the U.C. Davis School of Law is 400 Mrak Hall Drive, Davis, California 95616.

December 1, 1995: Panelist, "Conflicting Rights, Use of the Fifth Amendment Privilege in Civil Litigation," California State Bar Education Institute, San Diego, California. Outline supplied.

October 21, 1995: Panelist, "Pre-Charging Plea Negotiations," United States District Court for the Eastern District of California – District Conference, Yosemite, California. I participated in a panel discussion regarding the above described topic. I have no notes, transcript or recording. The address for the United States District Court for the Eastern District of California is Robert T. Matsui United States Courthouse, 501 I Street, 4th Floor, Sacramento, California 95814.

June 4, 1995: Panelist, "Basics of White Collar Criminal Law for Business Lawyers," California State Bar Education Institute," Monterey, California. Outline supplied.

June 3, 1995: Panelist, "Conflicting Rights, Use of the Fifth Amendment Privilege in Civil Litigation," California State Bar Education Institute, Monterey, California. Outline previously supplied in response to the event on December 1, 1995.

May 6, 1995: Panelist, "Nuts & Bolts: An Introduction to Federal Practice in Sacramento – Criminal Law Presentation," Sacramento Chapter of the Federal Bar Association, Sacramento, California. I participated in a panel discussion regarding the basics of the practice of criminal in the Eastern District of California including applicable local rules and practices of the various judges of the court. I have no notes, transcript or recording. The address for the Sacramento Chapter of the Federal Bar Association is 3104 O Street, #296, Sacramento, California 95816.

December 12, 1994: Panelist, "Lobbyist Ethics Orientation Course," California Legislature, Joint Legislative Ethics Committee, Sacramento, California. Materials supplied.

August 5, 1994: Panelist, "Ethics Orientation for California State Senators and Designated Employees," California Legislature, Senate Legislative Ethics Committee, Sacramento, California. Along with another attorney and the Chief Counsel of the California Joint Legislative Ethics Committee, I made a presentation to designated employees of the state legislature regarding state and federal public corruption laws. We also presented various case scenarios based upon then-recent court decisions to instruct the employees regarding their rights and responsibilities. I have no notes, transcript or recording. The address for the California Senate Legislative Ethics Committee is 1020 N Street, Room 238, Sacramento, California 95814.

April 29, 1994: Panelist, "Ethics Orientation for California State Senate Designated Employees," California Legislature, Senate Legislative Ethics Committee, Sacramento, California. Along with another attorney and the Chief Counsel of the California Joint Legislative Ethics Committee, I made a presentation to designated employees of the state legislature regarding state and federal public corruption laws. We also presented various case scenarios based upon then-recent court decisions to instruct the employees regarding their rights and responsibilities. I have no notes, transcript or recording. The address for the California Senate Legislative Ethics Committee is 1020 N Street, Room 238, Sacramento, California 95814.

April 18, 1994: Panelist, "Ethics Orientation for California State Senators," California Legislature, Senate Legislative Ethics Committee, Sacramento, California. Along with another attorney and the Chief Counsel of the California Joint Legislative Ethics Committee, I made a presentation to new state senators and designated employees of the state legislature regarding state and federal public corruption laws. We also presented various case scenarios based upon then-recent court decisions to instruct the employees regarding their rights and responsibilities. I have no notes, transcript or recording. The address for the California Senate Legislative Ethics Committee is 1020 N Street, Room 238, Sacramento, California 95814.

March 9, 1994: Panelist, "Lobbyist Ethics Orientation Course," California Legislature, Joint Legislative Ethics Committee, Sacramento, California. Materials supplied in response to the event on December 12, 1994.

February 8, 1993: Panelist, "Search and Seizure – 1992 Developments," Criminal Defense Lawyers of Sacramento, Sacramento, California. I spoke to members of the local criminal defense bar regarding developments in state and federal search and seizure law during 1992. I have no notes, transcript or recording. The Criminal Defense Lawyers of Sacramento is an organization that no longer exists and therefore has no current address.

January 19, 1993: Panelist, "CJA Panel Training Session - Presenting Allegations of Governmental Misconduct," Office of the Federal Defender for the Eastern District of California, Sacramento, California. I spoke to members of the CJA Panel regarding tips in moving to dismiss indictments based upon allegations of governmental misconduct. I have no notes, transcript or recording. The address for the Office of the Federal Defender, Eastern District of California is 801 I Street, 3rd Floor, Sacramento, California 95814.

January 11, 1990: Speaker, "Luncheon honoring Chief District Judge Lawrence K. Karlton," Sacramento Chapter of the Federal Bar Association, Sacramento, California. My remarks addressed the accomplishments of Judge Karlton on behalf of the Eastern District of California during the end of his seven-year tenure as Chief Judge. I have no notes, transcript or recording. The address for the Sacramento Chapter of the Federal Bar Association is 3104 O Street, #296, Sacramento, California 95816.

May 5, 1987: Special Guest, "Call a Lawyer: The Bicentennial of the U.S. Constitution," PBS/KVIE Broadcast, Sacramento, California. Video supplied.

January 28, 1984: Speaker, "International Extradition and the Case of William Quinn - Symposium on Comparative Criminal Law and Procedure," Pacific International Law Society at McGeorge School of Law, Sacramento, California. I spoke at this symposium regarding the international extradition case of *Quinn v. Robinson*, in which I had served as one of petitioner's attorneys in the district court and where relief had been obtained, which was at that time pending before the Ninth Circuit Court of Appeals. I have no notes, transcript or recording. The address of the University of the Pacific, McGeorge School of Law is 3200 Fifth Avenue, Sacramento, California 95817.

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.

Sacramento Chapter of the Federal Bar Association, Newsletter, *10 Things You May Not Know About Chief Magistrate Judge Dale A. Drozd*, March 2011. Copy supplied.

Linda Rapattoni, *Baseball-Trained Eye Now Keeps Its Gaze on the Law*, San Francisco Daily Journal, Vol. 112, No. 53, March 20, 2006. Copy supplied.

Denny Walsh, *New Judge Has Made Career of Beating Odds*, Sacramento Bee, Metro Section, B1, July 6, 1997. Copy supplied.

Anne D. Ellis & Angela V. Rush, *Lobbyist Says Bonadelle Urged Him to Resist FBI*, Fresno Bee, Feb. 11, 1997, at A1. Copy supplied.

Stephen Magagnini, *Chip Theft Suspects May Get Bailed Soon*, Sacramento Bee, Metro Section, B1, May 7, 1996. Copy supplied.

Denny Walsh, *Drug Currier Tied to "Brutal" Canada Gang Gets 5 Years,* Sacramento Bee, Oct. 19, 1995, at A1. Copy supplied.

Claire Cooper, *Drug Ruling Sets Up High Court Showdown,* Sacramento Bee, May 31, 1995, at B5. Copy supplied.

Denny Walsh, *Man Accused of $3 Million Fraud: Retired Construction Loan Broker Faces Federal Charges,* Sacramento Bee, Nov. 1, 1994, at B2. Copy supplied.

Brad Hayward, *Lobbyist Warned About "Dangerous World" As They Brush Up on Ethics,* Fresno Bee, Mar. 10, 1994, at B10. Copy supplied. (Reprinted in multiple outlets).

Greg Lucas, *Lawyers Teach Lobbyists How to Stay Out of Jail,* The San Francisco Chronicle, Mar. 10, 1994, at A17. Copy supplied.

Cynthia Hubert, *Charged with Crime, He Took His Own Life, Left a Mystery*, Sacramento Bee, Feb. 6, 1994, at A1. Copy supplied. (Reprinted in multiple outlets).

Ramon Coronado, *4 of 5 Acquitted of Extorting Money From Viet Restaurant,* Sacramento Bee, May 28, 1993, at B4. Copy supplied.

Dan Bernstein, *Some Drug Dealers Pay Stiff Penalty for Right to Trial,* Sacramento Bee, Dec. 13, 1990, at A1. Copy supplied.

Dan Bernstein, *Prosecution Wins Ruling in Export Case,* Sacramento Bee, Sept. 25, 1990, at B1. Copy supplied. (Reprinted in multiple outlets).

Dan Bernstein, *Animal Activists Fail to Get Grand Jury Subpoena Quashed,* Sacramento Bee, May 10, 1990, at B1. Copy supplied.

P.H. Frammolino, *Reagan Backs Ban on Faked Endorsements,* Los Angeles Times, Feb. 1, 1990, at MN3. Copy supplied. (Reprinted in multiple outlets).

Daniel M. Weintraub, *Orange County Assemblyman Cleared in Forgery Case,* Los Angeles Times, Jan. 24, 1990, at MN1. Copy supplied. (Reprinted in multiple outlets).

Claim of Van de Kamp Partisan Prosecuting Dismissed by Judge, Los Angeles Times, Jan. 6, 1990, at MN33. Copy supplied.

Jim Lewis, *Port Pair Guilty in Payroll Padding,* Sacramento Bee, Metro Section, B3, April 9, 1988. Copy supplied.

Law Student Interns Recall Moments They Won't Forget, National Prison Project Journal, Fall 1987, Number 13 at 14. Copy supplied.

Jim Mayer, *Property Forfeitures Sting Drug Suspects,* Sacramento Bee, Oct. 18, 1987, at B1. Copy supplied.

Judge Rescinds Release of Former IRA Member, Philadelphia Inquirer, Oct. 5, 1983, at F20. Copy supplied.

Jack Schreibman, The Associated Press, Domestic News, Dateline: San Francisco, Oct. 4, 1983. Copy supplied.

Jack Schreibman, The Associated Press, Domestic News, Dateline: San Francisco, Oct. 3, 1983. Copy supplied.

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

In July 1997, I was appointed by the United States District Court for the Eastern District of California to serve an eight-year term as a United States Magistrate Judge. I was re-appointed to eight-year terms in 2005 and 2013. I have served as the Chief Magistrate Judge of our court since January 2011. I preside over civil cases on a limited basis on reference from district judges and in full where the parties consent to jurisdiction. I also handle social security appeals. In addition, I review and issue criminal complaints and warrants, preside over the criminal arraignment, bail and discovery motion calendar and over the misdemeanor and petty offense docket. Finally, from January 2010 through December 2013 I served as the presiding judge in Sacramento for our Better Choices Court, a program launched with our Pretrial Services Office to provide more intense supervision and monthly contact with a judicial officer for those pretrial releasees viewed as posing a high risk of violating the conditions of their release.

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

According to a report generated through our court's CM/ECF system, not counting petty offense criminal cases, I have presided over 36 trials and a total of 1,105 cases to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	75%
bench trials:	25%
civil proceedings:	64%
criminal proceedings:	36%

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

See attached list of 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).

Below, I have listed the cases in reverse chronological order.

1. United States v. Jackson and Dorsey, 2:11-cr-0193 DAD JAM and 2:10-mj-0242 DAD

In this criminal case, the defendants were charged with assaulting an employee of the United States Post Office while he was engaged in the performance of official duties in violation of 18 U.S.C. § 111(a)(1), a Class A misdemeanor, and of Obstructing the Passage of Mail and a United States Postal Carrier, a Class B misdemeanor. Through counsel, the defendants waived their right to trial, judgment and sentencing before a district judge on the Class A misdemeanor charge and consented to proceed before a magistrate judge. Defendant Jackson entered pleas of guilty to the charged offenses. I subsequently sentenced Ms. Jackson to the custody of the United States Bureau of Prisons for two one-month terms, to be served concurrently, followed by a one-year term of supervised release on conditions, including 210 days in a residential community corrections center and 40 hours of community service as well as the mandatory special assessment. Defendant Dorsey proceeded to trial and in January 2011, I presided over her two-day jury trial, at the conclusion of which verdicts were returned finding her guilty on both counts. Thereafter I sentenced Ms. Dorsey to the custody of the United States Bureau of Prisons for terms of 12 months and 6 months, served concurrently, to be followed by a one-year term of supervised release on conditions including the performance of 40 hours of community service as well as the mandatory special assessment. Defendant Dorsey appealed from her judgment and sentence. The assigned district judge affirmed.

Counsel for Plaintiff:

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Counsel for Defendant Jackson:

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Sacramento, CA 95814
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Counsel for Defendant Dorsey:

Preeti Kaur Bajwa
(Formerly a Solo Practitioner)
California Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
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2. Jones v. County of Sacramento, 2:09-cv-1025 DAD, 2011 WL 3163307 (E.D. Cal. July 25, 2011) and 2011 WL 3584332 (E.D. Cal. Aug. 12, 2011)

In this § 1983 civil suit, plaintiff alleged that while being held at the Sacramento County Main Jail following his arrest, the defendant deputy sheriffs used excessive force against him in violation of his rights under the Fourth Amendment. After the assigned district judge denied the defendants' motion for summary judgment, the parties consented to magistrate judge jurisdiction for trial. I presided over the three-week long jury trial in February 2011. The jury returned a defense verdict as to the first aspect of plaintiff's excessive force claim but a verdict in favor of plaintiff on the second aspect of his claim. The jury also found that the defendants had acted maliciously, oppressively or in reckless disregard of plaintiff's constitutional rights, but declined to award punitive damages. Following the verdict, the defendants renewed their motion for judgment as a matter of law and plaintiff's counsel filed a motion for an award of attorney's fees pursuant to 42 U.S.C. § 1988. I addressed both motions in written orders, denying defendants' renewed motion for judgment as a matter of law and granting plaintiff's motion for attorney's fees and costs in part, awarding a total of $316,626 in fees and costs. A notice of appeal was filed but the appeal was dismissed by stipulation.

Counsel for Plaintiff:

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Law Offices of Stewart Katz
555 University Avenue, Suite 270
Sacramento, CA 95825
(916) 444-5678

Counsel for Defendants:

John A. Lavra
Longyear O'Dea and Lavra
3620 American River Drive, Suite 230
Sacramento, CA 95864
(916) 974-8510

3. In re Searches and Seizures, 2:08-SW-0361-63, 2008 WL 5411772 (E.D. Cal. Dec. 19, 2008)

The government had sought and obtained an *ex parte* order from me sealing the supporting affidavits at the time several search warrants were issued. Following the execution of the search, lawyers on behalf of the targets of the searches, an investment company and its principal, moved to unseal the affidavits. After conducting an *in camera* review of the affiant's supplemental affidavit addressing the government's need for continued secrecy, I denied the motion to unseal. The resulting order reviewed the law with respect to the pre-indictment right of access to search warrant materials by those whose property is the subject of search. No review of that order was sought.

Counsel for the United States:

Russell Carlberg (currently on detail assignment)
United States Attorney's Office
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Sacramento, CA 95814
(916) 544-2700

Counsel for Defendants:

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400 Capitol Mall, Suite 2550
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(916) 441-0886

Patrick K. Hanley
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(916) 773-2211

4. Risso v. City of Placerville, et al., 2:07-cv-0451 DAD

This consent case was a civil rights action brought by a father and grandmother, as Guardian Ad Litem, on behalf of a young girl who had been removed from the father's custody by County Child Protective Services officers acting in conjunction with a city police officer. As a result of the subsequent juvenile dependency proceedings, the child was returned to her father's custody. Plaintiffs brought this § 1983 action alleging that the defendants had acted without evidence and without a warrant in violation of both the child's and the father's constitutional rights. There was also a Monell claim brought against both the city and the county based on the alleged failure to train their respective employees. The parties waived any disqualification of the trial judge acting as settlement judge and requested that I preside over the settlement conference in June 2008. I was able to assist the parties in reaching a settlement which, among many advantages to both parties, meant that the young girl was spared having to testify at trial.

Counsel for Plaintiff:

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Counsel for Defendant:

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Franklin G. Gumpert (Defendant County of El Dorado)
Caulfield Law Firm
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5. United States v. Jack, et al., 2:07-cr-0266 FCD, 263 F.R.D. 640 (E.D. Cal. 2010) and 257 F.R.D. 221 (E.D. Cal. 2009)

In this criminal prosecution, the defendants were charged with conspiracy to, among other things, violate the Neutrality Act in connection with an alleged plot to overthrow the government of Laos. The case garnered a great deal of media attention. A significant aspect of my involvement in the case occurred on July 12, 2007, when a hearing before District Judge Frank C. Damrell, Jr. was scheduled on motions by the 11 detained defendants to revoke the previously entered orders that they be detained without bail. Judge Damrell referred the hearing to me and, after a two-day hearing, I set bail and fashioned conditions of release with respect to each of the defendants. The government elected not to seek review of those release orders. I was then specially assigned as the magistrate judge on the case for all purposes and heard a number of discovery motions and other pretrial matters. Charges against all defendants were eventually dismissed on motion by the government in January 2011.

Counsel for the United States:

Honorable Robert M. Twiss
(Formerly at the United States Attorney's Office)
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6. Jesus Christ Prison Ministry v. Cal. Dep't of Corrections, 2:05-cv-0440 DAD, 456 F. Supp. 2d 1188 (E.D. Cal. 2006), withdrawn pursuant to settlement (Apr. 16, 2007)

This was a consent case brought by a prison ministry and a state prisoner against the California Department of Corrections in which it was alleged that the policy

of prohibiting the sending of free Christian books, pamphlets and tapes into California prisons violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. On cross-motions for summary judgment, I rejected the defendant's procedural defenses and held in favor of plaintiffs. Subsequently, the parties settled the lawsuit contingent upon the withdrawal of the opinion, a request which I accommodated.

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Counsel for Defendant:

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7. Paxton v. Squaw Valley Ski Corporation, 2:02-cv-1527 DAD

In this diversity action, Mr. and Mrs. Paxton brought suit against the defendant ski resort for serious injuries suffered by Mr. Paxton in a skiing accident. Plaintiffs alleged that the defendant negligently failed to place a rope-line closure or appropriate perimeter signage around a man-made, 15-foot-deep half pipe terrain feature constructed for a competition that had been cancelled due to weather conditions on the day in question. Plaintiffs claimed that as a result, Mr. Paxton had inadvertently skied into the half pipe and crashed to the bottom thereby suffering his injuries. After the assigned district judge denied the defendant's motion for summary judgment and issued a final pretrial order, the parties consented to magistrate judge jurisdiction for trial. I presided over the three-week jury trial in May 2005. The jury returned a verdict in favor of the plaintiffs on the negligence claim but found that Mr. Paxton's own negligence was responsible for 6% of the harm he suffered. The jury awarded Mr. Paxton over $1.5 million in damages for economic loss and pain and suffering but awarded Mrs. Paxton nothing for loss of consortium. Following the verdict, the defendant filed a motion for new trial or, in the alternative, remittitur. After oral argument, I denied that motion in a written order, a copy of which is supplied. Thereafter, a notice of appeal was filed but the appeal was voluntarily dismissed by stipulation of the parties following the filing of a satisfaction of judgment with the court.

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8. United States v. Wong, 2:01-cr-0254 DAD

In this criminal case, the defendant was charged by Information with theft of government property in violation of 18 U.S.C. § 641 and contributing to the delinquency of a minor by encouraging her daughter to assist in the shoplifting of clothing at the Travis Air Force Base Exchange, both Class A misdemeanors. Through counsel, the defendant consented to proceed before a magistrate judge. During the pretrial proceedings I denied a defense motion to suppress evidence in a written order, which has been supplied. In April 2002, I presided over a four-day jury trial, at the conclusion of which I declared a mistrial when the jury announced that it was deadlocked and unable to reach a verdict. Thereafter, a Superseding Information was filed. The case was subsequently resolved by way of plea agreement with a joint recommendation of a one-month term of imprisonment in the custody of the United States Bureau of Prisons followed by a one-year term of supervised release and the mandatory special assessment. I adopted that joint sentencing recommendation in imposing judgment and sentence.

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Counsel for Defendant:

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9. United States v. Boyd, 2:98-cr-0043 DAD MLS

In this criminal case, the defendant was charged with assaulting a federal employee in violation of 18 U.S.C. § 111(a)(1), a Class A misdemeanor, and violating an order barring her from entering a military installation in violation of 18 U.S.C. § 1382, a Class B misdemeanor. I denied a defense motion to dismiss by written order, which is supplied. In September 1998 I presided over the three-day jury trial. The jury returned a verdict, finding the defendant guilty on both counts. Thereafter, I denied the defendant's motion for judgment of acquittal or for a new trial and imposed judgment and a sentence of a probationary term of 36 months with the conditions that the defendant pay a $1,000 fine, perform 200 hours of unpaid community service, and pay the mandatory special assessments. The defendant appealed and the judgment was affirmed by the assigned district judge.

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10. Oxsen v. County of Plumas, 2:95-cv-9044 DAD.

In this § 1983 civil action, the plaintiff, a former appraiser in the County Assessor's Office, alleged that the defendants, the County of Plumas and the County Assessor, had violated his rights under the First Amendment by first issuing him an unjustified letter of reprimand and later eliminating his position in retaliation for his running for election to the position of County Assessor. After the assigned district judge granted summary judgment in favor of the county defendant but denied the defendant assessor's motion for summary judgment, the parties consented to magistrate judge jurisdiction for trial. I presided over the six-day jury trial in May 1998. The jury returned a verdict for plaintiff and awarded damages. Following the verdict, the defendant assessor renewed his motion for judgment as a matter of law or in the alternative for a new trial or remittitur. In addition, plaintiff's counsel filed a motion for an award of attorney's fees pursuant to 42 U.S.C. § 1988, as did counsel on behalf of the county defendant who had prevailed on summary judgment. I addressed those motions in written orders, which are supplied. I denied the defendant assessor's motion for judgment as a matter of law or for a new trial or remittitur, as well as the defendant county's motion for attorney fees and costs. As to the latter motion, I found that plaintiff's arguments in support of his claims against the county defendant could not be accurately characterized as unreasonable, frivolous, fully without merit or vexatious. I granted plaintiff's motion for attorney fees in part, awarding a total of $62,019 in fees and costs. No appeal was taken from the judgment.

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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. Thompson v. Rosario, 2:12-cv-0776 KJM DAD, 2014 WL 1400856 (E.D. Cal. Apr. 10, 2014)

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2. United States v. Hammet, et al., 2:13-cr-0011 JAM, Docket No. 30 (E.D. Cal. Mar. 22, 2013). Copy supplied.

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3. Malibu Media, LLC v. John Does 1 through 59, 2:12-cv-2481 JAM DAD, 2012 WL 4864998 (E.D. Cal. Oct. 11, 2012)

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4. Jensen v. Hernandez, 864 F. Supp. 2d 869 (E.D. Cal. 2012)

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5. Jones v. County of Sacramento, 2:09-cv-1025 DAD, 2011 WL 3584332 (E.D. Cal. Aug. 12, 2011) and 2011 WL 3163307 (E.D. Cal. July 25, 2011)

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6. Santibanez v. Havlin, 750 F. Supp. 2d 1121 (E.D. Cal. 2010)

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7. United States v. Jack, et al., 263 F.R.D. 640 (E.D. Cal. 2010) and 257 F.R.D. 221 (E.D. Cal. 2009)

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8. Shirmohamadali v. Heinauer, 535 F. Supp. 2d 1059 (E.D. Cal. 2008)

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9. Drayton v. Castro, 2:99-cv-0708 GEB DAD P, 2006 WL 3531771 (E.D. Cal. Dec. 12, 2006)

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10. McDaniel v. Barnhart, 375 F. Supp. 2d 975 (E.D. Cal. 2004)

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

To the best of my knowledge, certiorari has not been granted in any of my cases. To the best of my knowledge, certiorari has been requested in the following cases which were assigned to me:

Jensen v. Hernandez, 864 F. Supp. 2d 869 (E.D. Cal. 2012), aff'd ___F. App'x___, 2014 WL 1928735 (9th Cir. May 15, 2014), cert. denied sub nom. Jensen v. Paramo, ___U.S.___, 2014 WL 4543003 (U.S. Nov. 3, 2014).

Marrero v. Ives, No. 2:08-cv-1853 FCD DAD P, 2009 WL 799253 (E.D. Cal. Mar. 23, 2009), aff'd 682 F.3d 1190 (9th Cir. 2012), cert. denied ___U.S.___, 133 S. Ct. 1264 (2013).

Dungan v. Barnes, No. 2:10-cv-1191 DAD P, 2011 WL 5877064 (E.D. Cal. Nov. 22, 2011), aff'd 491 Fed. Appx. 851 (9th Cir. Dec 06, 2012), cert. denied ___U.S.___, 134 S. Ct. 620 (2013).

Lopez v. Runnels, No. 2:03-cv-0543 JAM DAD P, 2008 WL 2383952 (E.D. Cal. June 09, 2008), adopted by 2008 WL 3200856 (E.D. Cal. Aug. 07, 2008), aff'd 495 Fed. Appx. 855 (9th Cir. Nov. 14, 2012), cert. denied ___U.S.___, 133 S. Ct. 1821 (2013).

Cox v. Small, No. 2:09-cv-2135 LKK DAD P, 2010 WL 4289868 (E.D. Cal. Oct. 22, 2010), adopted by Docket No. 41 (E.D. Cal. Jan 1, 2011), aff'd 463 Fed. Appx. 661 (9th Cir. Dec 22, 2011), cert. denied ___U.S.___, 133 S. Ct. 440 (2012).

Sims v. Rios, No. 2:10-cv-1893 LKK DAD P, 2010 WL 3505091 (E.D. Cal. Sept. 03, 2010), adopted by Docket No. 13 (E.D. Cal. Nov. 1, 2010), aff'd 457 Fed. Appx. 626 (9th Cir. Nov 01, 2011), cert. denied ___U.S.___, 133 S. Ct. 184 (2012).

King v. Hedgpeth, No. 2:08-cv-1524 GEB DAD P, 2010 WL 2698609 (E.D. Cal. July 07, 2010), adopted by Docket No. 28 (E.D. Cal. Aug. 27, 2010), aff'd 472 Fed. Appx. 818 (9th Cir. Apr. 30, 2012), cert. denied ___U.S.___, 133 S. Ct. 441 (2012).

Bettencourt v. Knowles, No. 2:07-cv-2246 FCD DAD P, 2009 WL 4755403 (E.D. Cal. Dec. 08, 2009), adopted by 2010 WL 431715 (E.D. Cal. Feb. 02, 2010), aff'd 472 Fed. Appx. 661 (9th Cir. Apr. 18, 2012), cert. denied ___U.S.___, 133 S. Ct. 344 (2012).

Prenatt v. G.W. Williams Co., No. 2:06-cv-1633 GEB DAD PS, 2007 WL 3313660 (E.D. Cal. Nov. 06, 2007), adopted by 2007 WL 4239557 (E.D. Cal. Dec. 03, 2007), aff'd 437 Fed. Appx. 543 (9th Cir. June 08, 2011), cert. denied ___U.S.___, 133 S. Ct. 333 (2012).

Kitchen v. Felker, No. 2:07-cv-0701 MCE DAD P, 2010 WL 761207 (E.D. Cal. Mar. 03, 2010), adopted by Docket No. 52 (E.D. Cal. Mar. 29, 2010), aff'd 442 Fed. Appx. 318 (9th Cir. July 13, 2011), cert. denied ___U.S.___, 132 S. Ct. 1042 (2012).

Hassan v. Morawcznski, No. 2:05-cv-2144 MCE DAD P, 2009 WL 2407694 (E.D. Cal. Aug. 04, 2009), adopted by Docket No. 12 (E.D. Cal. Aug. 31, 2009), aff'd 405 Fed. Appx. 129 (9th Cir. Nov. 30, 2010), cert. denied ___U.S.___, 132 S. Ct. 245 (2011).

Lavirgne v. Yates, No. 2:09-cv-0649 DAD P, 2009 WL 700428 (E.D. Cal. Mar.16, 2009), aff'd 421 Fed. Appx. 774 (9th Cir. Mar. 16, 2011), cert. denied ___U.S.___, 132 S. Ct. 163 (2011).

Pearson v. Brace, No. 2:06-cv-2505 FCD DAD PS, 2007 WL 2972744 (E.D. Cal. Oct. 10, 2007), adopted by 2007 WL 3293368 (E.D. Cal. Nov. 06, 2007), aff'd 329 Fed. Appx. 743 (9th Cir. 2009), cert. denied ___U.S.___, 131 S. Ct. 149 (2010).

Thomas v. Scribner, No. 2:04-cv-00733 MCE DAD P, 2008 WL 483575 (E.D. Cal. Feb. 20, 2008), adopted by Docket No. 90 (E.D. Cal. Feb. 20, 2008), aff'd 389 Fed. Appx. 726 (9th Cir. July 29, 2010), cert. denied ___U.S.___, 131 S. Ct. 667 (2010).

Newsom v. Runnels, No. 2:04-cv-2134 GEB DAD P, 2008 WL 4455855 (E.D. Cal. Sept. 30, 2008), adopted by 2008 WL 4933762 (E.D. Cal. Nov. 18, 2008),

aff'd 378 Fed. Appx. 641 (9th Cir. May 03, 2010), cert. denied ___U.S.___, 131 S. Ct. 470 (2010).

Faurot v. Terhune, No. 2:08-cv-0254 MCE DAD P, 2008 WL 2169451 (E.D. Cal. May 23, 2008), adopted by Docket No. 22 (E.D. Cal. Nov. 17, 2008), aff'd 357 Fed. Appx. 137 (9th Cir. Dec. 08, 2009), cert. denied ___U.S.___, 131 S. Ct. 1048 (2011).

Burgos v. Yarborough, No. 2:04-cv-0021 FCD DAD P, 2008 WL 2236383 (E.D. Cal. May 29, 2008), adopted by 2008 WL 2789776 (E.D. Cal. July 18, 2008), aff'd 369 Fed. Appx. 799 (9th Cir. Mar. 04, 2010), cert. denied ___U.S.___, 131 S. Ct. 147 (2010).

Peterson v. Roe, No. 2:02-cv-1720 FCD DAD P, 2006 WL 1455434 (E.D. Cal. May 25, 2006), adopted by 2006 WL 2711615 (E.D. Cal. Sept. 21, 2006), aff'd 337 Fed. Appx. 658 (9th Cir. 2009), cert. denied 558 U.S. 1000, 130 S. Ct. 513 (2009).

Davis v. Knowles, No. 2:07-cv-0416 LKK DAD P, 2008 WL 4307491 (E.D. Cal. Sept. 18, 2008), adopted by 2008 WL 4635428 (E.D. Cal. Oct. 17, 2008), aff'd 328 Fed. Appx. 557 (9th Cir. 2009), cert. denied 558 U.S. 998, 130 S. Ct. 507 (2009).

Ansel v. Superior Court of Sacramento County, No. 2:06-cv-2380 GEB DAD P, 2007 WL 1101455 (E.D. Cal. Apr. 12, 2007), adopted by 2007 WL 1501739 (E.D. Cal. May 21, 2007), aff'd 313 Fed. Appx. 34 (9th Cir. Nov. 25, 2008), cert. denied 558 U.S. 997, 130 S. Ct. 505 (2009).

Toliver v. Powers, No. 2:06-cv-0273 FCD DAD P, 2006 WL 3349546 (E.D. Cal. Nov. 16, 2006), adopted by 2006 WL 3762022 (E.D. Cal. Dec. 20, 2006), aff'd 298 Fed. Appx. 682 (9th Cir. Nov. 05, 2008), cert. denied 558 U.S. 834, 130 S. Ct. 77 (2009).

Drayton v. Castro, 2:99-cv-0708 GEB DAD P, 2006 WL 3531771 (E.D. Cal. Dec. 12, 2006), adopted by 2007 WL 273647 (E.D. Cal. Jan. 29, 2007), aff'd 319 Fed. App'x 632 (Mar. 17, 2009), cert. denied 556 U.S. 1272, 129 S. Ct. 2741 (2009).

Galvan v. Ayers, No. 2:00-cv-1142 DFL DAD P, 2006 WL 657121 (E.D. Cal. Mar. 15, 2006), adopted by 2006 WL 2734262 (E.D. Cal. Sept. 25, 2006), aff'd 292 Fed. Appx. 643 (9th Cir. Sep 09, 2008), cert. denied 555 U.S. 1172, 129 S. Ct. 1329 (2009).

Hammonds v. McGrath, No. 2:02-cv-0540 MCE DAD P, 2005 WL 1704402 (E.D. Cal. July 14, 2005), adopted by 2006 WL 707401 (E.D. Cal. Feb. 08, 2006), aff'd 267 Fed. Appx. 687 (9th Cir. Feb. 22, 2008), cert. denied 555 U.S. 891, 129 S. Ct. 213 (2008).

Anderson v. Terhune, No. 2:00-cv-2494 (Docket Nos. 19 & 21), aff'd 467 (9th Cir. 1208 (9th Cir. 2006), reversed and remanded on rehearing en banc 516 F.3d 781 (9th Cir. 2008), cert. denied 555 U.S. 818, 129 S. Ct. 344 (2008).

Tarkington v. Woodford, No. 2:06-cv-1021 RRB DAD P, 2007 WL 4365500 (E.D. Cal. Dec. 12, 2007), cert. denied 553 U.S. 1038, 128 S. Ct. 2439 (2008).

Fountain v. Yates, No. 2:04-cv-2350 GEB DAD P, 2006 WL 1627906 (E.D. Cal. June 8, 2006), adopted by 2006 WL 2065394 (E.D. Cal. July 24, 2006), aff'd 238 Fed. Appx. 213 (9th Cir. June 14, 2007), cert. denied 552 U.S. 1208, 128 S. Ct. 1264 (2008).

Reed v. Peterson, No. 2:04-cv-1822 LKK DAD P, 2006 WL 1130726 (E.D. Cal. Apr. 27, 2006), adopted by 2006 WL 1889876 (E.D. Cal. July 07, 2006), aff'd 255 Fed. Appx. 279 (9th Cir. Nov. 26, 2007), cert. denied 552 U.S. 1198, 128 S. Ct. 1253 (2008).

Curtis v. Guirbino, No. 2:01-cv-1562 GEB DAD P, 2005 WL 2789071 (E.D. Cal. Oct. 25, 2005), adopted by Docket No. 66 (E.D. Cal. Mar. 28, 2006), aff'd 248 Fed. Appx. 773 (9th Cir. Jun 13, 2007), cert. denied 552 U.S. 1046, 128 S. Ct. 662 (2007).

Williams v. Sheperd, No. 2:04-cv-2428 MCE DAD P, 2005 WL 1837133 (E.D. Cal. Aug. 01, 2005), adopted by 2005 WL 2400934 (E.D. Cal. Sept. 28, 2005), aff'd 238 Fed. Appx. 260 (9th Cir. June 27, 2007), cert. denied 552 U.S. 995, 128 S. Ct. 494 (2007).

Robinson v. State of California, No. 2:04-cv-1888 GEB DAD PS, 2005 WL 1561524 (E.D. Cal. June 29, 2005), adopted by Docket No. 85 (E.D. Cal. Nov. 22, 2005), aff'd 223 Fed. Appx. 607 (9th Cir. Feb. 28, 2007), cert. denied 552 U.S. 824, 128 S. Ct. 180 (2007).

Huftile v. Miccio-Fonseca, No. 2:03-cv-1522 FCD DAD, 2006 WL 572862 (E.D. Cal. Mar. 08, 2006), adopted by 2006 WL 1030094 (E.D. Cal. Apr. 19, 2006), aff'd in part, rev'd in part and remanded 410 F.3d 1136 (9th Cir. 2005), cert. denied 547 U.S. 1166, 126 S. Ct. 2325 (2006).

Planesi v. Peters, et al., No. 2:03cv2062 MCE DAD (Docket Nos. 37 & 41), aff'd 2005 WL 1939885 (9th Cir. Aug. 15, 2005), cert. denied 546 U.S. 1151, 126 S. Ct. 1182 (2006).

Stewart v. Terhune, No. 2:99-cv-0756 FCD DAD P, Docket No. 33 (E.D. Cal. Aug. 29, 2002), adopted by Docket No. 35 (E.D. Cal. Sept. 23, 2001), aff'd Fed. Appx. 205 (9th Cir. Mar. 04, 2004), cert. denied 543 U.S. 1060, 125 S. Ct. 877 2005).

Webster v. Calderon, No. 2:93-cv-0306 LKK DAD DP (Docket No. 176), findings and recommendations re summary judgment motions adopted in part and declined in part and petitioner's motion for summary judgment granted (Docket Nos. 201 & 232), reversed sub nom. Webster v. Woodford, 361 F.3d 522 (9th Cir. 2004), amended and superseded 369 F.3d 1062 (9th Cir.), cert. denied sub nom. Webster v. Brown, 543 U.S. 1007, 125 S. Ct. 626 (2004).

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

I have searched all decisions on Westlaw and Lexis/Nexis as well as my internal files to locate any of my decisions that have been reversed, my findings and recommendations which have been rejected or significantly modified by a reviewing court, and my findings and recommendations which have been adopted and then the order adopting was reversed on appeal. All of those instances are listed below.

Conservatively, in my over 17 years as a magistrate judge I have issued over 30,000 orders and 5,500 findings and recommendations. Each finding and recommendation is subject to objections by the parties and *de novo* review by the assigned district judge. I estimate that my findings and recommendations have been adopted nearly 99% of those cases.

Orders Reversed

Martinez v. Barnhart, No. 2:04-cv-0637 DAD, Docket No. 16 (E.D. Cal. Sept. 21, 2005) (copy supplied), rev'd and remanded sub nom. Martinez v. Astrue, 261 Fed. Appx. 33 (9th Cir. Dec. 20, 2007). In a Social Security appeal on consent, I affirmed the Commissioner's denial of benefits. On appeal, the Ninth Circuit rejected two of the claimant's arguments but reversed on the sole ground that the administrative law judge should have taken testimony from a vocational expert in finding the plaintiff not to be disabled in light of her non-exertional impairments.

In Morrison v. Astrue, No. 2:06-cv-0182 DAD, Docket No. 18 (E.D. Cal. Mar. 28, 2007) (copy supplied), aff'd in part, rev'd in part and remanded Morrison v. Astrue, 308 Fed. Appx. 89 (9th Cir. Jan. 9, 2009). In a Social Security appeal on consent, I affirmed the Commissioner's denial of benefits. On appeal, the Ninth Circuit affirmed in part and reversed and remanded the action. Although the Ninth Circuit rejected two of the claimant's arguments on appeal, it reversed in part because it found that the evidence did not support the administrative law judge's conclusion that the claimant's non-exertional impairments would impose no

additional functional limitations on her ability to perform work. In light of that conclusion, further administrative proceedings were deemed to be required.

Findings and Recommendations Rejected or Adopted in Part

Arista v. Mule Creek State Prison, No. 2:13-cv-2655 DAD KJM P, 2014 U.S. Dist. LEXIS 18072 (E.D. Cal. Feb. 12, 2014), declined to adopt by 2014 U.S. Dist. LEXIS 82528 (E.D. Cal. June 17, 2014). I issued findings and recommendations recommending that the plaintiff's filing, which I characterized as a petition for federal habeas relief, be denied, while advising the prisoner litigant that he could file a civil rights action. Plaintiff filed an objection to my characterization of his filing as a habeas petition. The assigned district judge declined to adopt my findings and recommendations, characterized the prisoner's filing as a civil rights complaint and dismissed it.

Escobar v. Smith, No. 2:12-cv-0773 GEB DAD P, 2013 WL 6389034 (E.D. Cal. Dec. 6, 2013), declined to adopt by Docket No. 35 (E.D. Cal. Jan. 28, 2014) (copy supplied). I issued findings and recommendations recommending defendants' motion for summary judgment on plaintiff's Eighth Amendment inadequate medical care claim be denied. The assigned district judge declined to adopt the findings and recommendations and granted defendants' motion for summary judgment, determining that plaintiff failed to provide sufficient evidence from which it could be reasonably inferred that defendants' treatment was medically unacceptable or that defendants acted in conscious disregard of plaintiff's health.

Bridgewater v. Cate, No. 2:10-cv-2971 TLN DAD P, 2013 U.S. Dist. LEXIS 112795 (E.D. Cal. Aug. 8, 2013), adopted in part, rejected in part by 2013 U.S. Dist. LEXIS 175379 (E.D. Cal. Dec. 11, 2013). I issued findings and recommendations recommending that defendants' motion to dismiss for failure to state a claim and failure to exhaust administrative remedies be granted. The assigned district judge adopted the findings and recommendations except on the issue of plaintiff's exhaustion of administrative remedies. Upon consideration of plaintiff's opposition, filed after the recommendation had issued, the district judge determined that plaintiff was excused from complying with the exhaustion requirement because prison officials had made administrative remedies effectively unavailable to him.

Mitchell v. Williams, No. 2:10-cv-1829 KJM DAD P, 2013 U.S. Dist. LEXIS 115770 (E.D. Cal. Aug. 15, 2013), adopted in part by 2013 U.S. Dist. LEXIS 138929 (E.D. Cal. Sept. 26, 2013). I issued findings and recommendations recommending defendants' motion for summary judgment on plaintiff's inadequate medical care claims and retaliation claims be granted. The assigned district judge adopted the findings and recommendations in part but based on the averments of plaintiff's complaint determined that there were material facts in dispute with respect to plaintiff's retaliation claim against one of the defendants.

Buckley v. Ritola, No. 2:11-cv-1310 KJM DAD P, 2013 U.S. Dist. LEXIS 70134 (E.D. Cal. May 16, 2013), declined to adopt by 2013 U.S. Dist. LEXIS 110696 (E.D. Cal. Aug. 5, 2013). I issued findings and recommendations recommending defendant's motion to dismiss be granted due to plaintiff's failure to exhaust administrative remedies prior to filing suit. The assigned district judge declined to adopt the findings and recommendations, concluding that defendants had not shown that further relief remained available to plaintiff after prison officials issued their informal and first level responses to his grievance.

Perry v. Wells Fargo Home Mortgage, No. 2:13-cv-0935 GEB DAD PS, 2013 WL 3214533 (E.D. Cal. June 24, 2013), adopted as modified by 2013 WL 3804836 (E.D. Cal. July 19, 2013). I issued findings and recommendations recommending that defendant's motion to dismiss be denied as moot and that the matter be remanded to the Placer County Superior Court. The assigned district judge adopted the findings and recommendations, except for a citation therein to a prior order of the assigned district judge which had subsequently been withdrawn and superseded.

Broadcast Music Inc. v. Antigua Cantina & Grill, LLC, No. 2:12-cv-1196 KJM DAD, 2013 WL 460329 (E.D. Cal. Feb. 5, 2013), adopted in part by Docket No. 16 (E.D. Cal. Mar. 29, 2013) (copy supplied). I issued findings and recommendations recommending that plaintiffs' motion for default judgment be granted, default judgment be entered against the defendants and defendants be ordered to pay statutory damages and attorney's fees. The assigned district judge adopted the findings and recommendations except as to the recommendation of an award of $6,425 in attorney's fees, finding that the hourly rate recommended had not been justified by plaintiffs' counsel, who was given an opportunity to file a supplemental memorandum.

Knockum v. BAC Home Loans Servicing, L.P., et al., No. 2:12-cv-0416 GEB DAD PS, 2012 U.S. Dist. LEXIS (E.D. Cal. Aug. 27, 2012), adopted in part by 2012 U.S. Dist. LEXIS 137722 (E.D. Cal. Sept. 25, 2012). I issued findings and recommendations recommending defendants' motion to dismiss be granted in its entirety and that plaintiff's complaint be dismissed without leave to amend. The assigned district judge adopted my findings and recommendations as to the analysis concerning the deficiencies of the complaint under Federal Rule of Civil Procedure 8 and as to plaintiff's Title 18 claim under Rule 12(b)(6) which was dismissed with prejudice. The district judge declined to reach defendants' arguments as to plaintiff's Fair Debt Collection Practices, Truth in Lending Act, and Real Estate Settlement Procedures Act claims. When plaintiff failed to file an amended complaint, the case was dismissed.

Cooper v. Naku, No. 2:10-cv-1057 GEB DAD, 2012 WL 345941 (E.D. Cal. Feb. 1, 2012), adopted in part by 2012 WL 913561 (E.D. Cal. Mar. 16, 2012). I issued findings and recommendations recommending that defendants' motion for summary judgment be denied as to plaintiff's Eighth Amendment inadequate

medical care claim against a doctor and nurse. The assigned district judge adopted the findings and recommendations as to the defendant doctor, but granted the motion for summary judgment as to the defendant nurse.

Pavey v. Recontrust Company, N.A., No. 2:11-cv-1477 GEB DAD PS, 2012 WL 467405 (E.D. Cal. Feb. 13, 2012), adopted in part by 2012 WL 3393870 (E.D. Cal. Mar. 5, 2012). I issued findings and recommendations recommending that defendant's motion to strike be denied as moot, that defendant's motion to dismiss be granted in part, that plaintiffs' only federal claim be dismissed with prejudice, that the court decline to exercise supplemental jurisdiction over plaintiffs' state law claims, that plaintiffs' state law claims be dismissed without prejudice and that the action be closed. The recommendation was adopted except as to the defendant's motion to strike, which the district judge found did not need to be addressed in light of the dismissal of plaintiffs' only federal claim and the court's decision to decline to exercise supplemental jurisdiction over plaintiffs' state law claims.

Rodgers v. Tilton, No. 2:07-cv-2269 WBS DAD P, 2011 WL 2709078 (E.D. Cal. July 11, 2011), adopted in part by 2012 WL 3925085 (E.D. Cal. Sept. 1, 2011). I issued findings and recommendations recommending that one defendant's motion for summary judgment be granted in part and denied in part. The assigned district judge declined to adopt my recommendation that the motion be denied in part on the grounds that plaintiff had not properly exhausted his administrative remedies. The district judge found that although plaintiff included his medical care claim in his inmate grievance at the Director's Level of review, he had not included his claim in his initial inmate grievance or his grievance to the second level of review.

Greene v. Board of Prison Terms, No. 2:09-cv-0229 LKK DAD P, 2010 U.S. Dist. LEXIS (E.D. Cal. Sept. 21, 2010), declined to adopt by 2011 U.S. Dist. LEXIS 41775 (E.D. Cal. Apr. 18, 2011). I issued findings and recommendations recommending dismissal of this prisoner civil rights action for failure to state a claim because plaintiff's claims were Heck-barred. The assigned district judge declined to adopt that recommendations because by that time the plaintiff was no longer in custody and could therefore challenge his parole revocation under § 1983 without his claim falling within the Heck bar. My subsequent findings and recommendations recommending dismissal of the case for failure to state a claim were adopted in full.

Rios v. Mendoza-Powers, No. 2:05-cv-1711 MCE DAD P, 2009 U.S. Dist. LEXIS (E.D. Cal. Dec. 11, 2009), rejected in part and stayed by 2010 U.S. Dist. LEXIS 27050 (Mar. 19, 2010), subsequently adopted in part and rejected in part by 2010 U.S. Dist. LEXIS 94998 (E.D. Cal. Aug. 27, 2010). I issued findings and recommendations recommending that petitioner's application for a writ of habeas corpus, which I determined was not moot, be granted on due process grounds. The assigned district judge declined to adopt the findings and recommendations.

The district judge administratively stayed the case pending the Ninth Circuit's en banc rehearing in Hayward v. Marshall, 527 F.3d 797 (9th Cir. 2008). Subsequently, the district judge determined that both the Governor and state courts had improperly applied California's "some evidence" standard in petitioner's case. The district judge then adopted the findings and recommendations but denied petitioner's petition for writ of habeas corpus finding that the petition had been rendered moot.

Graves v. Martel, No. 2:06-cv-0885 LKK DAD P, 2008 WL 5101560 (E.D. Cal. Dec. 2, 2008), adopted in part by 2009 WL 197364 (E.D. Cal. Jan. 27, 2009). I issued findings and recommendations recommending respondent's motion to dismiss the petition as barred by the statute of limitations be denied and respondent be directed to file an answer. The assigned district judge found the findings and recommendations to be supported by the record and proper analysis, except as to a date listed as April 21, 2007, that should have been listed as April 21, 2006 but that the typographical error did not affect the accuracy of the findings and recommendations.

The Rice Corp. v. Grain Bd. of Iraq, 2:06-cv-1516 GEB DAD, 2008 WL 2115664 (E.D. Cal. May 19, 2008), declined to adopt by 582 F.Supp.2d 1309 (E.D. Cal. 2008). I issued findings and recommendations recommending that plaintiff's unopposed motion for default judgment be granted. Thereafter, counsel appeared on behalf of the defendant and filed objections to the findings and recommendations and moved to set aside the Clerk's entry of default as well. Based upon the new arguments presented by defendant's counsel, the assigned district judge granted defendants' motion to set aside the entry of default and rejected my recommendation that the motion for default judgment be granted. The district judge found that plaintiff had not shown that service on either defendant was effective and that therefore the court did not have personal jurisdiction over either defendant.

Robins v. California Department of Corrections, No. 2:06-cv-02943 JKS DAD P, 2007 WL 5001393 (E.D. Cal. Feb. 21, 2007), declined to adopt by 2008 WL 686565 (E.D. Cal. Mar. 11, 2008). I issued findings and recommendations recommending dismissal of this action due to plaintiff's failure to file a complaint and submit an application to proceed in forma pauperis or the required filing fee. The assigned district judge declined to adopt the findings and recommendations because plaintiff had, subsequent to the issuance of the findings and recommendations, timely filed a complaint and a partially completed application to proceed in forma pauperis.

Mitchum v. Yolo Sheriff's Dept., 2:07-cv-0158 JKS DAD P, 2007 U.S. Dist. LEXIS (E.D. Cal. April 12, 2007), vacated by 2008 U.S. Dist. LEXIS 18141 (E.D. Cal. Mar. 10, 2008). I issued findings and recommendations recommending that the prisoner-plaintiff's case be dismissed without prejudice due to his failure to file an amended complaint as ordered. When the plaintiff filed objections

indicating his desire to file an amended complaint, the assigned district judge vacated those findings and recommendations in order to allow plaintiff a final opportunity to file an amended complaint. Plaintiff did not file an amended complaint, and the district judge dismissed the case without prejudice.

Ashanti v. Cal. Med. Facility, 2:06-cv-1304 JKS DAD P, 2007 U.S. Dist. LEXIS 75212 (E.D. Cal. Oct. 10, 2007), adopted as modified by 2008 U.S. Dist. LEXIS 9562 (E.D. Cal. Feb. 8, 2008). I issued findings and recommendations that the prisoner-plaintiff's federal causes of action be dismissed for failure to state a claim and that the court decline to exercise supplemental jurisdiction over his state-law causes of action and that they be dismissed without prejudice to their being asserted in a state court action. The district judge assigned to the case adopted the findings and recommendations with the lone modification of allowing plaintiff to file an amended complaint as to a single claim. Plaintiff did not file an amended complaint, and the district judge dismissed the complaint and ordered the case closed.

Manago v. Knowles, No. 2:04-cv-1712 FCD DAD P, 2007 U.S. Dist. LEXIS 42861 (E.D. Cal. June 13, 2007), adopted in part by 2007 U.S. Dist. LEXIS 60502 (E.D. Cal. Aug. 17, 2007). I issued findings and recommendations recommending defendants' motion to dismiss be granted without prejudice due to plaintiff's failure to exhaust administrative remedies prior to filing suit. The assigned district judge declined to adopt that recommendation in part. In plaintiff's objections to the findings and recommendations, he presented the new argument that he had exhausted administrative remedies with respect to a deliberate indifference claim. The assigned district judge noted that plaintiff's inadequate medical care claim was vague and not well pled, but that defendants had not addressed it in their motion to dismiss. The assigned district judge adopted the findings and recommendations as to plaintiff's first two causes of action but ordered the case to proceed on plaintiff's third cause of action alleging deliberate indifference.

United States v. Dutson, et al., No. 2:06-cv-0650 DFL DAD PS, 2006 U.S. Dist. LEXIS 47283 (E.D. Cal. July 12, 2006), adopted as modified by 2007 U.S. Dist. LEXIS 21827 (E.D. Cal. Mar. 27, 2007). I issued findings and recommendations recommending that plaintiff's motion for summary judgment be granted, judgment for plaintiff be entered on all claims, multiple identified UCC Financing Statements be declared null, void and without legal effect and defendants be permanently enjoined from filing any document or instrument purporting to create a nonconsensual lien or encumbrance. The assigned district judge adopted my findings and recommendations except with a modification allowing defendants to file liens or encumbrances with the prior permission of the court.

Saif'ullah v. Carey, No. 2:02-cv-2664 MCE DAD P, 2005 U.S. Dist. LEXIS 43319 (E.D. Cal. June 28, 2005), adopted in part and rejected in part by 2006 U.S. Dist. LEXIS 74390 (E.D. Cal. Sept. 29, 2006). I issued findings and recommendations recommending that petitioner's application for a writ of habeas

corpus be granted on due process grounds and denied on all other grounds. The assigned district judge declined to adopt my recommendation that petitioner's application for writ of habeas corpus be granted based on due process grounds.

Von Staich v. Schwarzenegger, No. 2:04-cv-2167 DFL DAD P, 2005 U.S. Dist. LEXIS 36351 (E.D. Cal. Aug. 29, 2005), declined to adopt and remanded by 2006 U.S. Dist. Lexis 73105 (E.D. Cal. Sept. 22, 2006). I issued findings and recommendations recommending that this civil rights action be dismissed because I construed plaintiff's claims as seeking habeas relief, not relief under 42 U.S.C. § 1983. The district judge assigned to the case reversed and remanded, finding the complaint could be read as asserting a procedural challenge to plaintiff's parole hearing. Thereafter, plaintiff voluntarily dismissed his case.

Yonai v. S.V.S.P. Employees, No. 2:06-cv-0476 FCD DAD P, 2006 U.S. Dist. LEXIS 46850 (E.D. Cal. July 11, 2006), adopted in part by 2006 U.S. Dist. LEXIS 57833 (E.D. Cal. Aug. 16, 2006). I issued findings and recommendations recommending dismissal with prejudice due to plaintiff's failure to file a complete application to proceed in forma pauperis. The assigned district judge declined to adopt my findings and recommendations in part because although my earlier order had warned plaintiff that his failure to submit a complete in forma pauperis application would result in dismissal of the action it did not specify that the dismissal would be with prejudice. Accordingly, the district judge dismissed the action without prejudice.

United States v. Hayat, No. 2:05-cr-0240 GEB DAD, Docket No. 124 (E.D. Cal. Dec. 12, 2005) (copy supplied), reversed on de novo review by No. 134 (E.D. Cal. Jan. 4, 2006) (copy supplied). Following an evidentiary hearing, I issued an order finding proposed properties and sureties proffered by the defense to be sufficient to secure the defendant's release in the $1.2 million bail set by the assigned district judge. At the request of the government, I simultaneously stayed that order to allow the government to seek reconsideration by the assigned district judge. The assigned district judge conducted a further evidentiary hearing and, based upon the additional evidence presented, issued an order finding the proposed sureties to be inadequate.

Directv v. Atwal, et al., No. 2:03-cv-2499 WBS DAD, Docket No 24 (E.D. Cal. Feb. 8, 2005) (copy supplied), adopted in part by Docket No. 25 (E.D. Cal. Mar. 22, 2005) (copy supplied). I issued findings and recommendations directing plaintiff's counsel to file a declaration addressing plaintiff's costs and attorney's fees and recommending that plaintiff's motion for default judgment be granted, default judgment be entered and that the court award $1,000 in damages plus costs and reasonable attorney's fees. The assigned district judge declined to adopt my findings and recommendations as to an award of attorney's fees, finding that plaintiff's counsel failed to file a declaration adequately addressing fees and costs. The district judge adopted the findings and recommendations in all other respects.

Breaux v. Calderon, No. 2:93-cv-0570 JAM DAD DP, Docket No. 166 (E.D. Cal. Jan. 6, 2004) (copy supplied), adopted in part by Docket No.181 (E.D. Cal. Sept. 30, 2004) (copy supplied). In this capital habeas case, I issued findings and recommendations addressing approximately 35 claims and sub-claims for relief and recommending that petitioner's motion for summary judgment be denied and respondent's motion for summary be granted in part and denied in part. The assigned district judge adopted those findings and recommendations in part but declined to do so as to two sub-claims and my analysis with respect to another.

Webster v. Calderon, No. 2:93cv0306 LKK DAD DP, Docket No. 176 (E.D. Cal. Feb. 18, 1999) (copy supplied), adopted in part and declined to adopt in part by Docket No. 201 (E.D. Cal. June 23, 2000) (copy supplied), reversed and remanded sub nom. Webster v. Woodford, 361 F.3d 522 (9th Cir. 2004), amended and superseded 369 F.3d 1062 (9th Cir.), cert. denied sub nom. Webster v. Brown, 543 U.S. 1007, 125 S. Ct. 626 (2004). In this capital habeas case, I issued findings and recommendations recommending that petitioner's motion for summary judgment be denied and that respondent's motion for summary judgment be granted in part and denied in part. The assigned district judge adopted those findings and recommendations in part but declined to do so as to petitioner's motion for summary judgment and granted summary judgment in favor of petitioner as to his due process claim and ordered him to be retried. On appeal, the Ninth Circuit reversed the district judge's grant of summary judgment in favor of petitioner. Following a subsequent evidentiary hearing, I issued findings and recommendations recommending that the petition for writ of habeas corpus be granted only with respect to petitioner's claim that he received ineffective assistance of counsel at the penalty phase of his trial and be denied in all other respects. Those findings and recommendations were adopted in full by the assigned district judge. No appeal was taken by either party.

Findings and Recommendations Adopted and Reversed on Appeal

Davis v. Walker, Nos. 2:10-cv-2139 KJM DAD and 2:08-cv-0593 KJM DAD, 2012 U.S. Dist. LEXIS 22404 (E.D. Cal. Feb. 22, 2012), adopted by Docket Nos. 62 and 30 respectively (E.D. Cal. April 3, 2012) (copy supplied), vacated and remanded 745 F.3d 1303 (9th Cir. 2014). I issued findings and recommendations recommending that both cases be stayed until a party filed a motion to lift the stay accompanied by evidence that plaintiff had been found to be restored to competency. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit vacated and remanded the cases with instructions to consider whether the court should appoint a guardian ad litem for plaintiff, and if the court declined to appoint a guardian, to craft an order that adequately protected plaintiff's interests in prosecuting his lawsuits.

Heilman v. Sanchez, No. 2:10-cv-1120 JAM DAD P, 2011 WL 4458837 (E.D. Cal. Sept. 23, 2011), adopted by Docket No. 22 (E.D. Cal. Nov. 22, 2011) (copy supplied), affirmed in part, reversed in part ___ Fed. Appx. ___, 2014 WL

3703949 (9th Cir. July 28, 2014). I issued findings and recommendations recommending that the action be dismissed due to plaintiff's failure to state a cognizable claim. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit affirmed in part, reversed in part, and remanded the case for further proceedings. The Ninth Circuit determined that the district court properly dismissed plaintiff's claim that a defendant's refusal to copy certain documents impaired an action the plaintiff had filed in state court, as well as plaintiff's claims against two other defendants, because he had not alleged plausible facts to support a claim for a constitutional violation. The Ninth Circuit also determined that the district court properly dismissed two bases of plaintiff's retaliation claim but had improperly dismissed the remainder of his claim that rested on a defendant allegedly threatening plaintiff with disciplinary action if he accessed the prison's grievance mechanisms.

Lopez v. Cook, No. 2:03-cv-1605 KJM DAD, No. 178 (E.D. Cal. Sept. 29, 2008), adopted by Docket No. 184 (E.D. Cal. Jan. 16, 2009) (copy supplied), affirmed in part, reversed in part and remanded 533 Fed. Appx. 763 (9th Cir. 2013), mandate recalled and amended ___ Fed. Appx.___, 2014 WL 2937177 (9th Cir. July 1, 2014). I issued findings and recommendations recommending that defendants' motion for summary judgment be granted in part and denied in part. The surviving causes of action were tried before a jury and resulted in a verdict in favor of the defendants. The Ninth Circuit affirmed in part, reversed in part, and remanded. Specifically, the Ninth Circuit affirmed the granting of summary judgment in favor of several defendants. The Ninth Circuit concluded, however, that the district court had erred at trial in allowing a witness called by plaintiff with respect to his retaliation claim to invoke his Fifth Amendment privilege against self-incrimination which was not grounded upon any possible criminal prosecution. The appellate court also held that the district court had erred in dismissing plaintiff's due process claim against one particular officer, thereby dismissing him from the case, because it served to allow the remaining defendants to argue at trial that the dismissed defendant, rather than the defendants who remained in the case, was the critical decision-maker. The judgment on plaintiff's due process claim was reversed and remanded for a new trial as to the erroneously dismissed defendant as well as the other remaining defendants and the judgment on plaintiff's retaliation claim was reversed and remanded for a new trial as well.

Reece v. Traquina, No. 2:10-cv-2949 JAM DAD, 2012 WL 174947 (E.D. Cal. Jan. 20, 2012), adopted by Docket No. 25 (E.D. Cal. Mar. 29, 2012) (copy supplied), affirmed in part, vacated in part and remanded 507 Fed. Appx. 660, 2013 WL 491558 (9th Cir. Jan. 2, 2013). I issued findings and recommendations, recommending that defendant's motion to dismiss be granted and the action be dismissed for failure to state a claim. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit affirmed in part, vacated in part, and remanded the case for further proceedings. The Ninth Circuit determined that the dismissal of one of plaintiff's claims without leave to

amend was premature because it was not "absolutely clear" that plaintiff could not cure the deficiencies of his complaint.

Davis v. Kissinger, No. 2:04-cv-0878 TLN DAD, 2009 WL 2043899 (E.D. Cal. July 14, 2009), adopted by 2009 WL 3201158 (E.D. Cal. Sept. 30, 2009), affirmed in part, reversed in part and remanded 465 Fed. Appx. 715, 2012 WL 76861 (9th Cir. Jan. 11, 2012). I issued findings and recommendations recommending that defendant's motion for summary judgment be granted in part and denied in part. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit affirmed in part, reversed in part, and remanded the case for further proceedings. The Ninth Circuit determined that the district court properly denied qualified immunity to four defendants on plaintiff's equal protection claim but improperly denied qualified immunity to a fifth defendant because plaintiff had not raised a triable dispute as to whether that defendant used excessive force against him or failed to protect him.

Hardwick v. Clarke, No. 2:06-cv-0672 LKK DAD P, 2010 WL 1444575 (E.D. Cal. Apr. 12, 2010), adopted by Docket No. 23 (E.D. Cal. July 13, 2010) (copy supplied), reversed 2011 WL 12506526 (9th Cir. Mar. 15, 2011). I issued findings and recommendations recommending that the habeas petition be granted in part and denied in part. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit reversed pursuant to the U.S. Supreme Court's intervening decision in Swarthout v. Cooke, 562 U.S. 216 (2011) which had overruled prior Ninth Circuit precedent and held that federal courts cannot review the application of California's "some evidence" rule in a federal habeas corpus proceeding.

Walker v. Sisto, No. 2:07-cv-2070 JAM DAD P, 2009 WL 4755396 (E.D. Cal. Dec. 8, 2009), adopted by 2010 WL 1027608 (E.D. Cal. Mar. 4, 2010), reversed and remanded Docket No. 25 (9th Cir. June 28, 2011) (copy supplied). I issued findings and recommendations recommending that petitioner's application for a writ of habeas corpus be granted and the California Board of Parole Hearings calculate petitioner's term in keeping with the requirements of California Penal Code § 3041. The assigned district judge adopted the findings and recommendations in full. During the pendency of the appeal, the Supreme Court had decided Swarthout v. Cooke, 562 U.S. 216 (2011), overruling prior Ninth Circuit precedent on the issue. Accordingly, the Ninth Circuit reversed and remanded the case.

Pierce v. Woodford, No. 2:08-cv-01148 FCD DAD, 2009 WL 799079 (E.D. Cal. Mar. 24, 2009), adopted by Docket No. 126 (E.D. Cal. May 8, 2009) (copy supplied), affirmed in part, vacated in part and remanded sub nom. Pierce v. Alameida, 416 Fed. Appx. 664, 2011 WL 683786 (9th Cir. Feb. 15, 2011). I issued findings and recommendations recommending that the action be dismissed due to plaintiff's failure to state a cognizable claim. The assigned district judge

adopted the findings and recommendations in full. On appeal, the Ninth Circuit affirmed in part, vacated in part, and remanded the case for further proceedings. The Ninth Circuit determined that the district court properly dismissed claims against supervisorial defendants but concluded that plaintiff could have stated a colorable claim against the "Four Unknown by Name High Desert Officers" and that his failure to identify them by name did not support dismissal.

Ontiveros v. Subia, No. 2:07-cv-1441 JAM DAD, 2008 U.S. Dist. LEXIS 109469 (E.D. Cal. June 13, 2008), adopted by 2008 U.S. Dist. LEXIS 79307 (E.D. Cal. Sept. 30, 2008), affirmed in part, reversed in part and remanded 365 Fed. Appx. 848, 2010 U.S. App. LEXIS 3235 (9th Cir. Feb. 18, 2010). I issued findings and recommendations recommending that respondent's motion to dismiss a habeas petition as time-barred be granted. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit affirmed in part and reversed in part. The Ninth Circuit determined that the district court had not adequately addressed petitioner's claim for equitable tolling of the statute of limitations based on a documented learning disability and a prison lock-down.

Nwozuzu v. Runnels, No. 2:05-cv-1938 MCE DAD, 2007 WL 4374055 (E.D. Cal. Dec. 14, 2007), adopted by 2008 WL 275757 (E.D. Cal. Jan. 31, 2008), affirmed in part, reversed in part and remanded 338 Fed. Appx. 724, 2009 WL 2241573 (9th Cir. July 28, 2009). I issued findings and recommendations recommending that defendants' motion for summary judgment be granted. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit affirmed in part, vacated in part, and remanded the case for further proceedings. The Ninth Circuit determined that the district court should have construed plaintiff's summary judgment opposition and his motion for injunctive relief as a motion to file an amended complaint to add a claim for damages. The Ninth Circuit instructed the district court to determine on remand whether plaintiff should be granted leave to amend.

Hallford v. California Department of Corrections, No. 2:05-cv-0573 FCD DAD, 2006 WL 3782701 (E.D. Cal. Dec. 21, 2006), adopted by 2007 WL 512365 (E.D. Cal. Feb. 14, 2007), affirmed in part, vacated in part and remanded 343 Fed. Appx. 176, 2009 WL 2015421 (9th Cir. July 8, 2009). I issued findings and recommendations recommending defendants' motion to dismiss for failure to exhaust administrative remedies be granted and the action be dismissed without prejudice. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit affirmed in part, vacated in part, and remanded the case for further proceedings. The Ninth Circuit agreed that plaintiff's procedurally defective and post-suit inmate grievances did not satisfy the exhaustion requirement. However, the appellate court found that because plaintiff had terminated his inmate grievance after prison officials had granted his request for relief, he had effectively received all available remedies and was not required to pursue the administrative process further.

Anderson v. Terhune, No. 2:00-cv-2494 WBS DAD, Docket No. 19 (E.D. Cal. Sept. 28, 2004) (copy supplied), adopted by Docket No. 21 (E.D. Cal. Oct. 15, 2004) (copy supplied), affirmed 467 F.3d 1208 (9th Cir. 2006), reversed and remanded en banc 516 F.3d 781 (9th Cir. 2008) (en banc), cert. denied 555 U.S. 818, 129 S. Ct. 344 (2008). I issued findings and recommendations recommending that the petition for writ of habeas corpus be denied. Those findings and recommendations were adopted in full. On appeal, the judgment was initially affirmed. However, rehearing en banc was granted and the judgment was reversed and remanded with instructions to grant the writ. The en banc court concluded that the petitioner's statements to detectives were an unambiguous declaration of the right to remain silent and that the state court's decision to ignore petitioner's invocation of this right to remain silent was an unreasonable application of Supreme Court precedent, was based on an unreasonable determination of fact and could not survive review under AEDPA.

Greene v. Solano County Jail, et al., No. 2:04-cv-0917 MCE DAD P, 2006 WL 2067056 (E.D. Cal. July 24, 2006), adopted by 2006 WL 2671075 (E.D. Cal. Sept. 18, 2006), reversed in part, vacated in part and remanded 513 F.3d 982 (9th Cir. 2008). I issued findings and recommendations recommending that defendant's motion for summary judgment be granted and the case be dismissed. The assigned district judge adopted the findings and recommendations in full. The Ninth Circuit reversed, vacated the order of dismissal and remanded the case for further proceedings. The Ninth Circuit held that there were genuine issues of fact on whether a total ban on group religious worship in the county's maximum security facility was the least restrictive measure to be taken in furtherance of the compelling interest of prison security, as required under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc, et seq. The Ninth Circuit also held that defendant's summary judgment motion addressed only the RLUIPA claims and that defendant had not submitted evidence negating an essential element of plaintiff's claims brought under 42 U.S.C. § 1983 or California Penal Code § 4027. The Ninth Circuit found that the court's grant of summary judgment on those claims left plaintiff without a full opportunity to oppose their dismissal.

Moyer v. Alameida, No. 2:03-cv-1350 FCD DAD, No. 12 (E.D. Cal. Mar. 17, 2004) (copy supplied), adopted by Docket No. 16 (E.D. Cal. May 6, 2004) (copy supplied), reversed and remanded 184 Fed. Appx. 633, 2006 WL 1666690 (9th Cir. June 9, 2006). I issued findings and recommendations recommending that the action be dismissed for failure to state a claim. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit reversed and remanded the case for further proceedings. The Ninth Circuit determined that plaintiff stated a colorable ex post facto claim based on a state law that imposed a 10% administrative fee on prisoners whose wages and trust account deposits were garnished to pay restitution fines.

Richardson v. Newland, No. 2:97-cv-2318 WBS DAD, 342 F.Supp.2d 900 (E.D. Cal. 2004), adopted by 342 F.Supp.2d 900, 2004 U.S. Dist. LEXIS 28341 (E.D. Cal. Nov. 5, 2004), reversed in part and remanded 171 Fed. Appx. 156, 2006 U.S. App. LEXIS 6718 (9th Cir. Mar. 15, 2006). I issued findings and recommendations recommending that respondent's motion to dismiss the petition as time-bared be denied and petitioner's motion for equitable tolling of the statute of limitations be granted. The assigned district judge adopted the findings and recommendations in full. Subsequently on reconsideration, the assigned district judge determined that petitioner was entitled to statutory tolling of the statute of limitations and the court did not need to reach the issue of equitable tolling. Thereafter, I issued findings and recommendations recommending that petitioner's application for a writ of habeas corpus be granted on petitioner's Confrontation Clause claim and denied in all other respects. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit reversed in part and remanded in part. The Ninth Circuit determined that the district court erred in deciding that petitioner was entitled to statutory tolling while his post-conviction habeas petition was pending in state court because it was not properly filed. In addition, because the district court did not reach petitioner's equitable tolling claim, the Ninth Circuit remanded for further proceedings.

Huftile v. Miccio-Fonseca, No. 2:03-cv-1522 FCD DAD, Docket No. 5 (E.D. Cal. Aug. 15, 2003) (copy supplied), adopted by Docket No. 8 (E.D. Cal. Sept. 4, 2003) (copy supplied), affirmed in part and reversed in part and remanded 410 F.3d 1136 (9th Cir. 2005). I issued findings and recommendations recommending that this action be dismissed as Heck-barred. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit affirmed in part but reversed the dismissal of plaintiff's claim for injunctive relief under Heck and remanded for further proceedings on the claim for injunctive relief.

Jones v. Cummings, No. 2:03-cv-0170 GEB DAD, Docket No. 44 (E.D. Cal. Aug. 30, 2004) (copy supplied), adopted by Docket No. 48 (E.D. Cal. Oct. 6, 2004) (copy supplied), vacated and remanded 131 Fed. Appx. 551, 2005 WL 1127109 (9th Cir. May 13, 2005). I issued findings and recommendations recommending that defendants' motion for judgment on the pleadings be granted and the action be dismissed without prejudice as Heck-barred. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit vacated and remanded with instructions to consider plaintiff's allegations in light of its then recent decision in Smith v. Hemet, 394 F.3d 689 (9th Cir. 2005) (en banc), in which the court had held that success on the merits of an excessive use of force claim does not necessarily imply the invalidity of a criminal conviction.

Lewis v. Mayle, No. 2:99-cv-1751 FCD DAD, Docket No. 31 (E.D. Cal. Apr. 15, 2003) (copy supplied), adopted by Docket No. 33 (E.D. Cal. May 20, 2003) (copy supplied), reversed and remanded 391 F.3d 989 (9th Cir. 2004). I issued findings

and recommendations recommending that petitioner's application for writ of habeas corpus be denied. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit reversed and remanded with directions to grant the habeas petition, finding that the petitioner's written and verbal waiver of his right to conflict-free representation was invalid, that counsel's conflict of interest adversely affected petitioner's defense and that the state court had unreasonably accepted counsel's explanation for his conduct.

Young v. Riley, No. 2:02-cv-2297 LKK DAD, Docket No. 15 (E.D. Cal. Feb. 11, 2003) (copy supplied), adopted by Docket No. 19 (E.D. Cal. Apr. 25, 2003) (copy supplied), affirmed in part, reversed in part and remanded 81 Fed. Appx. 233, 2003 U.S. App. LEXIS 23368 (9th Cir. Nov. 14, 2003). I issued findings and recommendations recommending that the action be dismissed for failure to state a claim. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit affirmed in part, reversed in part, and remanded the case for further proceedings. The Ninth Circuit affirmed the dismissal of plaintiff's access to the courts and Eighth Amendment claims but concluded that his retaliation claim should not have been dismissed.

Bell v. Barnhart, No. 2:00-cv-2586 WBS DAD, Docket No. 17 (E.D. Cal. Feb. 27, 2002) (copy supplied), adopted by Docket No. 19 (E.D. Cal. Mar. 19, 2002) (copy supplied), reversed and remanded 74 Fed. Appx. 798, 2003 U.S. App. LEXIS 18719 (9th Cir. Sept. 8, 2003). I issued findings and recommendations recommending that plaintiff's motion for summary judgment be granted, defendant's motion for summary judgment be denied, that the decision of the Commissioner of Social Security be reversed, and that the case be remanded for rehearing. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit reversed the decision to remand for rehearing and instead remanded with instructions to reinstate plaintiff's benefits.

Mancuso v. Olivarez, No. 2:96-cv-0787 LKK DAD, Docket No. 26 (E.D. Cal. Apr. 12, 2000) (copy supplied), adopted by Docket No. 34 (E.D. Cal. May 23, 2000) (copy supplied), affirmed in part and reversed in part 282 F.3d 728 (9th Cir. 2002), amended and superseded on denial of rehearing 292 F.3d 939 (9th Cir. 2002). I issued findings and recommendations recommending that the petition for writ of habeas corpus be granted only with respect to the petitioner's claim that the jury at his trial had considered impermissible and prejudicial extrinsic evidence. Those findings and recommendations were adopted in full. On cross-appeal, the judgment was affirmed in part and reversed in part with the appellate court concluding that the jury's consideration of the extrinsic evidence was not unduly prejudicial to petitioner.

Jones v. California Department of Corrections, No. 2:01-cv-1166 LKK DAD, Docket No. 5 (E.D. Cal. Sept. 14, 2001) (copy supplied), adopted by Docket No. 11 (E.D. Cal. Oct. 19, 2001) (copy supplied), vacated and remanded 51 Fed. Appx. 275, 2002 U.S. App. LEXIS 24226 (9th Cir. Nov. 22, 2002). I issued

findings and recommendations recommending dismissal of this action due to plaintiff's failure to exhaust administrative remedies prior to filing suit as required. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit vacated and remanded the case in light of its then recent decision in Wyatt v. Terhune, 305 F.3d 1033, 1044 (9th Cir. 2002), which held that failure to exhaust administrative remedies is an affirmative defense that defendants must raise and prove.

McQuillion v. McKenzie, No. 2:97-cv-0859 GEB DAD, Docket No. 71 (E.D. Cal. Feb. 4, 2000) (copy supplied), adopted by Docket No. 73 (E.D. Cal. Mar. 6, 2000) (copy supplied), affirmed in part, reversed in part 35 Fed. Appx. 547, 2002 U.S. App. LEXIS 9593 (9th Cir. May 16, 2002). I issued findings and recommendations recommending plaintiff's motion for summary judgment be denied, summary judgment be granted in favor of defendants, and the action be dismissed. The assigned district judge adopted the findings and recommendations in full. On appeal, the Ninth Circuit affirmed in part but reversed with respect to plaintiff's retaliation claim against two prison officials, which the court found turned on disputed issues of material fact precluding the grant of summary judgment.

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

As a magistrate judge, I issue orders on non-dispositive matters and orders on dispositive matters in consent cases. I also issue findings and recommendations on all dispositive motions in pro se and all prisoner cases, both of which are referred to magistrate judges by Local Rule. My non-dispositive orders include those addressing discovery motions, motions to amend the pleadings, motions to extend scheduling orders, final pretrial orders and other miscellaneous civil motions. In addition, in matters referred to me I issue findings and recommendations addressing dispositive motions to dismiss, for summary judgment, for entry of default judgment and the like. I estimate that I have issued over 30,000 orders and 5,500 findings and recommendations in my more than 17 years as a magistrate judge. Very few of those orders and findings and recommendations are published in the official reporters. They are all filed with our court's electronic case filing system and in that way are available to the public. In addition, the majority of my orders and findings and recommendations are published electronically on 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.

Thompson v. Rosario, 2:12-cv-0776 KJM DAD, 2014 WL 1400856 (E.D. Cal. Apr. 10, 2014), adopted in full Docket No. 47 (E.D. Cal. June 25, 2014).

Hall v. City of Fairfield, 2:10-cv-0508 DAD, 2014 WL 1303612 (E.D. Cal. Mar. 31, 2014).

Parkison v. Butte County Sheriff's Dep't, 2:09-cv-2257 MCE DAD P, 2013 WL 1007214 (E.D. Cal. Mar. 13, 2013), adopted in full 2013 WL 1345080 (E.D. Cal. Mar. 28, 2013).

Jensen v. Hernandez, 864 F. Supp. 2d 869 (E.D. Cal. 2012), aff'd ___Fed. App'x ___, 2014 WL 1928735 (9th Cir. May 15, 2014), cert. denied sub nom. Jensen v. Paramo, ___U.S.___, 2014 WL 4543003 (U.S. Nov. 3, 2014).

Jones v. County of Sacramento, 2:09-cv-1025 DAD, 2011 WL 3163307 (E.D. Cal. July 25, 2011), appeal dismissed by stipulation, Docket No. 197 (E.D. Cal. Dec. 7, 2011).

Freeland v. Sacramento City Police Dep't, 2:06-cv-0187 LKK DAD, 2010 WL 408908 (E.D. Cal. Jan. 29, 2010), adopted in full by 2010 WL 960375 (Mar. 16, 2010).

Allen v. Shepard, 2:06-cv-1923 FCD DAD P, 2010 WL 424323 (E.D. Cal. Jan. 27, 2010), adopted in full by Docket No. 71 (E.D. Cal. Feb. 23, 2010), aff'd 456 Fed. App'x 710 (Nov. 1, 2011).

Rogers v. Shepard, 2:05-cv-1395 DAD P, 2009 WL 1768945 (E.D. Cal. June. 23, 2009), aff'd 438 Fed. App'x 546 (June 10, 2011).

Drayton v. Castro, 2:99-cv-0708 GEB DAD P, 2006 WL 3531771 (E.D. Cal. Dec. 12, 2006), adopted in full by 2007 WL 273647 (E.D. Cal. Jan 29, 2007), aff'd 319 Fed. App'x 632 (Mar. 17, 2009), cert. denied 556 U.S. 1272, 129 S. Ct. 2741 (2009).

South v. Gomez, et al., 2:95-cv-1070 DFL DAD P, Docket No. 269 (E.D. Cal. Feb. 26, 1999) (copy supplied), adopted by Docket No. 274 (E.D. Cal. Mar. 31, 1999), aff'd 211 F.3d 1275, 2000 WL 222611 (9th Cir. Feb. 25, 2000).

Perez v. Gomez, et al., 2:95-cv-0757 LKK DAD, Docket No. 70 (E.D. Cal. July 7, 1998) (copy supplied), adopted in full by Docket No. 73 (E.D. Cal. July 27, 1998.

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.

With assistance from the Administrative Office of the U.S. Courts, our court has instituted an automated system to aid judges in screening cases for conflicts of interest. I update the information for that automated system as needed. I rely on that system and also evaluate each case, both at the time of initial reference and again if it is assigned to me for all purposes on the consent of the parties, to identify any potential conflict.

A search of my court's CM/ECF system as well as my own records reflect that I have recused myself either sua sponte or upon request by one of the parities in the following cases:

Cemo v. Wannakuwatte, et al., 2:14-cv-0662 KJM CKD. In this civil fraud action, I immediately recused myself sua sponte prior to any appearance of the parties before me when I recognized the name of one of the parties as being a former client of mine over 20 years previously.

Schneider v. Bank of America, et al., 2:11-cv-2953 JAM EFB PS. In this mortgage foreclosure case, the plaintiff is proceeding pro se. After waiver of my disqualification for serving as the settlement judge, I conducted a settlement conference at which time a tentative settlement agreement was reached subject to corporate approval by defendant. At a subsequent status of settlement conference it became clear to me that the plaintiff was withdrawing from the tentative agreement. Because of what I had been exposed to as a result of the settlement conference, I sua sponte recused myself from the case.

United States v. Johnson, 2:11-cr-0007 JAM. I immediately recused myself sua sponte from this case when at defendant's detention hearing his father appeared in court and I realized I had represented the father while in private practice over 15 years earlier.

Castaneda v. Hartford Life and Accident Insurance Company, 2:06-cv-0305 RRB. Both myself and the assigned district judge were recused from this action and it was reassigned

to an out-of-district judge by sua sponte order of our Chief Judge, prior to any appearance of the parties in court, because the plaintiff was a former court staff interpreter.

Pronechen v. U.S. Department of Homeland Security, 2:06-cv-01726 LEW. The originally assigned district judge in this action issued an order recusing both he and I and reassigning the case to an out-of-district judge when the district judge learned at a status conference that the plaintiff was one of the court's security officers. The case had not come before me at the time the recusal order was issued.

Robinson v. Rymer, et al., 2:02-cv-1792 LKK PAN P. I immediately recused myself sua sponte from this case after reviewing the complaint and learning that the plaintiff had named me as a defendant therein.

Frye v. Calderon, et al., 2:99-cv-00628 KJM CKD (DP). This death penalty habeas case was reassigned to me following the appointment of the previously assigned magistrate judge to a district judgeship. In preparation for the initial status conference before me, I realized that the petitioner's trial counsel, whose performance at trial was being challenged as ineffective, was a close friend of mine. I sua sponte recused myself.

United States v. Nguyen, 2:99-cr-0433 WBS AC. This criminal case came before me as the general duty judge and I realized that in an earlier, related case I had represented a defendant who was not charged in this indictment. As a result of that representation, I was familiar with these defendants who had been co-defendants of my client in the earlier case. I disclosed that potential conflict to the parties who waived my disqualification for purposes of arraignment and other preliminary proceedings. I later recused myself from any substantive proceedings in the case.

United States v. Radunovich, 2:97-cr-0055 GEB JFM. I granted defendant's motion to recuse and disqualified myself based on defendant's representation that he was once my client. Although I had no memory of defendant, I removed myself from the case to avoid any appearance of impropriety. I vacated my previously issued findings and recommendations on defendant's motion for relief under 28 U.S.C. § 2255, and the case was reassigned.

A search of my court's CM/ECF system as well as my own records reflects that motions have been made seeking my recusal in the following cases in which I did not recuse:

Cevallos v. Cate, 2:12-cv-1433 DAD P. The pro se petitioner in this habeas action moved to recuse me based upon adverse rulings. I denied the motion under 28 U.S.C. § 144. The petition was dismissed, judgment was entered and no appeal was taken.

Gipbsin v. Kernan, et al., 2:12-cv-0556 GEB DAD P. The pro se plaintiff in this prisoner-civil rights action moved to recuse me based on adverse rulings. He later filed a "request for status" in which he withdrew the motion. I deemed the motion withdrawn but noted that adverse rulings are not a basis on which recusal can be granted. The case is currently still open.

Peck v. Wenstrom, et al., 2:11-cv-0151 JAM DAD PS. The pro se plaintiff moved to recuse me, alleging that in the absence of his consent "[n]o Magistrate Judge has authority to participate in this civil action." Plaintiff did not allege bias or partiality. I denied the motion on the basis that no reasonable person with knowledge of the case would conclude that my impartiality might be questioned. I stated further that under 28 U.S.C. § 636 and the court's local rules, referral of certain matters in a civil case to the magistrate judge does not require the parties' consent. My recommendation that the case be dismissed for lack of subject matter jurisdiction was adopted and judgment was entered. Plaintiff appealed, and the Ninth Circuit affirmed this court's decision.

Robinson v. Plumas County, 2:10-cv-2948 JAM DAD PS. The pro se plaintiff in this civil rights action moved to recuse me on the basis of adverse rulings and findings and recommendations I issued in a prior case, Robinson v. California State, et al., CIV S-04-1888 GEB DAD PS. I denied the motion on the basis that adverse rulings do not justify recusal. The district judge adopted my recommendation that the case be dismissed with prejudice, and judgment was entered. No appeal was taken.

Witkin v. Yates, 2:10-cv-0091 GEB DAD P. The pro se petitioner in this habeas action moved for my recusal under 28 U.S.C. § 455. I found that there were no grounds of bias or partiality to warrant recusal and denied the motion. My recommendation that the petition be dismissed as untimely was adopted and judgment was entered. Petitioner appealed, and the Ninth Circuit declined to issue a certificate of appealability.

Van Noland et al. v. Pelletier et al., 2:09-cv-2035 MCE DAD. The pro se plaintiffs in this patent action filed three motions for recusal, alleging bias and partiality, ex parte communications with defense counsel and a personal friendship with defense counsel. I denied the motions as factually baseless and noted further that 28 U.S.C. § 636 and the court's local rules authorize assigning certain matters to the magistrate judge's authority without the parties' consent. The case was subsequently settled and dismissed pursuant to stipulation.

Allustiarte et al. v. United States et al., 2:05-cv-2284 DFL DAD PS. The pro se plaintiffs in this action filed two requests for recusal, alleging bias and friendship with defendants, judges and attorneys. I denied the motions, finding no reasonable person with knowledge of the case would conclude my impartiality might reasonably be questioned. I stated further that adverse rulings are not grounds for recusal. Plaintiffs voluntarily dismissed their case, and it was closed.

Atterbury v. Van Diver et al., 2:05-cv-1365 DAD P. In this pro se civil rights case, I construed plaintiff's request for judicial reassignment as a request for recusal. The request was based on previous adverse orders. I denied the request on the basis that adverse orders do not justify recusal and stated further that there was no basis for finding partiality or bias. The complaint was dismissed, and judgment was entered. Plaintiff took no appeal.

Rupe v. Woodward, et al., 2:04-cv-2630 LKK DAD P. The pro se plaintiff is this prisoner-civil rights action requested my recusal on the basis of adverse rulings that he claimed evinced an unwillingness to carry out the law. While that request was still pending, the assigned district judge adopted my recommendation that the case be dismissed, and judgment was entered. That decision terminated the motion to recuse; therefore I issued no ruling on the request for recusal. Plaintiff's appeal to the Ninth Circuit was dismissed for failure to prosecute.

Israel v. Hargrave, et al., 2:04-cv-2111 LKK DAD PS. The pro se plaintiff in this civil rights action filed a motion to recuse, alleging bias and denial of meaningful access to the courts. I denied the motion, finding no merit to the assertion of partiality or bias. The district judge adopted my recommendation of dismissal for failure to prosecute, and judgment was entered. Plaintiff took no appeal.

Chappell v. Pliler, et al., 2:04-cv-1183 TLN DAD P. The pro se plaintiff in this prisoner-civil rights action requested recusal on the basis of prior adverse rulings. I denied the motion as being substantively insufficient to support the allegation that I exhibited bias or prejudice toward plaintiff from an extrajudicial source. I stated further that adverse rulings do not justify recusal. The case remains pending before me and the assigned district judge.

Maciel v. Stratton, et al., 2:02-cv-0329 FCD DAD P. The pro se plaintiff in this prisoner-civil rights action requested recusal, alleging that adverse rulings in prior cases evinced a bias against him. He also sought recusal because his criminal conviction was mentioned in one ruling. I denied the motion on the basis that adverse rulings do not justify recusal. The district judge adopted my recommendation of dismissal for failure to pay the appropriate filing fee, and judgment was entered. Plaintiff took no appeal.

United States v. Schmidt, et al., 2:02-cv-0041 MCE DAD. Several pro se defendants in this action on unpaid taxes filed a motion for recusal, alleging that I had a conflict of interest in light of their administrative tort action against me, the district judge assigned to the case and the clerk of court. The tort action, which they filed well after the suit for unpaid taxes began, alleged the court's adverse rulings in the case constituted "false writings with the intent to defraud." I denied the motion to recuse, finding that adverse rulings do not justify recusal. I stated further that no reasonable person with knowledge of the case would conclude that my impartiality could reasonably be questioned. Judgment and tax liens in favor of the United States were entered. The Ninth Circuit affirmed.

Dustin v. Terhune, et al., 2:01-cv-0426 WBS DAD P. The pro se plaintiff in this prisoner-civil rights action requested recusal but provided no grounds for the request. I denied the request, stating that adverse rulings do not justify recusal. The district judge adopted my recommendation to dismiss the case for failure to comply with court orders and failure to file a timely amended complaint, and judgment was entered. The Ninth Circuit affirmed.

Chaidez v. Weir, et al., 2:99-cv-0744 LKK DAD P. The pro se petitioner in this habeas action filed a motion for recusal one week after I issued findings and recommendations that his petition be dismissed without prejudice. The district judge adopted the recommendation while the motion for recusal was still pending, and judgment was entered. The district judge's decision terminated the motion to recuse; therefore I did not rule on the request for recusal. The Ninth Circuit denied a certificate of appealability.

Chaidez v. Moulds, et al., 2:98-cv-0867 GEB DAD P. The pro se plaintiff in this prisoner-civil rights action filed a motion to recuse. I denied the motion. Given the age of the case, there is no electronic record of the motion to recuse or of the order denying that motion. The assigned district judge adopted my recommendation that the case be dismissed without prejudice, and judgment was entered. The Ninth Circuit affirmed.

Bismillah v. Gomez, et al., 2:94-cv-0419 DAD P. The pro se plaintiff in this prisoner-civil rights action filed a motion for magistrate review. I construed it as a motion to recuse me from the case. The motion was denied. Given the ages of the case, there is no electronic record of the construed motion to recuse or the order denying the motion.

Webster v. Ornoski, et al., 2:93-cv-0306 LKK DAD DP. Approximately nine months after the case was reassigned to me upon my appointment, respondent's counsel moved to recuse me based upon my relationship with petitioner's penalty phase trial counsel whom petitioner claimed had provided him ineffective assistance. At the hearing on the motion I disclosed the extremely limited nature of that professional relationship and found that no reasonable person with knowledge of the case would conclude that my impartiality could reasonably be questioned under the circumstances. Accordingly, I denied the motion. Respondent did not seek review of that ruling.

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 the judicial office I currently hold.

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 an uncompensated volunteer without title in a few political campaigns before I became a judge. Typically, I knocked on doors and made telephone calls to encourage registered voters to vote, and I stuffed envelopes. The specific

campaigns in which I recall participating are: Barbara Boxer for United States Senate (1992), Dianne Feinstein for United States Senate (1992), Walter Mondale for President (1984), and Ted Kennedy for President (1980). In addition, I was on host committees for fundraising dinners for Phil Eisenberg's successful campaign for California State Assembly, Ninth District (1993) and for Michael Sands' unsuccessful campaign for Sacramento County Superior Court Judge (1988).

From 1976 to 1977, I served as President for the San Diego State University Student Democrats. To the best of my recollection, I did not participate in any campaign activities in that position.

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 1980 to 1982, I served as a law clerk to the Honorable Lawrence K. Karlton, United States District Judge for the Eastern District of California.

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.

1982 – 1985
Hallinan, Osterhoudt & Poplack
(since dissolved)
San Francisco, CA
Associate

1986 – 1997
Blackmon, Drozd & Snellings (formerly Blackmon & Drozd (1986 – 1995), Blackmon & Associates (1986))
(since dissolved)
Sacramento, CA
Associate (1986)
Partner (1986 – 1997)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant

matters with which you were involved in that capacity.

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

b. Describe:

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

My law practice was primarily devoted to the defense of those under investigation for or charged with the commission of crimes in federal and state courts at both the trial and appellate levels.

Following my judicial clerkship, I practiced as a litigation associate at Hallinan, Osterhoudt and Poplack in San Francisco. There, I participated in all phases of the firm's criminal practice, which was devoted largely to the defense of those charged in state and federal courts with controlled substances violations but also included defending against fraud and RICO charges in federal court as well as international extradition proceedings. My work included meeting with clients and investigators, preparing research memoranda, the drafting and arguing of pretrial motions and the drafting of appellate briefs. During that time I also served as second chair counsel in three trials in the United States District Court for the Northern District of California.

In 1986, I joined the firm of Clyde Blackmon and Associates and became a partner later that year with the firm's name becoming Blackmon & Drozd and later Blackmon, Drozd & Snellings. I served as lead counsel in most of the criminal cases I handled in both the state and federal trial and appellate courts. I worked on a wide variety of criminal cases including those involving allegations of political corruption, business related fraud, environmental crimes, and controlled substances violations. To a lesser extent, I also represented individuals in international extradition proceedings, civil forfeiture litigation and on rare occasion other civil actions.

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

My typical clients were individuals, although during the latter half of my practice, I represented a number of corporations as well. During my career in private practice I specialized in the defense of those charged with a full spectrum of crimes in federal and state courts and did so at both the trial and appellate levels.

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 was 99% litigation. I appeared in federal and state courts in different matters very frequently. I would estimate that from 1986 through 1997, I appeared in federal and state court on practically a daily basis. As an associate attorney from 1982 to 1986, I appeared in court less frequently but still on a regular basis.

i. Indicate the percentage of your practice in:
   1. federal courts: 67%
   2. state courts of record: 33%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 2%
   2. criminal proceedings: 98%

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

I tried eight criminal jury trials to verdict during my career as a litigator. In the first three, I served as associate counsel. In the last five I was either the sole or chief counsel for the defendant. In addition, during my years in private practice I appeared regularly in the federal and state trials courts. I conducted many evidentiary hearings and argued countless motions as lead counsel. I also practiced before appellate courts, appearing on briefs in ten cases and at oral argument in seven cases before the United States Court of Appeals for the Ninth Circuit and before the California Court of Appeals in nine cases.

i. What percentage of these trials were:
   1. jury: 100%
   2. non-jury: 0%

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

My practice before the Supreme Court was limited to filing of Petitions for Writ of Certiorari. I believe I may have done so on more than one occasion, however, database searches have yielded only the one case cited below. I no longer have access to my files from my private practice.

Lance R. Dozier v. United States, No. 88-438 (Sept. 6, 1988), cert. denied 488 U.S. 927 (Oct. 31, 1988). Petition is available at 1988 WL 1093844.

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. Reeves, No. 2:91-cr-255 LKK (E.D. Cal.), on appeal 999 F.2d 440 (9th Cir. 1993)

I was the chief counsel in this case in which our client, an attorney, was indicted in federal court for fraud in connection with the filing of a bankruptcy petition on behalf of one of his clients. The case ran the full range of litigation, involving hearings before the district court, the Ninth Circuit and a lengthy evidentiary hearing before a magistrate judge on the issue of "taint" flowing from an unlawful search following the remand of the case from the Ninth Circuit. The district court granted a motion to suppress evidence seized from our client's law office based on the court's finding that the affiant had falsely represented how the law office search would be executed and had exceeded the scope of the warrant in its execution. On appeal, the Ninth Circuit panel found that the suppression order based upon the affiant's misrepresentations with respect to the execution of the warrant was not justified. The appellate court vacated that order and remanded the case for a determination of whether the law office search as conducted amounted to an "impermissible general search," making suppression of all evidence seized appropriate. I briefed and argued the matter on appeal. On remand, the case was referred to a magistrate judge to conduct an evidentiary hearing with respect to the degree of taint. I conducted that hearing on behalf of our client. As a result, some but not all, of the evidence seized from our client's law office was ordered suppressed on remand. After several years of litigation, a successful negotiated disposition was reached, whereby our client pled guilty to a lesser charge and received a probationary sentence.

Dates of Representation: 1991 – 1996

Trial Judge: Honorable Lawrence K. Karlton

Magistrate Judge: Honorable Peter A. Nowinski (retired)

Opposing counsel:

Donald W. Searles
(Formerly at the United States Attorney's Office)
U.S. Securities & Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036
(323) 965-3998

2. United States v. Emley, 2:92-cr-0455 EJG (E.D. Cal.)

This case was a federal criminal prosecution involving charges of bank fraud and money laundering with criminal forfeiture counts stemming from an alleged check-kiting scheme. I was sole counsel for Mr. Emley, one of the two named defendants. I filed motions to suppress evidence and to dismiss duplicative counts of the indictment. Following hearing, the motion to suppress was denied but the motion to dismiss was granted, resulting in the dismissal of several counts of the indictment and reducing my client's maximum exposure. The subsequent ten-day jury trial resulted in a hung jury. Following the filing of post-trial motions for judgment of acquittal, the matter was resolved favorably to my client by way of negotiated plea agreement resulting in a sentence of a five-year term of probation with the condition that Mr. Emley serve six months in a halfway house.

Dates of Representation: 1992 – 1994

Trial Judge: Honorable Edward J. Garcia (inactive)

Opposing counsel:

Donald W. Searles
(Formerly at the United States Attorney's Office)
U.S. Securities & Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036
(323) 965-3998

Co-defendant's counsel:

Donald H. Heller
Donald H. Heller, A Law Corporation
3638 American River Drive
Sacramento, CA 95864
(916) 974-3500

3. United States v. Huffman, 2:88-cr-0201 RAR (E.D. Cal.), on appeal 951 F.2d 988 (9th Cir. 1991)

In this federal criminal prosecution, I served as co-counsel, along with my partner, on behalf of Mr. Huffman, who was charged with exporting controlled commodities in violation of the Arms Export Control Act (AECA) and with conspiracy to violate the AECA and the Export Administration Act of 1979. After extensive pretrial litigation, the case was resolved by way of plea agreement, with Mr. Huffman being sentenced to the custody of the United States Bureau of Prisons for a term of 41 months to be followed by a three-year term of supervised release and a fine of $7,500. On appeal from the sentence imposed, I briefed and argued the matter before the Ninth Circuit. The Ninth Circuit affirmed the co-defendant's sentence, but reversed as to my client, concluding that the district court had erred in increasing Mr. Huffman's offense level in calculating his sentencing guideline range sentence by finding him to be a manager within the meaning of U.S.S.G. § 3B1.1(b) solely on the basis of his activities with respect to unwitting participants. Accordingly, his sentence was vacated and the matter remanded to the district court for re-sentencing.

Dates of Representation: 1988 – 1994

Trial Judge: Raul A. Ramirez (retired from bench)

Opposing counsel:

Thomas E. Flynn (retired)
(Formerly at the United States Attorney's Office)

Co-defendant's counsel:

Marcus S. Topel
Daniel F. Cook
Kasowitz, Benson, Torres & Friedman
101 California Street, Suite 2300
San Francisco, CA 94111
(415) 421-6140

4. United States v. Watson, 2:89-cr-0470 EJG (E.D. Cal.)

Our client in this case was a legislative aide for a California Assemblyman. She was the first individual charged with extortion under color of official right in violation of 18 U.S.C. § 1951 as part of an undercover investigation in the California Legislature conducted by the Federal Bureau of Investigation. I served as co-counsel in the case with my partner. Following extensive defense investigation and lengthy negotiations, our client entered a plea agreement with the government. Pursuant to that agreement she was called upon to testify in a number of proceedings as part of the Federal Bureau of Investigation's probe. The case culminated with her being sentenced to a three-year term

of straight probation in July 1994, at which time I presented the argument on her behalf.

Dates of Representation: 1989 – 1994

Trial Judge: Honorable Edward J. Garcia (inactive)

Opposing counsel:

David F. Levi
(Formerly United States Attorney, Eastern District of California)
Dean, Duke University School of Law
Box 90362
Towerview Road & Science Drive
Durham, NC 27708
(919) 613-7001

John P. Panneton
(Formerly at the United States Attorney's Office)
Solo Practitioner
845 University Avenue
Sacramento, CA 95825
(916) 996-2821

Bradford C. Lewis
(Formerly at the United States Attorney's Office)
BlackRock Legal Group
400 Howard Street, 2d Floor
San Francisco, CA 94105
(415) 670-2311

John K. Vincent
United States Attorney's Office
501 I Street, Suite 10-100
Sacramento, CA 95814
(916) 544-2795

5. United States v. Holland, 2:87-cr-0266 MLS (E.D. Cal.), aff'd. 880 F.2d 1091 (9th Cir. 1989)

I served as chief counsel for our client in this case in which he was charged with conspiracy to falsely represent social security numbers and subscribe to false tax returns, conspiracy to obstruct justice and a substantive count of obstruction of justice in connection with a payroll padding scheme at the Port of Sacramento. I was the sole counsel for Mr. Holland at the four-week trial of him and his co-defendant. Both were convicted. Mr. Holland was sentenced to the custody of the United States Bureau of Prisons for a term of three years and a concurrent three-year term of probation, a fine of

$25,000 and a restitution order of $14,760. I was Mr. Holland's sole counsel on appeal and briefed and argued the case before the Ninth Circuit, where the convictions were affirmed.

Dates of Representation: 1987 – 1989

Trial Judge: Honorable Milton L. Schwartz (deceased)

Opposing counsel:

Prof. Rory K. Little
(Formerly at the United States Department of Justice)
U.C. Hastings College of the Law
200 McAllister
San Francisco, CA 94102
(415) 565-4669

Co-defendant's counsel:

Malcolm S. Segal
Segal & Associates
400 Capitol Mall, Suite 2550
Sacramento, CA 95814
(916) 441-0886

6. United States v. Dozier, 2:85-cr-0320 EJG (E.D. Cal.), on appeal 844 F.2d 701 (9th Cir. 1988)

Our client was charged with possession with the intent to distribute marijuana. I was co-counsel with my partner in the district court proceedings where our challenge to the underlying search warrant was denied on a number of grounds. Following a conditional guilty plea by the client, we appealed the conviction to the Ninth Circuit, where I was the sole counsel on the briefs and at oral argument. The Ninth Circuit agreed that the search warrant was unconstitutionally overbroad, reversed in part and remanded the case to the district court, where the case was resolved by way of plea agreement.

Dates of Representation: 1985 – 1989

Trial Judge: Honorable Edward J. Garcia (inactive)

Opposing counsel:

Richard Bender
United States Attorney's Office
501 I Street

Sacramento, CA 95814
(916) 554-2731

Co-defendant's counsel:

Timothy L. Zeff
Larscheid, Buchanan & Zeff
2609 Capitol Avenue
Sacramento, CA 95816
(916) 441-7500

7. People v. Chi Luong, Case No. 114818 (Sacramento County Superior Court)

I was the sole counsel for the lead defendant in this multi-defendant trial on state charges of conspiracy and extortion. The jury trial lasted approximately five weeks. Ultimately my client and all but one of the co-defendants were acquitted on all charges. The prosecution relied upon the testimony of the alleged victim and of tape-recordings of the alleged extortion attempts that he had made with the assistance of law enforcement. As lead counsel, I conducted the primary examination of all the prosecution witnesses, delivered the bulk of the closing argument on behalf of the defense and presented my client as the only defendant to take the witness stand at trial.

Dates of Representation: 1992 – 1993

Trial Judge: Honorable James T. Ford (deceased)

Opposing counsel:

Mark R. Swartz
(Formerly at the Sacramento County District Attorney's Office)
Solo Practitioner
2366 Gold Meadow Way, 2d Floor
Gold River, CA 95670
(916) 631-7722

8. Lewis v. Superior Court of Sacramento County, Case No. 87992 (Sacramento County Superior Court), on appeal 217 Cal. App. 3d 379, 265 Cal. Rptr. 855 (1990)

Our client, then a member of the California Assembly, was indicted in state court for forgery based upon his alleged fabrication of the signature of the President of the United States on letters endorsing candidates for the State Assembly. I served as co-counsel with my partner. We moved to dismiss the indictment on the grounds that the conduct alleged did not come within the definition of forgery provided by California Penal Code § 470. The trial court denied the motion. However, the California Court of Appeal for the Third Appellate District granted our application for a writ of prohibition and directed that the indictment be dismissed. In doing so, the court agreed that the version of Penal Code §

470 then in effect had to be interpreted according to the common law definition of forgery, which included an intent to defraud, and that without such a limitation the statute would be overbroad. As a result, all charges against our client were dismissed.

Dates of Representation: 1989 – 1990

Trial Judge: Honorable James I. Morris (retired)

Appellate Justices: Honorable Coleman Blease, Honorable Robert Puglia (deceased), Honorable Keith Sparks (retired)

Opposing counsel:

W. Scott Thorpe (retired)
(Formerly at the California Attorney General's Office)

John Gordinier (retired)
(Formerly at the California Attorney General's Office)

9. People v. Pereira, Case No. 78733 (Sacramento County Superior Court), on appeal, 207 Cal. App. 3d 1057 (1989)

I served as co-counsel with my partner for Mr. Pereira who was charged with offering false evidence under Penal Code § 132 and preparing false documentary evidence under Penal Code § 134 in connection with an investigation conducted by the Fair Political Practices Commission. The trial court granted a defense motion to set aside the counts alleging the offering of false evidence. On appeal, a divided panel reversed the judgment. On remand, the matter was successfully resolved by way of plea agreement with Mr. Pereira being sentenced to straight probation and a fine.

Dates of Representation: 1988 – 1990

Trial Judge: Honorable Rodney Davis, Jr. (retired)

Opposing counsel:

Frank C. Meyer (retired)
(Formerly at the Sacramento County District Attorney's Office)

10. Republic of France v. Moghadam, 617 F. Supp. 777 (N.D. Cal. 1985)

In this matter the Republic of France sought the extradition of my client from the United States. I was the sole counsel of record for the defendant. Following briefing and an evidentiary hearing, the district court held that the government had not established probable cause supporting its request to extradite my client to France to stand trial and the doctrine of dual criminality had not been satisfied. Under that doctrine, the act

charged must be criminal in both the requesting and extraditing jurisdictions in order to justify extradition. As a result, the court ruled that the client could not be extradited.

Dates of Representation: 1985

Trial Judge: Honorable Marilyn Hall Patel

Opposing counsel:

Honorable Charles B. Burch
(Formerly at the United States Attorney's Office)
Contra Costa County Superior Court
725 Court Street
Martinez, CA 94553
(925) 957-5723

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 January 2010 I became the presiding judge for our newly launched Better Choices program. The program was a cooperative effort involving our court, our Pretrial Services Office, the Office of the Federal Defender and the United States Attorney's Office aimed at providing increased programming, supervision, assistance, and regular interaction with a judicial officer for those pretrial releasees found to pose a particular risk of violating the conditions of their release while their case was pending. The program has had a significant number of graduates who have transitioned to more typical levels of pretrial supervision successfully and has decreased the number of revocations of release orders. I served as the presiding judge for the program in Sacramento until December 2013.

I have not performed any lobbying activities on behalf of any clients 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.

None.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

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

    No.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       Because my wife and I have no outside business interests or significant investments, conflicts arising from financial arrangements have been virtually non-existent for me in the more than 17 years I have served as a United States Magistrate Judge. Given the length of time I have served on the bench, conflicts arising from my past representation of individuals or entities rarely arise. I would expect this to continue to be the case. Of course, if a conflict were to arise, I would continue to recuse myself immediately.

    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 intend to continue my present practice with respect to identifying conflicts and determining whether recusal is appropriate. I would continue to adhere to the Code of Conduct for United States Judges, 28 U.S.C. § 455, and all

applicable policies and procedures of the United States Courts. In addition, I will remain vigilant during the pendency of any case before me for any new information that might require disclosure or 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.

As a magistrate judge, I am not permitted to represent clients, pro bono or otherwise. However, I participate in several volunteer civic education programs, primarily those aimed at students. For example, I have been involved for many years in Operation Protect and Defend, a program involving judges, lawyers and teachers, who reach out to non-Advance Placement high school students with the goal of connecting them to the U.S. Constitution and American history and exploring with them the rights and responsibilities of active United States citizens. In addition, I participate yearly in my court's Open Doors program, which brings high school students into our courtrooms for a mock trial exercise followed by a discussion regarding our federal courts and the career paths of the many professionals who work in them. Finally, I regularly lead school group tours at our courthouse. I also have participated in the training of lawyers who have volunteered to participate in our court's robust pro bono panel program, which provides representation to pro se litigants, primarily prisoners, when appointment of counsel is deemed warranted.

While in private practice, my partners and I regularly represented individuals on a pro bono or reduced fee basis. Moreover, our policy was to never move to withdraw from representation, once commenced, due to a client's inability to continue to pay for our legal services. Finally, for several years I provided legal advice and assistance to the West Sacramento Legal League, a non-profit corporation, 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 July 31, 2014, I submitted my District Court Judicial Appointment Application for the vacancy in the Eastern District of California to Senator Boxer's office. On August 22, 2014, I interviewed with the Senator's Eastern

District of California Selection Committee in Sacramento, California. Since September 4, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 22, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 12, 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.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   LaShann Moutique DeArcy Hall
   LaShann Moutique DeArcy
   LaShann Moutique Jones

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

   United States District Judge for the Eastern District of New York

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

   Morrison & Foerster LLP
   250 West 55th Street
   New York, New York 10019

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

   1970; Hollywood, California

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

   1997 – 2000, Howard University School of Law; J.D. (*magna cum laude*), 2000

   1988 – 1992, Antioch College; B.A., 1992

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
Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019
Partner (January 2014 – present)
Of Counsel (2010 – 2013)

2005 – 2010
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Associate

2000 – 2005, Summer 199
Cravath, Swaine & Moore LLP
825 8th Avenue
New York, New York 10019
Associate (2000 – 2005)
Summer Associate (Summer 1999)

June 1998 – August 1998
Circuit Court for Prince George's County, Maryland
14735 Main Street
Upper Marlboro, Maryland 20772
Judicial Intern to Judge Sheila Tillerson Adams

1995 – 1997
United States Air Force
Bolling Air Force Base
Chappie James Boulevard
Washington, D.C. 20032
Senior Airman

1995 – 1997
Grand Slam Sports Bar at the Grand Hyatt Hotel
1000 H Street, N.W.
Washington, D.C. 20001
Waitress

Approximately May 1994 – February 1995
SOB's
204 Varick Street
New York, New York 10014
Waitress

March – May 1994
English language school (the name of which I do not recall)
Seoul, South Korea
Conversational English Teacher

Approximately September 1993 – February 1994
Café Wha?/Comedy Cellar/Olive Tree
117 MacDougal Street
New York, New York 10012
Waitress

Approximately February – August 1993
United States House of Representatives
1035 Longworth House Office Building
Washington, D.C. 20515
Scheduler for Congressman Floyd H. Flake

January – February 1993
Temporary Employment Agency (the name of which I do not recall)
Washington, D.C.
Temporary Administrative Employee

July 1992 – January 1993
Bukom Café
2442 18th Street N.W.
Washington, D.C. 20009
Waitress

Other affiliations (uncompensated unless otherwise indicated):

2013 – present
Ommie LLC
17 Cooper Rd.
Monroe, New York 10950
Sole member

2012 – present
Howard University School of Law
2900 Van Ness Street, N.W.
Washington, D.C. 20008
Board of Visitors

2012 – present
Neighborhood Defender Service of Harlem
317 Lenox Avenue, 10th Floor
New York, New York 10027
Board of Trustees

2012 – May 2014
New York State Joint Commission on Public Ethics
540 Broadway
Albany, New York 12207
Commissioner
(stipend for attendance at meetings)

2011 – present
New York City Taxi and Limousine Commission
33 Beaver Street
New York, New York 10004
Commissioner

2010 – present
Greenwood Forest Farms Association
P.O. Box 212
Greenwood Lake, New York 10925
Board of Trustees

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

   1995 – 1997
   United States Air Force
   Senior Airman
   Honorably Discharged

   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.

   Women's Veteran Honoree, Metro-Manhattan (NY) Chapter of the Links, Incorporated (2013)

   Diversity Champion Award, New York City Bar Association (2009)

Champion, NITA Tournament of Champions National Competition (2000)

Captain, Huver L. Brown Trial Advocacy Moot Court Team (1999 – 2000)

Corpus Juris Secundum Award, Criminal Law, Howard University School of Law (1999)

Member, Howard Law Journal (1998 – 2000)

Best Advocate, Allegheny Trial Lawyers Association Trial Advocacy Competition (1998)

Howard University School of Law Merit Scholar (1997 – 1999)

Corpus Juris Secundum Award, Constitutional Law (1997)

I also received various awards while on active duty in the United States Air Force between 1995 and 1997.

Chatterjee Merit Scholarship (1990)

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

American Bar Association (2002 – present)
Metropolitan Black Bar Association (2012)
New York City Bar Association (2008 – present)
New York State Bar Association (2001 – 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.

    New York, 2001

    There has been no lapse in membership.

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

    United States Court of Appeals for the Second Circuit, 2010
    United States Court of Appeals for the Fourth Circuit, 2008
    United States District Court for the Southern District of New York, 2007

New York Court of Appeals, 2001

There have been no lapses in membership.

11. **Memberships**:

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

Council of Urban Professionals (2011 – 2012)
Executive Member

Greenwood Forest Farms Association (2010 – present)
Board of Directors

Howard University School of Law (2012 – present)
Board of Visitors

Metro-Manhattan (NY) Chapter of The Links, Inc. (2011 – September 2014)
2012 Gala Committee Chair (2012)

Metropolitan Chapter of Jack and Jill of America (May 2014 – present)

Neighborhood Defender Service of Harlem (2012 – present)
Board of Trustees

New York City Taxi and Limousine Commission (2011 – present)

New York State Joint Commission on Public Ethics (2012 – May 2014)

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.

Jack and Jill of America, Inc., is an organization of mothers whose children are of African-American descent. Jack and Jill is dedicated to nurturing future African-American leaders by strengthening children through leadership development,

volunteer service, philanthropic giving and civic duty. The Links, Inc., is an international, not-for-profit corporation, which was established in 1946. It is a volunteer service organization of women of color who are committed to enriching and sustaining African-Americans and other persons of African ancestry. To the best of my knowledge, none of the other organizations listed above currently discriminate or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

Class Notes, THE ANTIOCHIAN, Winter 2013. Copy supplied.

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

As a member of the New York State Joint Commission on Public Ethics ("JCOPE") from 2012 to May 2014, I approved the JCOPE's 2012 and 2013 Annual Reports. However, I have no recollection of having played a role in the drafting or editing of those reports. Copies of the reports are available at http://www.jcope.ny.gov/pubs/POL/2012%20FINAL%20ANNUAL%20REPORT.pdf and http://www.jcope.ny.gov/pubs/POL/2013%20JCOPE%20Annual%20Report.pdf.

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

As a member of the New York City Taxi and Limousine Commission ("TLC") since 2011, I have participated in nearly all of the monthly hearings of the TLC. I have regularly offered remarks during the hearings about TLC matters and proposed rules. These remarks have been made extemporaneously and not from written text. My remarks involved issues related to wheelchair accessible taxis, lease caps, taxi fare rates, e-hail programs, the street hail livery program and NYC's Taxi of Tomorrow, among other things. Copies of 2014 meeting transcripts are supplied and transcripts, minutes, and videos of the meetings from

2011 to 2013 are available at:
http://www.nyc.gov/html/tlc/html/archive/archive_transcript_min_2013.shtml,
http://www.nyc.gov/html/tlc/html/archive/archive_transcript_min_2012.shtml,
and
http://www.nyc.gov/html/tlc/html/archive/archive_transcript_min_2011.shtml.

As one of 14 Commissioners for the New York State Joint Commission on Public Ethics ("JCOPE") from October 2012 until May 2014, I participated in the following hearings and decisions. I attended nearly all of the monthly JCOPE hearings. Although the majority of every JCOPE hearing is statutorily required to be closed and confidential, certain matters are discussed openly at brief public sessions held at the outset of every hearing. Public minutes and recordings are available at: http://www.jcope.ny.gov/public/open_meetings.html and http://www.jcope.ny.gov/public/openmeetings2.html. I also deliberated on and approved Investigation Reports, Settlement Agreements, and Decisions and Orders. Copies are available at http://www.jcope.ny.gov/enforcement/index.html. Finally, I participated in the drafting of JCOPE Advisory Opinion 13-02, dated March 28, 2013, concerning the general standards of use of state aircraft by the governor of New York State. Copy supplied. Although, as a Commissioner, my name appeared on the letterhead of Delinquency Notices that were sent by the Commission during my tenure, I did not sign these notices and I did not participate or consult in any way in their preparation. These Delinquency Notices are prepared entirely by Commission staffers. Copies of the notices are available at http://www.jcope.ny.gov/public/candidates2012.html.

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

September 8, 2014: Speaker, Taxi and Limousine Commission, Taxi Honor Roll Recognition Ceremony, New York, New York. Video available at:
https://www.youtube.com/watch?feature=player_embedded&v=XQu0e2MUSVA

February 11, 2014: Speaker, "How to Write a Legal Memo," Howard University School of Law, Washington, D.C. PowerPoint supplied.

September 18, 2013: Speaker, "Hot Topics in Attorney-Client Privilege," American International Group, New York, New York. PowerPoint supplied.

July 8, 2013: Panelist, "What do Litigators Really Do," Sponsors for Educational Opportunity, New York, New York. The panel provided a practical explanation of the day-to-day work of commercial litigators. I have no notes, transcript, or recording. The address for Sponsors for Educational Opportunity is 55 Exchange Place, Suite 601, New York, New York 10005.

June 19, 2013: Speaker, "Tips for Successful Pre-trial Motion Practice," Association of Corporate Counsel, Washington, D.C. Outline and PowerPoint supplied.

February 26, 2013: Speaker, "How to Write a Legal Memo," Howard University School of Law, Washington, D.C. I used the PowerPoint previously supplied in connection with the entry for the February 11, 2014 event noted above.

December 9, 2012: Speaker, Metro-Manhattan Chapter of the Links, Realizing the Dream Gala, New York, New York. I offered welcome remarks and introduced J.P. Morgan Chase as the organization's 2012 corporate honoree. I have no notes, transcript, or recording. The address for the Metro-Manhattan Chapter of the Links, Incorporated is P.O. Box 5916, Englewood, New Jersey 07631.

February 19, 2012: Panelist, "Litigation Management Roundtable," American Bar Association Litigation Section, Chicago, Illinois. The panel was on the best practices for litigation management. I have no notes, transcript, or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

February 8, 2012: Speaker, "How to Write a Legal Memo," Howard University School of Law, Washington, D.C. I used the PowerPoint previously supplied in connection with the entry for the February 11, 2014 event noted above.

June 21, 2011: Panelist, "What Do Litigators Really Do," Sponsors for Educational Opportunity, New York, New York. The panel provided a practical explanation of the day-to-day work of commercial litigators. I have no notes, transcript, or recording. The address for Sponsors for Educational Opportunity is 55 Exchange Place, Suite 601, New York, New York 10005.

May 27, 2009: Speaker, Diversity Champion Award Acceptance Speech, New York City Bar Association, New York, New York. Remarks supplied.

April 2008: Welcome Remarks, Howard University School of Law Alumni Reception hosted by Gibson Dunn & Crutcher LLP, New York, New York. My remarks consisted of a welcome to the alumni and a brief introduction of the Dean of Howard University School of Law. I have no notes, transcript, or recording. The address for Howard University School of Law is 2900 Van Ness Street, N.W., Washington, DC 20008.

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

Press Release, City and Industry Leaders Join Mayor DeBlasio, TLC Chair Joshi in Honoring 295 Taxi & For-Hire Drivers Who Will Make Up the First-Ever Vision Zero Safe Driver Honor Roll, September 8, 2014. Copy supplied.

Press Release, New York City Taxi and Limousine Commission, City of New York and Disability Advocates Announce Landmark Settlement to Dramatically Increase NYC Taxicab Accessibility. December 6, 2013. Copy supplied.

At Home with LaShann and Jayden, MATER MEA No. 40, March 25, 2013. Copy supplied.

Hall, 38 and DeArcy, 35, NY POST, November 26, 2006. Copy supplied.

ABC News Now/Top Priority, ABC Top Priority, September 14, 2006. Transcript supplied.

Out There: Washington; Good-Time Bookstore, N.Y. TIMES, November 29, 1992. Copy supplied.

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

I have 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.

Since 2011, I have served as a Commissioner on the New York City Taxi and Limousine Commission after being appointed by Mayor Michael Bloomberg and confirmed by the New York City Council.

Between October 2012 and May 2014, I served as a Commissioner on the New York State Joint Commission on Public Ethics after being appointed by State Minority Leader John Sampson.

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

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

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

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

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

I have not served as a judicial law clerk.

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.

2000 – 2005
Cravath, Swaine & Moore LLP
825 8th Avenue
New York, New York 10019
Associate

2005 – 2010
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Associate

2010 – present
Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019
Of Counsel (2010 – 2013)
Partner (January 2014 – present)

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

I have never served as a mediator or arbitrator.

b. Describe:

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

In 2000, I joined the law firm of Cravath, Swaine & Moore LLP as an associate. I worked primarily on civil litigation in a variety of areas, including antitrust, securities, contract, and tort claims. I performed research and legal analysis, drafted documents, and conducted written and deposition discovery. I also served on three trial teams, where I prepared direct and cross-examination outlines, identified trial exhibits, drafted motions *in limine*, and conducted the examination of a trial witness.

In 2005, I joined the law firm of Gibson, Dunn & Crutcher LLP. My practice there encompassed many areas of civil litigation, including antitrust, securities, contract, and tort claims. As an experienced associate, I had a greater role in managing case teams and supervising other associates. Among other things, I authored various written submissions to the court, appeared at hearings, and second-chaired three proceedings before arbitral tribunals.

Since 2010, I have practiced at the firm of Morrison & Foerster LLP, first as Of Counsel and later as Partner. At Morrison & Foerster, my work has continued to focus primarily on complex commercial litigation. I have worked at a senior level on all of my cases, devising litigation and trial strategies. I have played a key role in all phases of litigation from the initiation of or response to a complaint through to the resolution of the litigation through settlement or trial. I have prepared and responded to written discovery, examined and defended witnesses at deposition, drafted and argued various motions, appeared at pretrial conferences and status hearings, worked with experts in the preparation of their reports, and examined and cross-examined witnesses at trial. In addition to my legal work, I also take part in mentoring and training young attorneys.

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

Throughout my career, my client base has consistently included Fortune 500 companies, as well as individuals across a variety of industries, including banking institutions, accounting firms, media companies, technology companies, and insurers.

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

The vast majority of my practice has been in litigation. As an associate from 2000 to 2009, I was in court on occasion. Since joining Morrison & Foerster LLP in 2010, my appearances in court have increased. Depending on the procedural posture of my cases, my appearances in court can be characterized as frequent, such as when I am at trial or scheduled to argue various motions. Otherwise, my appearance is occasional.

i. Indicate the percentage of your practice in:
   1. federal courts: 80%
   2. state courts of record: 20%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

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

counsel.

I have tried two cases to verdict, as well as two cases that settled during trial. I was associate counsel in all four cases. In addition, I have participated as associate counsel in three proceedings before arbitral tribunals.

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.

I have listed the cases in reverse chronological order.

1) *In re Residential Capital, LLC*, No. 12-12020 (Bankr. S.D.N.Y. 2013).

We represented Residential Capital, LLC and certain of its affiliates (collectively, "ResCap" or the "Debtors") as Debtors' counsel in this bankruptcy action. ResCap had entered into an $8.7 billion settlement with certain investors and, pursuant to Rule 9019 of the Bankruptcy Code, numerous creditors lodged objections to the proposed settlement. I oversaw the drafting of the Debtors' written responses to each of the nine objections filed against the proposed settlement. A hearing on the objections was slated to take place over two weeks and was to include the presentation of live witnesses. I was responsible for all aspects of the Debtors' hearing preparation, including document discovery and deposition discovery. I identified the Debtors' potential hearing exhibits and negotiated evidentiary objections with opposing counsel. I was the principal author

of the direct examination for several key hearing witnesses. On the eve of the hearing, a universal settlement was negotiated with all of ResCap's creditors, which resolved all challenges to the proposed settlement.

Dates of Representation: 2012 – 2013

Presiding Judge: U.S. Bankruptcy Judge Martin Glenn

Co-counsel:

Jamie Levitt
Gary Lee
Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019
212-468-8000

Opposing Counsel:

Sean A. O'Neal
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
212-225-2416
(Certain Unsecured Noteholders)

Richard L. Wynne
Jones Day
555 South Flower Street, 50th Floor
Los Angeles, California 90071
213-243-2548
(Creditor Financial Guaranty Insurance Company)

Kenneth H. Eckstein
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
212-715-9229
(Official Committee of Unsecured Creditors)

2) *Fresh Del Monte v. Del Monte Foods Corp.*, 933 F. Supp. 2d 655 (S.D.N.Y. 2013).

I served as second chair representing defendant Del Monte Foods Corporation ("Del Monte") during a two-week jury trial, involving false advertising and breach of contract claims brought by Fresh Del Monte ("Fresh"). In particular, plaintiff alleged that Del Monte engaged in false advertising by representing that certain of its products were

"fresh" and had breached a licensing agreement by selling certain other products allegedly reserved to plaintiff under the licensing agreement. I managed all aspects of trial preparation, including identification of Del Monte's trial exhibits, negotiation and formulation of all evidentiary objections, preparation of Del Monte's designations and cross-designations of witness testimony, and drafting Del Monte's proposed jury instructions and special verdict form. I also was responsible for drafting and arguing each of Del Monte's ten motions *in limine*. At trial, my principal role was to present Del Monte's damages case. I conducted the direct and cross-examinations of fact witnesses and damages experts, and I also argued Del Monte's motion for a directed verdict. The jury rendered a verdict against Del Monte on liability and awarded $13.5 million in damages, which was consistent with Del Monte's damages theory. The court also issued an injunction against Del Monte, prohibiting it from disseminating certain advertisements and imposing labeling requirements.

Dates of Representation: 2011 – 2013

Presiding Judge: U.S. District Court Judge Sidney H. Stein

Co-counsel:

Arturo Gonzalez
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
415-268-7000

Opposing Counsel:

Anthony Dreyer
Skadden, Arps, Slate, Meagher & Flom
4 Times Square
New York, New York 10036
212-735-3097

3) *TPTCC NY, Inc., v. Radiation Therapy Servs., Inc.*, 784 F. Supp. 2d 485 (S.D.N.Y. 2011), *aff'd in part, rev'd in part*, 453 F. App'x 105 (2d Cir. 2011).

I served as co-counsel for the plaintiffs in this action, which involved state law business tort and breach of contract claims, and federal antitrust claims. Plaintiffs alleged that the defendants conspired to exclude plaintiffs from the market for proton beam therapy services, which is a form of radiation therapy for the treatment of several types of cancer. Morrison & Foerster LLP was engaged to serve as co-counsel after the initial complaint was filed, and I co-authored the amended complaint. Over the course of the matter, I participated in numerous telephonic hearings. Defendants filed a motion to dismiss the complaint in its entirety, which was granted by the federal district court. TPTCC NY, Inc., represented by Morrison & Foerster as sole counsel, appealed the dismissal of the

stated business tort claims to the Second Circuit Court of Appeals. I was the principal drafter of the appellate submissions. The Second Circuit granted the appeal, in part, and remanded the surviving state law claims to state court for further proceedings. The case was resolved through settlement.

Dates of Representation: 2010 – 2011

Presiding Judge: U.S. District Judge Jed S. Rakoff

Co-counsel:

Michael Miller
Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019
212-468-8000

Rachel Schwartz
William Thomashower
Schwartz & Thomashower LLP
15 Maiden Lane, Suite 705
New York, New York 10038
212-227-4300

Opposing Counsel:

Allan Arffa
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
212-373-3000

4) *Ormet Primary Aluminum Corp. v. Glencore Ltd.*, 09-cv-00289 (S.D. Ohio 2009)/International Centre for Dispute Resolution Arbitration Case No. 50 181 T 00187 09.

I served as the lead associate on a team representing plaintiff Ormet Primary Aluminum Corporation ("Ormet"), which filed a complaint for breach of contract against Glencore Ltd. ("Glencore"). The contract at issue was an exclusive supply agreement between the parties that required Ormet to convert specified quantities of alumina into aluminum on behalf of Glencore at pre-fixed prices. The district court granted Glencore's motion to dismiss based on the contract's arbitration clause, and Ormet subsequently brought an arbitration proceeding against Glencore. I was integrally involved in every aspect of this litigation. Before the district court, I authored all written submissions, including the federal complaint, motion for preliminary injunction, and plaintiff's opposition to defendant's motion to dismiss. Subsequently, before the arbitral tribunal, I authored all

written submissions, including the interim measures pre-hearing brief, full merits pre-hearing brief, and various motions *in limine*. I oversaw the preparation of witness statements, expert reports, and every phase of the arbitration preparation, including witness preparation for direct and cross-examinations. I second chaired two separate proceedings in this matter – an interim measures hearing and the full merits hearing. The results of the arbitration are confidential.

Dates of Representation: 2009 – 2010

Presiding Judge: U.S. District Judge Edmund Sargus/Arbitral Tribunal

Co-counsel:

Mitchell Karlan
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
212-351-4000

Opposing Counsel:

Turner P. Smith
Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, New York 10178
212-696-6121

5) *In re Royal Ahold N.V. Sec. & ERISA Litig.*, No. 1:03-MD-01539, 2007 WL 1832141 (D. Md. June 18, 2007), *aff'd sub nom. Public Employees' Retirement Ass'n of Colorado v. Deloitte & Touche LLP*, 551 F.3d 305 (4th Cir. 2009).

I was the lead associate on a team representing Deloitte Netherlands ("Deloitte") in this securities class action. Royal Ahold N.V. ("Ahold") had overstated its earnings on financial reports, and Deloitte had audited Ahold's subsidiaries and acted as a reviewer for Ahold's filings with the Securities and Exchange Commission. Plaintiffs alleged that Deloitte was complicit in and liable for Ahold's fraud. This case originally commenced in 2004. In 2005, the complaint was dismissed against Deloitte in its entirety. Plaintiffs then moved to amend their pleadings. In 2006, I was the principal author of Deloitte's motion in opposition to plaintiffs' motion, which was granted in its entirety. Plaintiffs subsequently appealed. I was the principal author of Deloitte's appellate submission, and I worked closely with co-counsel in preparation for his oral argument before the Fourth Circuit. The Fourth Circuit affirmed the trial court's denial of plaintiffs' motion for leave to amend.

Dates of Representation: 2005 – 2009

Presiding Judge: U.S. District Judge Catharine C. Blake

Co-counsel:

John Behrendt
UBS
1285 Avenue of the Americas
14th Floor
New York, New York 10019
212-713-3295

Marshall King
Lee Dunst
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
212-351-4000

Counsel for Defendant:

Andrew Entwistle
Entwistle & Cappucci LLP
280 Park Avenue
26th Floor West
New York, New York 10017
212-894-7200

6) *In re Redback Networks Inc. Sec. Litig.*, No. Co3-5642 JF (HRL), 2007 WL 4259464 (N.D. Cal. Mar. 20, 2006), *aff'd*, 329 F. App'x 715 (9th Cir. 2009).

With co-counsel, I defended PricewaterhouseCoopers LLP ("PwC") in a securities fraud case filed in the Northern District of California. In this case, plaintiffs alleged that PwC's audits of Redback's financial statements for fiscal years 2000, 2001 and 2002 were not completed in accordance with Generally Accepted Auditing Standards and that PwC improperly represented that Redback's financials were prepared in accordance with Generally Accepted Accounting Principles in violation of sections 10B, 10b-5 and 18 of the Private Securities Litigation Reform Act. I was the principal author of a motion to dismiss plaintiffs' third amended complaint, which resulted in the dismissal of all claims against PricewaterhouseCoopers, with leave to amend. Plaintiffs subsequently amended their pleadings, which were again dismissed by the district court, and affirmed on appeal by the Ninth Circuit. I was not involved in these subsequent proceedings.

Dates of Representation: 2005

Presiding Judge: U.S. District Court Judge Jeremy Fogel

Co-counsel:

Fred Fields
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 8th Avenue
New York, New York 10019
212-474-1000

Opposing Counsel:

Stuart Grant
Grant & Eisenhofer, P.A.
123 Justison Street
Wilmington, Delaware 19801
302-622-7000

7) *Aguiaza et al. v. Vantage Props., LLC*, No. 105197/08, 2009 WL 1511791 (N.Y. Sup. Ct. May 21, 2009).

I was the lead associate on a team defending Vantage Properties ("Vantage") in an action alleging unfair business practices and harassment. I defended against a motion for declaratory judgment seeking a determination that Vantage engaged in unlawful business practices and a permanent injunction requiring Vantage to cease any allegedly unlawful practices and harassment, which also sought unspecified compensatory damages and attorney's fees and costs. I was the principal author of Vantage's motion to dismiss, which was granted in part. I was the principal drafter of Vantage's appeal of the remaining claims, which was withdrawn after the parties reached a settlement. I led the settlement discussion on behalf of Vantage. Through the course of the matter, I appeared in court on numerous occasions.

Dates of Representation: 2008 – 2010

Presiding Judge: New York Supreme Court Justice Martin Schulman

Co-counsel:

Mitchell Karlan
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
212-351-4000

Opposing Counsel:

Robert McCreanor
Catholic Migration Office
47-01 Queens Boulevard, Suite 201
Sunnyside, New York 11104
347-472-3500

The Honorable April Newbauer
Supreme Court, Bronx County, Criminal Division
261 East 161st Street
Bronx, New York 10451
718-618-3775

8) *Compuware Corp. v. Int'l Bus. Machs., Corp.*, No. 02-CV-70906 (E.D. Mich. 2005).

I was on a trial team defending IBM in a matter involving antitrust and copyright claims related to IBM's mainframe computers and software. At issue were five "mainframe software tools" for which a competing company, Compuware, had the dominant market share. IBM launched certain products that competed with Compuware's products. Compuware alleged that IBM tied its tools products to its mainframe products and offered them at predatory prices, damaging Compuware's business. I was the lead associate responsible for preparing the defense of the antitrust claims. I took and defended over 20 depositions and co-authored a motion for summary judgment, which was granted in part. I also drafted direct and cross-examinations of key witnesses. The case was resolved through settlement during trial.

Dates of Representation: 2003 – 2005

Presiding Judge: U.S. District Court Judge George Caram Steeh

Co-counsel:

Rowan Wilson
Cravath, Swaine & Moore LLP
825 8th Avenue
New York, New York 10019
212-474-1348

Opposing counsel:

Daniel Johnson, Jr.
Morgan, Lewis & Bockius
One Market, Spear Street Tower
San Francisco, California 94105
415-442-1392

9) *Arbitration representing Gibson, Dunn & Crutcher LLP.*

In 2006, I second-chaired a two-week confidential arbitration on behalf of Gibson, Dunn & Crutcher LLP. The case involved a contract dispute between Gibson, Dunn & Crutcher and another party. I was responsible for all aspects of the arbitration preparation, including the drafting of all written submissions and the preparation of witness examinations and exhibits. The results of the arbitration are confidential.

Dates of Representation: 2006

Co-counsel:

Mitchell Karlan
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
212-351-4000

Opposing Counsel:

Katharine Griffing, Esq.
Current Address Unknown

10) *Tridee Assocs., Inc. v. Bd. of Educ. of City of N.Y.*, No. 047478/1997 (N.Y. Sup. Ct.)

This case involved a breach of contract claim brought by Tridee Associates, Inc. ("Tridee") against the Board of Education of New York City (the "BOE"). The BOE had sought to convert Tridee's building into an elementary school and entered into a lease whereby the BOE agreed to pay for the necessary construction work and Tridee agreed to select the contractor to perform the work. The dispute involved a bill for extra work that had been performed without the BOE's previous written authorization. The BOE declined to pay for the extra work, and Tridee brought a lawsuit to recover those expenses. The case was originally defended by New York City Corporation Counsel. Cravath, Swaine & Moore was engaged to serve as trial counsel for the BOE during a one-week trial in New York Superior Court. I was responsible for all aspects of trial preparation, and I conducted the direct examination of two witnesses during the trial. The jury rendered a verdict in favor of the plaintiff.

Dates of Representation: 2002 – 2003

Presiding Judge: New York State Supreme Court Judge Gloria C. Aronin

Co-counsel:

John Beerbower
Cravath, Swaine & Moore LLP
825 8th Avenue
New York, New York 10019
212-474-1000

Opposing Counsel:

Stacie Bryce Feldman
Kossoff, PLLC
217 Broadway, Suite 401
New York, New York 10007
212-267-6364

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.)

At Gibson, Dunn & Crutcher, I dedicated a portion of my time to antitrust counseling matters. For example, I was part of a team that provided antitrust counseling to a large oil services company in connection with a successful $1.5 billion acquisition. I successfully responded to a civil investigation demand issued by the Department of Justice, Antitrust Division. In addition to antitrust counseling, I also did some transactional work, co-authoring a white paper as part of a successful merger approval.

Since 2011, I have served as a commissioner on the New York City Taxi and Limousine Commission. I was appointed to this nine-person commission by Mayor Michael Bloomberg. The Commission is a charter-mandated agency, the purpose of which is the continuance, further development and improvement of taxi and for-hire service in the City of New York. The Commission is responsible for licensing and regulating for-hire vehicles, commuter vans, and wheelchair accessible van services as they relate to the overall public transportation network of the city. As a commissioner, my principal role is to consider proposed rules to govern the operation of taxi and for-hire services.

Between October 2012 and May 2014, I served as a Commissioner for the New York State Joint Commission on Public Ethics. This 14-person Commission is the product of the Public Integrity Reform Act of 2011, which was signed into law by Governor Andrew Cuomo on August 15, 2011. The Commission has oversight over both the executive and legislative branches. The Commission provides information, education, and advice regarding current ethics and lobbying laws and promotes compliance through audits, investigations, and enforcement proceedings.

I have never performed any lobbying or registered as a lobbyist.

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

    I have never taught a course.

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

    If confirmed, I would receive a return of capital and payment of my remaining share of partnership proceeds after withdrawing from my law firm. 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. Otherwise, I have no arrangements or expectations concerning future income or compensation.

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

    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 the attached Financial Disclosure Report.

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

    See the attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

    Cases in which my current law firm, Morrison & Foerster LLP, represented a party or appeared would present a potential conflict. I would recuse myself from all other matters where a party is represented by Morrison & Foerster LLP for a reasonable period of time. As a general matter, I would recuse myself from any such matters as required by the Code of Conduct for United States Judges or any other relevant ethical canons or rules.

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

    If confirmed, I would handle all matters involving actual or potential conflicts of interest through careful application of the Code of Conduct for United States Judges, as well as other relevant canons and statutory provisions. I would consult my judicial colleagues on these issues as appropriate.

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

    Throughout my career, I have devoted thousands of hours to serving as pro bono counsel in a variety of matters, including representing plaintiffs in several cases brought under 42 U.S.C. §1983. Earlier in my career, I was part of the appellate team that challenged the conviction and death sentence of Louise Harris. This matter involved extensive briefing before the state courts of Alabama over the course of many years. The Alabama Court of Criminal Appeals granted Ms. Harris's state *habeas corpus* petition in part and commuted Ms. Harris's death sentence to life in prison. *In re Louise Harris*, 947 So.2d 1139 (Ala. 2005).

    Beyond my pro bono legal practice, my husband and I established the LaShann DeArcy and Courtney C. Hall Endowed Scholarship Fund at Howard University School of Law. The purpose of the scholarship, which is awarded based on financial need, is to defray the high cost of law school textbooks.

26. **Selection Process**:

    a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so,

please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In May 2013, I was contacted by an acquaintance who asked if I would be interested in being considered for a federal judgeship. I forwarded her my resume, which I understood would be considered by Senator Kirsten Gillibrand. On April 3, 2014, I was interviewed by Senator Gillibrand and a member of her staff in Washington, D.C. At the end of the interview, Senator Gillibrand informed me that she would be forwarding my name to the White House. Since May 5, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 9, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 12, 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.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Lawrence Joseph Vilardo

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

   United States District Judge for the Western District of New York

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

   Office: Connors & Vilardo, LLP
   1000 Liberty Building
   424 Main Street
   Buffalo, NY 14202

   Residence: Town of Tonawanda, NY

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

   1955; Buffalo, 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.

   1977 – 1980, Harvard Law School; J.D. (*magna cum laude*), 1980

   1973 – 1977, Canisius College; B.A. (*summa cum laude*), 1977

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

1986 – present
Connors & Vilardo, LLP
1000 Liberty Building
424 Main Street
Buffalo, NY 14202
Partner

February – May 1987
State University of New York at Buffalo School of Law
John Lord O'Brian Hall
Buffalo, NY 14260
Adjunct Faculty

1983 – 1987
Canisius College
2001 Main Street
Buffalo, NY 14209
Adjunct Faculty

1981 – 1986
Damon & Morey
200 Delaware Avenue, Suite 1200
Buffalo, NY 14202
Associate

1980 – 1981
United States Court of Appeals for the Fifth Circuit
1100 Commerce Street
Dallas, TX 75202
Law clerk to the Honorable Irving L. Goldberg

Summer 1979
Morrison & Foerster
425 Market Street
San Francisco, CA 94105
Summer law clerk

Summer 1978
Lipsitz, Green, Fahringer, Rolle, Schuller & James
42 Delaware Avenue, Suite 100
Buffalo, NY 14202
Summer law clerk

May – August 1977
Joseph S. Vilardo & Sons
Printing & Rubber Stamps
(a/k/a Vilardo Printing)
326 Connecticut Street
Buffalo, NY 14213
Printer

Other affiliations (uncompensated):

2012 – present
Canisius College
2001 Main Street
Buffalo, NY 14208
Trustee

2010 – present
Irish Classical Theatre Company
625 Main Street
Buffalo, NY 14203
Trustee

2001 – 2007
Canisius High School
1180 Delaware Avenue
Buffalo, NY 14209
Trustee (2001 – 2007)
Board Chair (2004 – 2007)

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.

   Best Lawyers in America (2007 – present)

   New York Super Lawyers (Upstate New York) (2007 – present)

   Fellow, New York State Bar Foundation (2005 – present)

Fellow, American Academy of Appellate Lawyers (2003 – present)

Fellow, American Bar Foundation (1999 – present)

New York Super Lawyers Top 10 (Upstate New York) (2014)

New York Super Lawyers Top 50 (Upstate New York) (2008 – 2011, 2013 – 2014)

Canisius College Distinguished Alumni Award (2010)

Canisius High School Distinguished Alumni Hall of Honor (2008)

Alpha Sigma Nu (National Jesuit Honor Society) Service Award, Canisius College Chapter (2008)

Officer-at-Large: Assistant to the President, *Harvard Law Review* (1979 – 1980)

Editor, *Harvard Law Review* (1978 – 1980)

Father Francis A. O'Malley Memorial Award for Highest Four-Year Cumulative Average, Canisius College (1977)

William Harrigan Memorial Award for Excellence in History, Canisius College (1977)

Student Vice Master, DiGamma Honor Society, Canisius College (1976 – 1977)

Dean's List (with special distinction for 4.0 grade point average), Canisius College (1973 – 1977)

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

American Bar Association (1981 – present)
- Section of Litigation (1981 – present)
  - *Litigation* Magazine (1987 – 2000, 2010 – 2014)
    - Associate Editor (1987 – 1996)
    - Executive Editor (1996 – 1998)
    - Editor-in-Chief (1998 – 2000)
    - Senior Editor (2010 – 2014)
  - Book Publishing Board (2004 – 2009)
  - Council Member (2001 – 2004)
  - Publications Division (2000 – 2001)
    - Co-Director

Erie County Bar Association (1981 – present)

Nominating Committee (2012 – present)

New York State Bar Association (1981 – present)
Committee on Standards of Attorney Conduct (COSAC) (2010 – present)
Task Force on Non-Lawyer Ownership (2011 – 2012)

New York State Judicial Conference (2000 – 2002)

Second Circuit Task Force on Gender, Racial, and Ethnic Fairness (Western District of New York Working Committee) (approximately 1993)

United States District Court, Western District of New York, Civil Justice Reform Act Advisory Group (approximately 1991 – 1995)
Chair (approximately 1991 – 1993)
Reporter (approximately 1993 – 1995)

Western New York Trial Lawyers Association (sometime in the 1980s, 1990s, or 2000s)

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, 1981

There has been no lapse in my membership.

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

Supreme Court of the United States, 1987

United States Court of Appeals for the Second Circuit, 1983

United States District Court for the Western District of New York, 1982

United States Court of Appeals for the Third Circuit, 1981

United States Court of Appeals for the Fifth Circuit, 1981 (inactive)

United States Court of Appeals for the Eleventh Circuit, 1981 (inactive)

I inadvertently did not renew my admission in the Second Circuit, and my admission lapsed in approximately 2010 or 2011. I reapplied and have been

readmitted since 2013. I did not practice before the Second Circuit while my admission lapsed. I was admitted to the Fifth Circuit as a result of my clerkship there. When the Fifth Circuit split, I also was admitted to the Eleventh Circuit. Because I have never practiced in the Eleventh Circuit and have handled only one matter in the Fifth Circuit (which occurred while I was admitted there), I did not renew my admission to those courts when they 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.

Alpha Sigma Nu Honor Society (2008 – present)

Canisius College Board of Trustees (2012 – present)
Student Life Committee Chair (2013 – present)

Canisius High School Board of Trustees (2001 – 2007)
Chair (2004 – 2007)

DiGamma Honor Society, Canisius College (approximately 1976 – present)

Irish Classical Theater Company Board of Trustees (2010 – present)
Nominating Committee Chair (2012 – 2014)

Lockport Town & Country Club (approximately 1993 – 2002)

St. Thomas More Guild (Western New York Catholic Lawyers) (approximately 1982 – present)
President (1993 – 1994)
Scholarship Committee (2006)

Tan-Tara Country Club (approximately 1983 – 1993)

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 St. Thomas More Guild is an organization of Catholic lawyers and legal professionals. Canisius High School, of which I was a trustee from 2001 to 2007, is an all-male, Jesuit school. Canisius College, of which I am now a trustee, previously admitted only men years before I attended or became a trustee. When I became a member of the DiGamma Honor Society at Canisius College in approximately 1976, it did not admit women, but there was a separate organization, DiGamma Alpha, for women. In 1976, I wrote an editorial for the college newspaper calling for DiGamma to admit women. In 1983, the men's and women's societies voted to become one. 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.

After a careful search of my personal records and public records, I have been able to locate the following materials:

Lawrence J. Vilardo, *Magis* essay (2014), Canisius College Website. Copy supplied.

Lawrence J. Vilardo, *You Can Go Home Again* (January 7, 2014). Copy supplied.

Lawrence J. Vilardo, Book Review, Erie County Bar Association Bulletin (2014) (reviewing Robert L. Haig, *Business and Commercial Litigation in Federal Courts*, 3d ed., (2014)). Copy supplied.

Lawrence J. Vilardo & Vincent E. Doyle III, *Where Did the Zeal Go?*, 38 Litigation, no. 1 (Fall 2011). Copy supplied.

Lawrence J. Vilardo & Vincent E. Doyle III, *Representing Lawyers*, 32 Litigation, no. 4 (Summer 2006). Copy supplied.

Priscilla Anne Schwab & Lawrence J. Vilardo (eds.), *The Litigation Manual: Depositions*, American Bar Association (2006). Copy supplied.

Lawrence J. Vilardo, *Expert Analysis: CPLR §3101*, New York Consolidated Law Service Annotated Statutes with Forms: Civil Practice Law and Rules (3101-3108) (2002). Copy supplied.

Lawrence J. Vilardo, *Communicating with Clients*, 27 Litigation, no. 3 (Spring 2001). Copy supplied.

Lawrence J. Vilardo, Editor's Note in *Lawyers, Lessons, Life & Death*, 26 Litigation, no. 4 (Summer 2000). Copy supplied.

Lawrence J. Vilardo, Editor's Note in *Perspective*, 26 Litigation, no. 3 (Spring 2000). Copy supplied.

Lawrence J. Vilardo, Editor's Note in *Tomorrow*, 26 Litigation, no. 2 (Winter 2000). Copy supplied.

Lawrence J. Vilardo, Editor's Note in *Yesterday*, 26 Litigation, no. 1 (Fall 1999). Copy supplied.

Lawrence J. Vilardo, Editor's Note in *Experts, E-Mail, Cutting-Edge Cases*, 25 Litigation, no. 4 (Summer 1999). Copy supplied.

Lawrence J. Vilardo, Editor's Note in *Evidence*, 25 Litigation, no. 3 (Spring 1999). Copy supplied.

Lawrence J. Vilardo, Editor's Note in *Appeals*, 25 Litigation, no. 2 (Winter 1999). Copy supplied.

Lawrence J. Vilardo, Editor's Note in *Back to Basics*, 25 Litigation, no. 1 (Fall 1998). Copy supplied.

Lawrence J. Vilardo & Howard W. Gutman, *The Honorable Irving L. Goldberg: A Place in History*, 49 SMU L. Rev. 1 (1995). Copy supplied.

Lawrence J. Vilardo, *Taking Care of the Doctor*, 21 Litigation, no. 3 (Spring 1995). Copy supplied.

Lawrence J. Vilardo & Howard W. Gutman, *With Justice From One: Interview with Hon. Irving L. Goldberg*, 17 Litigation, no. 3 (Spring 1991). Copy supplied.

Larry Vilardo & Doug Karp, *A Supra Show*, Harvard Law Record (Feb. 29, 1980). Copy supplied.

Ralph D. Gants, Larry Vilardo, *et al.*, *Developments in the Law – Corporate Crime: Regulating Corporate Behavior Through Criminal Sanctions*, 92 Harvard L. Rev. 1227 (1979). I was responsible for Part II(A): *The Rationale for*

Regulatory Crimes; Part V: *The Choice Between Civil and Criminal Sanctions*; and Part VIII: *Conclusion: An Evaluation and Proposal.* Copy supplied.

Larry Vilardo, *Miller Goes Video, Debates Issues*, Harvard Law Record (Nov. 2, 1979). Copy supplied.

Larry Vilardo, *Marshall Club Takes Honors*, Harvard Law Record (Nov. 21, 1978). Copy supplied.

Larry Vilardo, *Stone Elected by Psychiatrists*, Harvard Law Record (Apr. 28, 1978). Copy supplied.

Larry Vilardo, *Admission Policy Revamped; Flawed Candidates Sought*, Harvard Law Record (Apr. 1, 1978) (humorous April Fools issue). Copy supplied.

Larry Vilardo, *Alumni Notebooks: Pages from the Past*, Harvard Law Record (Mar. 17, 1978). Copy supplied.

Larry Vilardo, *Bar Gives Mixed Reaction to Burger's Rap of Lawyers*, Harvard Law Record (Mar. 3, 1978). Copy supplied.

Larry Vilardo, *Cross-Country Skiing: Rx for the Law Student*, Harvard Law Record (Jan. 27, 1978). Copy supplied.

Larry Vilardo, *Judge Says Test Lacks Redeeming Social Value*, Harvard Law Record (Dec. 9, 1977). Copy supplied.

Larry Vilardo, *Group Proposed to Seek Student Aid to Support Public Interest Law*, Harvard Law Record (Nov. 23, 1977). Copy supplied.

Larry Vilardo, *Law School is Family Affair for 1L*, Harvard Law Record (Oct. 28, 1977). Copy supplied.

Larry Vilardo, *T-Shirts a 'Plus' for Harvard Graduate*, Harvard Law Record (Oct. 7, 1977). Copy supplied.

Larry Vilardo, *Melvin Belli: Tort Lawyer Made Good*, Harvard Law Record (Sept. 23, 1977). Copy supplied.

Larry Vilardo, *Newspaper's Function Critical*, The Griffin (Mar. 11, 1977). Copy supplied.

Larry Vilardo, *Senate Voting Makes Cents*, The Griffin (Mar. 4, 1977). Copy supplied.

Larry Vilardo, *UnderGriffs Startle Niagara, 64-60*, The Griffin (Mar. 4, 1977). Copy supplied.

Larry Vilardo, *Pinstripes Are Back in Style*, The Griffin (Feb. 25, 1977). Copy supplied.

Larry Vilardo, *Music Awards Lack Harmony*, The Griffin (Feb. 18, 1977). Copy supplied.

Larry Vilardo, *Fee VP Has Golden Touch*, The Griffin (Feb. 11, 1977). Copy supplied.

Larry Vilardo, *All I Want for Christmas . . .*, The Griffin (Dec. 10, 1976). Copy supplied.

Larry Vilardo, *Sense of Humor Makes Sense*, The Griffin (Nov. 19, 1976). Copy supplied.

Larry Vilardo, *SC Ramp Among Alternatives*, The Griffin (Nov. 12, 1976). Copy supplied.

Larry Vilardo, *Great Pumpkin Didn't Raise Drooping Halloween Spirits*, The Griffin (Nov. 5, 1976). Copy supplied.

Larry Vilardo, *Election Year Ramblings*, The Griffin (Oct. 29, 1976). Copy supplied.

Larry Vilardo, *'. . . That's the Facts, Ma'am,'* The Griffin (Oct. 15, 1976). Copy supplied.

Larry Vilardo, *'Testy' About Loud Carpets*, The Griffin (Oct. 8, 1976). Copy supplied.

Larry Vilardo, *Rocky Outing a Cliffhanger*, The Griffin (Oct. 1, 1976). Copy supplied.

Larry Vilardo, *Two Tempests at Stratford*, The Griffin (Sept. 24, 1976). Copy supplied.

Larry Vilardo, *Crowded Prisons, Empty Inmates*, The Griffin (Sept. 17, 1976). Copy supplied.

Larry Vilardo, *Forward-Looking Retrospect*, The Griffin (May 7, 1976). Copy supplied.

Larry Vilardo, *It's Yankee Time Again*, The Griffin (Apr. 2, 1976). Copy supplied.

Larry Vilardo, *When in Doubt, Call a Meeting*, The Griffin (Mar. 19, 1976). Copy supplied.

Larry Vilardo, *Urban History Analyzed by Fitzpatrick Lecturer*, The Griffin (Mar. 19, 1976). Copy supplied.

Larry Vilardo, *Griff Aud Program Needs Help*, The Griffin (Mar. 12, 1976). Copy supplied.

Larry Vilardo, *Martin, Foschio Too Tough for Snyder's Braves Brass*, The Griffin (Mar. 5, 1976). Copy supplied.

Larry Vilardo, *Tuition Change Forces Financial Aid Revision*, The Griffin (Feb. 13, 1976). Copy supplied.

Larry Vilardo, *Bursar Berry's Outlook Bright; Late Fine Deters Delinquents*, The Griffin (Jan. 30, 1976). Copy supplied.

Larry Vilardo, *Turnovers Prove Costly as Bona Scalps Canisius*, The Griffin (Jan. 30, 1976). Copy supplied.

Larry Vilardo, *Dismissal Charges Against Mr. Ernst Rescinded by College*, The Griffin (Jan. 23, 1976). Copy supplied.

Larry Vilardo, *Ernst Resolution Up Before Faculty Senate*, The Griffin (Dec. 12, 1975). Copy supplied.

Larry Vilardo, *Ernst Takes Appeal Before Courts*, The Griffin (Dec. 5, 1975). Copy supplied.

Larry Vilardo, *Frosh Tongue Tie Opponents*, The Griffin (Nov. 21, 1975). Copy supplied.

Larry Vilardo, *Paper Griffin Finds ROTC Weekend Rewarding*, The Griffin (Nov. 7, 1975). Copy supplied.

Larry Vilardo, *Athletic Reply Scores*, The Griffin (Oct. 17, 1975). Copy supplied.

Larry Vilardo, *Ernst, Dept. Submit Appeal*, The Griffin (Oct. 10, 1975). Copy supplied.

Larry Vilardo, *'Peer Evaluation' Just an Empty Standard*, The Griffin (Oct. 10, 1975). Copy supplied.

Larry Vilardo, *M.S.A. Response Off Target*, The Griffin (Oct. 3, 1975). Copy supplied.

Larry Vilardo, *I.P.T.B.A.*, The Griffin (Oct. 3, 1975). Copy supplied.

Larry Vilardo, *Dismissal Creates Crisis*, The Griffin (Sept. 19, 1975). Copy supplied.

Larry Vilardo, *Ump School Safe at Home*, The Griffin (Sept. 12, 1975). Copy supplied.

Larry Vilardo, *Prof Fired; Dept. Balks*, The Griffin (Sept. 12, 1975). Copy supplied.

Larry Vilardo, *Where Have All the Baseballs Gone?*, The Griffin (Apr. 25, 1975). Copy supplied.

Larry Vilardo, *Learn From Our Mistakes*, The Griffin (Apr. 18, 1975). Copy supplied.

Larry Vilardo, *Maybe This Year?*, The Griffin (Apr. 11, 1975). Copy supplied.

Larry Vilardo, *It Can't Happen Here*, The Griffin (Mar. 7, 1975). Copy supplied.

Larry Vilardo, *Ship Up and Shape Out*, The Griffin (Feb. 28, 1975). Copy supplied.

Larry Vilardo, *Christ Is Alive*, The Griffin (Feb. 14, 1975). Copy supplied.

Larry Vilardo, *Who, What, Where, Why, How is P.F. Flyers?*, The Griffin (Feb. 7, 1975). Copy supplied.

Larry Vilardo, *Is It Better to Give Than to Receive?*, The Griffin (Jan. 31, 1975). Copy supplied.

Larry Vilardo, *Who Woulda Thunk It?*, The Griffin (Jan. 24, 1975). Copy supplied.

Larry Vilardo, *Skiing to Potato City*, The Griffin (Jan. 17, 1975). Copy supplied.

Larry Vilardo, *Free Throw Parade*, The Griffin (Dec. 6, 1974). Copy supplied.

Larry Vilardo, *Doctor Heals Attendance*, The Griffin (Nov. 22, 1974). Copy supplied.

Larry Vilardo, *You've Come a Long Way, Baby!*, The Griffin (Nov. 15, 1974). Copy supplied.

Larry Vilardo, *From Rome to Holiday Rinks*, The Griffin (Nov. 8, 1974). Copy supplied.

Larry Vilardo, *Alibis & Excuses*, The Griffin (Nov. 1, 1974). Copy supplied.

Larry Vilardo, *Beer Cans, Trash Barrels and Club Football*, The Griffin (Oct. 18, 1974). Copy supplied.

Larry Vilardo, *'Tell Him to Stonewall – Cover It Up,'* The Griffin (Oct. 11, 1974). Copy supplied.

Larry Vilardo, *Tennis is on the Upswing*, The Griffin (Oct. 4, 1974). Copy supplied.

Larry Vilardo, *I.P.T.B.A.*, The Griffin (Sept. 27, 1974). Copy supplied.

Larry Vilardo, *"Lot for U.S. to Catch Up,"* The Griffin (Sept. 27, 1974). Copy supplied.

Larry Vilardo, *"Lot for U.S. to Catch Up,"* The Griffin (Sept. 20, 1974). Copy supplied.

Larry Vilardo, *Damn Yankees!*, The Griffin (Mar. 29, 1974). Copy supplied.

Larry Vilardo, *"Concert at the Aud,"* The Griffin (Mar. 1, 1974). Copy supplied.

I also edited and wrote several pieces for *The Griffin* and the *Harvard Law Record* for which I did not have a by-line, including the following:

> *Fenno* (humor column), Harvard Law Record (May 4, 1979). Copy supplied.
>
> *Fenno* (humor column), Harvard Law Record (Apr. 27, 1979). Copy supplied.
>
> *Fenno* (humor column), Harvard Law Record (Apr. 20, 1979). Copy supplied.
>
> *Fenno* (humor column), Harvard Law Record (Apr. 13, 1979). Copy supplied.
>
> *Fenno* (humor column), Harvard Law Record (Apr. 2, 1979) (humorous April Fools issue). Copy supplied.

Fenno (humor column), Harvard Law Record (Mar. 23, 1979). Copy supplied.

Fenno (humor column), Harvard Law Record (Mar. 4, 1979). Copy supplied.

Fenno (humor column), Harvard Law Record (Mar. 2, 1979). Copy supplied.

Fenno (humor column), Harvard Law Record (Feb. 16, 1979). Copy supplied.

Fenno (humor column), Harvard Law Record (Feb. 9, 1979). Copy supplied.

Fenno (humor column), Harvard Law Record (Dec. 8, 1978). Copy supplied.

Fenno (humor column), Harvard Law Record (Nov. 21, 1978). Copy supplied.

Fenno (humor column), Harvard Law Record (Nov. 16, 1978). Copy supplied.

Fenno (humor column), Harvard Law Record (Nov. 3, 1978). Copy supplied.

Fenno (humor column), Harvard Law Record (Oct. 27, 1978). Copy supplied.

Fenno (humor column), Harvard Law Record (Oct. 20, 1978). Copy supplied.

Fenno (humor column), Harvard Law Record (Oct. 13, 1978). Copy supplied.

Fenno (humor column), Harvard Law Record (Oct. 6, 1978). Copy supplied.

Fenno (humor column), Harvard Law Record (Sept. 29, 1978). Copy supplied.

Fenno (humor column), Harvard Law Record (Sept. 22, 1978). Copy supplied.

Editorial: *Parking Fee Unfair*, The Griffin (Dec. 10, 1976). Copy supplied.

Editorial: *Merry Christmas*, The Griffin (Dec. 10, 1976). Copy supplied.

Editorial: *CPB Works Now . . . Parties Later*, The Griffin (Apr. 2, 1976) Copy supplied.

Editorial: *We'll Drink to That*, The Griffin (Mar. 12, 1976). Copy supplied.

Editorial: *Quad Party Needs Time*, The Griffin (March 5, 1976). Copy supplied.

Editorial: *Promise Her Anything – But Give Her DiGamma*, The Griffin (Feb. 13, 1976). Copy supplied.

Buckley to Speak at Canisius on Tuesday Night, The Griffin (Feb. 6, 1976). Copy supplied.

Canisius Community Loses 3, The Griffin (Feb. 6, 1976). Copy supplied.

Afro President Welcomes All Cultural Enthusiasts, The Griffin (Feb. 6, 1976). Copy supplied.

Editorial: *Pat on the Back for REACH*, The Griffin (Dec. 5, 1975). Copy supplied.

Ministry Urges Pooling Resources, The Griffin (Oct. 24, 1975). Copy supplied.

Editorial: *Time for a Turnaround in Student Government*, The Griffin (Apr. 25, 1975). Copy supplied.

Father Maloney Ailing, The Griffin (circa 1975 – 1976, date unknown). Copy supplied.

Ernst Meetings Prove Fruitless: 'Crisis' Remains, The Griffin (circa 1975 – 1976, date unknown). Copy supplied.

Tutorial Group Plans Rathskellar to Benefit Poor, The Griffin (circa 1975 – 1976, date unknown). Copy supplied.

Committee Celebrates Golen [sic] Anniversary, The Griffin (May 6, 1974) (humorous Moving Up Day (MUD) issue). Copy supplied.

I also edited my biography and the "Law Firm Profile" section from my law firm's website. Copies supplied.

Between 1987 and 2014, I served as a copy editor for various publications by the American Bar Association, although I did not provide substantive edits to the pieces. As the Editor-in-Chief of the American Bar Association's *Litigation* magazine between 1998 and 2000, I copyedited the articles in Volumes 25 and 26. Over the years, I also have copyedited numerous articles in my capacities as Associate Editor, Executive Editor, and Senior Editor of that publication. I also helped copyedit Hecht, *Effective Depositions*, 2d ed. (2010), published by the American Bar Association Section of Litigation.

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 Chair of the Student Life Committee of the Canisius College Board of Trustees since 2013, I have attended quarterly meetings related to student life and reported on those meetings to the Board of Trustees. I have no notes, transcripts, or recordings, but summaries of these reports, which were included in the Canisius College Board of Trustees Highlights and Summaries, are supplied.

As a member of the New York State Bar Association Task Force on Nonlawyer Ownership in 2010 and 2011, I contributed to the preparation of the Report of the Task Force on Nonlawyer Ownership. Copy supplied.

As a member of the New York State Bar Association Committee on Standards of Attorney Conduct in 2010, I contributed to the preparation of the New York State Bar Association, New York City Bar Association and New York County Lawyers' Association Proposed Rules for Licensing of In-House Counsel. Copy supplied.

As a part of the Western District of New York Working Committee for the Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in 1997, I contributed to the preparation of the Report of the Working Committees to the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts. Copy supplied.

As chair and as reporter for the Civil Justice Reform Act Advisory Group for the United States District Court, Western District of New York, in the early 1990s, I participated in the preparation of the Report and Recommendations of the Civil Justice Reform Act Advisory Group for the Western District of New York and a Draft Standing Order on Effective Discovery. Copies supplied.

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

I have not provided any testimony or statements of this nature.

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. I have carefully reviewed my personal papers, calendars, diaries, and public records to compile this list. There may, however, have been other talks, presentations, or moot court competitions over the years that I have been unable to recall or identify.

October 23, 2014: Moot Court Judge, SUNY Buffalo Law School, Amherst, NY. I participated as a moot court judge for law students arguing a fictional case. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

October 7, 2014: Speaker, Seminar on Appellate Oral Argument, SUNY Buffalo Law School, Amherst, NY. I have no notes, transcript, or recording, but my remarks would have been substantially similar to the October 17, 2013 event, for which notes have been supplied.

April 30, 2014: Panelist, Panel Discussion, Buffalo Pediatric Society, Buffalo, NY. The panel discussion was on legal, ethical, and moral issues arising from parents' refusing vaccinations for their children. I have no notes, transcript, or recording. The address of the Buffalo Pediatric Society is P.O. Box 827, Buffalo, NY 14220.

February 26, 2014: Panelist, Panel Discussion, The Charles S. Desmond American Inn of Court, Buffalo, NY. The panel discussion was on the late Charles S. Desmond, Chief Judge of the New York Court of Appeals. I have no notes, transcript, or recording. The address of The Charles S. Desmond American Inn of Court is Charles S. Desmond American Inn of Court, c/o Mark Davis, Esq.,

Lippes Mathias Wexler Friedman LLP, 665 Main Street, Suite 300, Buffalo, NY 14203.

February 7, 2014, Speaker, Luncheon Speech to Group of Catholic Men, Northside First Friday Club, Kenmore, NY. Remarks supplied.

December 19, 2013: Panelist, "Real Life vs. Reel Life Ethics," New York State Bar Association, Amherst, NY. The panel discussion was part of a continuing legal education seminar on legal ethics as seen in motion pictures. I have no notes, transcript, or recording. The address of the New York State Bar Association is 1 Elk Street, Albany, NY 12207.

October 24, 2013: Moot Court Judge, SUNY Buffalo Law School, Amherst, NY. I participated as a moot court judge for law students arguing a fictional case. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

October 17, 2013: Speaker, Seminar on Appellate Oral Argument, SUNY Buffalo Law School, Amherst, NY. Notes supplied.

June 15, 2013: Speaker, Litigation Journal Tribute, ABA Litigation Section, Newport, RI. Video available at: http://stream.americanbar.org/services/player/bcpid2059188277001?bckey=AQ~~,AAABsp7SiCE~,aEBLYbQyvvDzG_ilsy3VR1brzH8RuBIr&bctid=2520484017001.

February 15, 2013: Panelist, "Effective Arbitration and Mediation Advocacy: The Do's and Don'ts," New York State Bar Association, Buffalo, NY. The two continuing legal education panel discussions in which I participated were on effective advocacy in mediation and arbitration. I have no notes, transcript, or recording. The address of the New York State Bar Association is 1 Elk Street, Albany, NY 12207.

December 10, 2012: Panelist, "Real Life vs. Reel Life Ethics," New York State Bar Association, Amherst, NY. The panel discussion was part of a continuing legal education seminar on legal ethics as seen in motion pictures. I have no notes, transcript, or recording. The address of the New York State Bar Association is 1 Elk Street, Albany, NY 12207.

December 8, 2012: Trial Technique Judge, SUNY Buffalo Law School, Buffalo, NY. I participated as a judge for law students trying a fictional case in Buffalo City Court. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

October 31, 2012: Moot Court Judge, SUNY Buffalo Law School, Amherst, NY. I participated as a moot court judge for law students arguing a fictional case. I

have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

October 24, 2012: Speaker, Seminar on Appellate Oral Argument, SUNY Buffalo Law School, Amherst, NY. I have no notes, transcript, or recording, but my remarks would have been substantially similar to the October 17, 2013 event, for which notes have been supplied.

October 16, 2012: Panelist, "U.S. Supreme Court Review and Preview," Erie County Bar Association, Buffalo, NY. Notes supplied.

September 13, 2012: Panelist, "The Continuous Pursuit of Excellence," Canisius High School, Buffalo, NY. The panel was on networking and future employment. I have no notes, transcript, or recording. The address of Canisius High School is 1180 Delaware Avenue, Buffalo, NY 14209.

May 5, 2012: Speaker, Alumni Hall of Honor Induction Speech for Erik L. Brady, Canisius High School, Buffalo, NY. Remarks supplied.

May 4, 2012: Speaker, Retirement Speech for Dr. Peter Galie, Canisius College, Buffalo, NY. Remarks supplied.

December 5, 2011: Panelist, "Avoiding Ethical Dilemmas in Day to Day Practice," New York State Bar Association, Amherst, NY. The continuing legal education panel was on ethical issues in legal practice. I have no notes, transcript, or recording. The address of the New York State Bar Association is 1 Elk Street, Albany, NY 12207.

November 14, 2011: Speaker, Luncheon Speech, Harvard Club of Western New York, Buffalo, NY. Remarks supplied.

October 27, 2011: Moot Court Judge, SUNY Buffalo Law School, Amherst, NY. I participated as a moot court judge for law students arguing a fictional case. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

October 20, 2011: Speaker, Seminar on Appellate Oral Argument, SUNY Buffalo Law School, Amherst, NY. I have no notes, transcript, or recording, but my remarks would have been substantially similar to the October 17, 2013 event, for which notes have been supplied.

March 3-5, 2011: Moot Court Judge, SUNY Buffalo Law School, Amherst, NY. I participated as a moot court judge for law students arguing a fictional case. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

November 13, 2010: Speaker, Distinguished Alumni Induction, Canisius College, Buffalo, NY. The speech was on my gratitude for being inducted into the Canisius College Distinguished Alumni. I have no notes, transcript, or recording. The address of Canisius College is 2001 Main Street, Buffalo, NY 14208.

November 11-12, 2010: Trial Technique Judge, SUNY Buffalo Law School, Buffalo, NY. I participated as a judge for law students trying a fictional case in Buffalo City Court. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

October 31, 2010: Speaker, Father-Son Breakfast, Canisius High School, Buffalo, NY. Remarks supplied.

October 27, 2010: Moot Court Judge, SUNY Buffalo Law School, Amherst, NY. I participated as a moot court judge for law students arguing a fictional case. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

October 25, 2010: Speaker, Seminar on Appellate Oral Argument, SUNY Buffalo Law School, Amherst, NY. I have no notes, transcript, or recording, but my remarks would have been substantially similar to the October 17, 2013 event, for which notes have been supplied.

April 24, 2010: Speaker, Distinguished Alumni Hall of Honor Induction Speech for the late Rev. James Higgins, S.J., Canisius High School, Buffalo, NY. Remarks supplied.

March 1, 2010: Speaker, Seminar on Appeals, SUNY Buffalo Law School, Amherst, NY. I have no notes, transcript, or recording, but my remarks would have been substantially similar to the November 5, 2003 event, for which notes have been supplied.

January 22, 2010: Panelist, "U.S. Supreme Court Review and Preview," Erie County Bar Association, Buffalo, NY. The continuing legal education panel discussion was on recent and forthcoming Supreme Court cases. I have no notes, transcript, or recording. The address of the Erie County Bar Association is 438 Main Street, Sixth Floor, Buffalo, NY 14202

December 6, 2009: Speaker, Dedication of Rev. James Higgins Hall, Canisius High School, Buffalo, NY. Remarks supplied.

December 1, 2009: Panelist, Continuing Legal Education Panel Discussion on Ethics and Professionalism, New York State Bar Association, Buffalo. The panel was on ethics and professionalism in legal practice. I have no notes, transcript, or recording. The address of the New York State Bar Association is 1 Elk Street, Albany, NY 12207.

September 25, 2009: Speaker, "The Art of Civil Trial Advocacy, Preserving the Record," New York State Bar Association, Buffalo, NY. Outline supplied.

January 24, 2009: Speaker, Eulogy of Rev. James Higgins, S.J., Buffalo, NY. Remarks supplied.

November 7-11, 2008: Trial Technique Judge, SUNY Buffalo Law School, Buffalo, NY. I participated as a judge for law students trying a fictional case in Buffalo City Court. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

November 1, 2008: Speaker, Distinguished Alumni Hall of Honor Induction Speech, Canisius High School, Buffalo, NY. Remarks supplied.

October 21-22, 2008: Moot Court Judge, SUNY Buffalo Law School, Amherst, NY. I participated as a moot court judge for law students arguing a fictional case. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

April 6, 2008: Speaker, Service Award Recipient Speech, Alpha Sigma Nu, Canisius College, Buffalo, NY. Remarks supplied.

December 12, 2007: Panelist, Continuing Legal Education Panel Discussion on Ethics and Professionalism, New York State Bar Association, Buffalo, NY. The panel was on ethics and professionalism in legal practice. I have no notes, transcript, or recording. The address of the New York State Bar Association is 1 Elk Street, Albany, NY 12207.

October 29-31, 2007: Moot Court Judge, SUNY Buffalo Law School, Amherst, NY. I participated as a moot court judge for law students arguing a fictional case. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

July 21, 2007: Speaker, Graduate School Presentation for St. Bonaventure University, Campus of Hilbert College, Hamburg, NY. Notes supplied.

November 9-12, 2006: Trial Technique Judge, SUNY Buffalo Law School, Buffalo, NY. I participated as a judge for law students trying a fictional case in Buffalo City Court. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

October 27-29, 2005: Trial Technique Judge, SUNY Buffalo Law School, Buffalo, NY. I participated as a judge for law students trying a fictional case in Buffalo City Court. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

July 16, 2005: Speaker, Swearing-In Speech for Hon. Jeffrey N. Cole, Magistrate Judge, United States District Court for the Northern District of Illinois, Chicago, IL. The speech was about Judge Cole on the occasion of his swearing in as a United States Magistrate Judge. I have no notes, transcript, or recording. The address of the United States District Court for the Northern District of Illinois is 219 South Dearborn Street, Chicago, IL 60604.

October 7, 2004: Trial Technique Judge, SUNY Buffalo Law School, Buffalo, NY. I participated as a judge for law students trying a fictional case in Buffalo City Court. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

November 5, 2003: Speaker, Seminar on Appellate Practice, New York State Bar Association, Rochester, NY. Notes supplied.

October 13-16, 2003: Moot Court Judge, SUNY Buffalo Law School, Amherst, NY. I participated as a moot court judge for law students arguing a fictional case. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

November 11-13, 2002: Moot Court Judge, SUNY Buffalo Law School, Amherst, NY. I participated as a moot court judge for law students arguing a fictional case. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

September 21, 2002: Panelist, Panel Discussion, Jesuits for Upstate New York, Canisius College, Buffalo, NY. The panel discussion was on the clergy sex abuse crisis. I have no notes, transcript, or recording. The address of Canisius College is 2001 Main Street, Buffalo, NY 14208.

October 23-27, 2000: Moot Court Judge, SUNY Buffalo Law School, Amherst, NY. I participated as a moot court judge for law students arguing a fictional case. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

March 2, 2000: Speaker, "Mini-Medical School" Presentation, SUNY Buffalo Law School, Amherst, NY. The presentation was on the legal issues connected with obstetrics and delivery resulting in an injured infant. I have no notes, transcript, or recording. The address of SUNY Buffalo Law School is John Lord O'Brian Hall, Buffalo, NY 14260.

February 18, 2000: Speaker, DiGamma Honor Society Induction Speech, Canisius College, Buffalo, NY. The speech was a light-hearted look at the honor society on the induction of a new class of members. I have no notes, transcript, or

recording. The address of Canisius College is 2001 Main Street, Buffalo, NY 14208.

September 26, 1986: Speaker, "Attorney Client Privilege and You," New York State Bar Association Committee on Law Office Economics and Management, Buffalo, NY. Annotated outline supplied.

I recall giving seminars to the National Federation of Paralegals Association and the Western New York Paralegal Association sometime in the 1980s or 1990s, but I do not have any records of those seminars, cannot recall the dates, and have not found any record of those seminars despite an Internet search and contacting the organizations.

I recall judging moot court competitions at Harvard Law School in 1979 – 1980 and at Southern Methodist University Law School in 1980 – 1981, but I do not have any records of those competitions, cannot recall the dates, and have not found any record despite a careful search of my personal papers.

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

Susan Schulman, *Diocese, Falls School to be Tried Over Role in Girls' Harassment*, Buffalo News, February 9, 2014. Copy supplied.

Phil Fairbanks, *Ex-Shipping Company Owners Get New Court Chance in DHL Claim*, The Buffalo News, February 8, 2014. Copy supplied.

Jerry Zremski, *Presidential Campaign Donations in WNY Dwindling*, The Buffalo News, April 22, 2012. Copy supplied.

Marlen Garcia, *Case Against Boeheim Likely Tough to Prove*, USA Today, December 15, 2011. Copy supplied.

Distinguished Alumni 2010, Canisius College Magazine, Winter 2011. Copy supplied.

Audrey R. Browka, *All College Honors: Bringing Out the Best in Students for 50 Years*, Canisius College Magazine, Summer 2010. Copy supplied.

Jocelyn Allison, *Ex-Watermark Affiliate Pleads Guilty In $6M Ponzi*, Law360, April 19, 2010. Copy supplied.

Michael Beebe, *Associate Pleads Guilty in $6 Million Ponzi Scheme*, The Buffalo News, April 16, 2010. Copy supplied.

Michael Beebe, *Authorities Arrest Man Accused of $5.8 million Ponzi Scheme*, The Buffalo News, March 26, 2010. Copy supplied.

Michael Beebe, *Guilty Plea by Gane's VP Expected in SEC Fraud Case; Altadonna Will Admit Misleading Investor in Alleged Ponzi Scheme, Court Papers Say*, The Buffalo News, March 16, 2010. Copy supplied.

WNED-AM, *Law Line* (radio interview on 2010 Supreme Court cases), January 2, 2010. Recording supplied.

Jerry Zremski, *Former Area Man Takes Top Civil Rights Post; Dominican Heritage Also Shapes Perez*, The Buffalo News, November 14, 2009. Copy supplied.

Jay Tokasz, *Diocese Ousts St. Teresa's Priest and Finance Chief: Both Had Aired Concerns About Irregularities*, The Buffalo News, August 27, 2009. Copy supplied.

Rev. James Higgins, 'Remarkable' as Canisius High School President; Nov. 3, 1954 – Jan. 20, 2009, The Buffalo News, January 23, 2009. Copy supplied.

Jay Tokasz, *Higgins, Ex-Head of Canisius High, Dies*, The Buffalo News, January 22, 2009. Copy supplied.

G. Scott Thomas, *Donations Lag for Front-Runners*, Buffalo Business First, March 3, 2008. Copy supplied.

Harold McNeil, *Buffalo Law Firm Takes Smartest Title in Trivia Contest Aiding Cradle Beach: Fundraiser*, The Buffalo News, April 5, 2007. Copy supplied.

Canisius High Names New Principal, Buffalo Business First, April 25, 2006. Copy supplied.

Local News Briefs, The Buffalo News, February 7, 2006. Copy supplied.

Anthony Cardinale, *4 Canisius High Teachers Sue Over Tenure Denial*, The Buffalo News, September 23, 2005. Copy supplied.

Michael Ziegler, *Area Lawyers Says Roberts a 'Gentleman'*, Democrat and Chronicle, September 13, 2005. Copy supplied.

Jerry Zremski, *Roberts Nomination Draws Praise; John G. Roberts Jr.'s Stellar Legal Record and Stealth Judicial Views Are Seen as Assets By Legal Experts*, The Buffalo News, July 21, 2005. Copy supplied.

Dan Herbeck, *Lewiston Lawyer Gets Probation in Tax Case*, The Buffalo News, May 21, 2003. Copy supplied.

Michael Beebe, *National Fuel Critic is Spared Jail, Gets Fine and Gag Order*, The Buffalo News, December 20, 2002. Copy supplied.

Kathy Kellogg, *Changing Priorities Cited in Ouster of Hospital CEO*, The Buffalo News, July 7, 2001. Copy supplied.

It's the Law: Keeping Up with Educational Requirements is Required, Buffalo Business First, January 8, 2001. Copy supplied.

Buffalo Firm Asked to Assist Gore Group, The Buffalo News, November 15, 2000. Copy supplied.

Tom Ernst, *Doctor Sought on Sex Charges Kills Himself*, The Buffalo News, May 29, 1995. Copy supplied.

Dan Herbeck, *Area Doctor is Target of U.S. Manhunt Fugitive Warrant Issued in Drugs-for-Sex Probe*, The Buffalo News, May 24, 1995. Copy supplied.

Dan Herbeck, *Disbarred Lawyer Wins a Reversal of Bankruptcy Fraud Charge*, The Buffalo News, February 16, 1994. Copy supplied.

Neil Graves, *Lewiston, Modern Assess Relationship*, The Buffalo News, July 30, 1992. Copy supplied.

McKinley Mall Pays Its Taxes Under Protest, The Buffalo News, April 18, 1992. Copy supplied.

Rick Stouffer, *Developer Loses Control of McKinley Mall, About $3 Million in County, Town and School Taxes Were Not Paid by Zamias*, The Buffalo News, March 31, 1992. Copy supplied.

James T. Madore, *Zamias Back on Top at McKinley Mall, Two Judges Rule in His Favor, But Another Court Date Is Set for Nov. 20*, The Buffalo News, November 2, 1991. Copy supplied.

Rick Stouffer, *Heitman Wins Control of McKinley Mall But Despite Court Ruling, Zamias Company Still Claims to Be General Partner*, The Buffalo News, November 1, 1991. Copy supplied.

Rick Stouffer, *Mall Power Struggle Goes to Court*, The Buffalo News, October 31, 1991. Copy supplied.

Matt Gryta, *Man's Award in Police Beating Upheld But New Trial is Ordered to*

Assess Punitive Damages Against Officers, The Buffalo News, November 24, 1989. Copy supplied.

Karen Brady, *Faculties of Fine Prof Don't Depend on Age*, The Buffalo News, approximately June 11, 1980. Copy supplied.

Louise Leiker, *'Tortoise' Student's Fast Finish Brings Him Scholastic Awards*, Courier-Express, approximately June 1977. Copy supplied.

In addition to the list provided, on a few occasions over the years, I have been interviewed on WIVB-TV, Buffalo, New York, to comment on current legal issues during segments on the nightly news. I also recall being interviewed on television, and perhaps radio, about the appointment of Chief Justice Roberts, who was a law school schoolmate and with whom I served on the Harvard Law Review. I have no transcripts, copies, or tapes of those interviews, and I do not have any record of them or recall the dates.

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.

Although I have not served as a judge, I have served as a hearing officer and fact finder in a quasi-judicial capacity in two matters. In 2008, I was retained by the Town of Cheektowaga, New York, to serve as a hearing officer and fact finder in a decision relating to the town's residency requirement for employees as applied to a town employee. In 2005, I was retained by Kaleida Health to serve as a hearing officer regarding the denial of hospital privileges of a hospital physician.

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

Although I have not presided over any cases in the traditional sense, I have presided over two matters as a hearing officer in a quasi-judicial capacity, and both of those matters resulted in a decision.

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.

In the Matter of a Proceeding to Determine the Residency of Rogowski, an Employee of the Town of Cheektowaga (2008).

In the Matter of the Kaleida Fair Hearing Regarding the Neonatology Privileges of Dukarm, M.D. (2005).

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

(1) *In the Matter of a Proceeding to Determine the Residency of Rogowski, an Employee of the Town of Cheektowaga.* Decision supplied.

I was the hearing officer and fact finder in this matter involving a dispute over the Town of Cheektowaga residency requirement. After conducting a hearing, I rendered a decision finding that the employee, who had moved out of town, did not meet the town's residency requirement because he had less than the 15 years of service required of employees who lived outside the town.

Attorney for Mr. Rogowski:
Richard H. Wyssling, Esq.
375 Linwood Avenue
Buffalo, NY 14209
(716) 882-2243
(Solo Practitioner)

Attorney for Town of Cheektowaga:
Henry F. Sobota, Esq.
Ferrara, Fiorenza, Larrison, Barrett & Reitz
5010 Campuswood Drive
East Syracuse, NY 13057
(315) 427-7600

(2) *In the Matter of the Kaleida Fair Hearing Regarding the Neonatology Privileges of Dukarm, M.D.* Decision supplied.

I was the hearing officer presiding over a dispute between a hospital and physician regarding the physician's privileges in neonatology. The physician requested a hearing after the hospital denied his application for "Level III" privileges because it had an exclusive contract with a group in which the physician was not a member to provide Level III services. After conducting a hearing, I drafted a decision, which then was rendered by a three-member panel, confirming the denial of hospital privileges.

Attorney for Kaleida Health:
Robert J. Lane, Jr., Esq.
Hodgson Russ, LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, NY 14202
(716) 848-1474

Attorney for Dukarm, M.D.:
Linda C. Laing, Esq.
Notaro & Laing, P.C.
One Niagara Square
Buffalo, NY 14202
(716) 854-4080

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

(1) *In the Matter of a Proceeding to Determine the Residency of Rogowski, an Employee of the Town of Cheektowaga.* Decision previously supplied in response to 13c.

Attorney for Mr. Rogowski:
Richard H. Wyssling, Esq.
375 Linwood Avenue
Buffalo, NY 14209
(716) 882-2243
(Solo Practitioner)

Attorney for Town of Cheektowaga:
Henry F. Sobota, Esq.
Ferrara, Fiorenza, Larrison, Barrett & Reitz
5010 Campuswood Drive
East Syracuse, NY 13057
(315) 427-7600

(2) *In the Matter of the Kaleida Fair Hearing Regarding the Neonatology Privileges of Dukarm, M.D.* Decision previously supplied in response to 13c.

Attorney for Kaleida Health:
Robert J. Lane, Jr., Esq.
Hodgson Russ, LLP
The Guaranty Building
140 Pearl Street, Suite 100

Buffalo, NY 14202
(716) 848-1474

Attorney for Dukarm, M.D.:
Linda C. Laing, Esq.
Notaro & Laing, P.C.
One Niagara Square
Buffalo, NY 14202
(716) 854-4080

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 issued one unpublished decision in *In the Matter of a Proceeding to Determine the Residency of Rogowski, an Employee of the Town of Cheektowaga*. A copy of that decision is on file with the Law Department of the Town of Cheektowaga. I drafted a second unpublished decision for the panel in *In the Matter of the Kaleida Fair Hearing Regarding the Neonatology Privileges of Dukarm, M.D.* A copy of that decision is on file with Hodgson Russ, LLP, counsel for Kaleida Health in the matter.

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:

I neither recused myself sua sponte nor was I asked to recuse myself in either of the cases in which I served as hearing officer.

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, nor have I been an unsuccessful candidate or nominee.

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

As an unpaid member of the Transition Team for New York State Attorney General Eric Schneiderman in 2011, I reviewed resumes, participated in telephone interviews, and helped recommend candidates for positions in the Attorney General's Office.

My wife and I hosted a fundraiser in our home for President Barack Obama's campaign in 2008.

In 1993 and 1994, I was a volunteer for the Transition Team of City of Buffalo Mayor Anthony M. Masiello, which involved providing ad hoc legal advice.

As an unpaid member of the Finance and Administration Subcommittee of the Transition Team for Erie County Executive Joel Giambra from 1999 to 2000, I reviewed resumes and helped recommend candidates for positions in Erie County government.

In addition, my firm handled or worked on the following election law matters. Although I was not primarily responsible for these matters, I did some work on them:

Zalocha v. Donovan, Index No. 125-2014 (New York State Supreme Court) (election law challenge to validity of nominating petitions on behalf of State Senator Timothy Kennedy) (2014) (paid)

Betz v. Key, Index No. 2557-2012 (New York State Supreme Court) (election law challenge to validity of nominating petitions on behalf of Buffalo City Court Judge Amy Martoche) (2012) (paid)

Masiello v. Griffin, Index No. 8845-2002 (New York State Supreme Court) (opposition to petition to recall Buffalo Mayor Anthony M. Masiello) (2002) (paid)

Bush v. Gore, 531 U.S. 98 (2000) (United States Supreme Court) (limited fact-finding and legal assistance to attorneys representing Vice President Gore in connection with presidential election provided before case reached U.S. Supreme Court) (2000) (unpaid)

Smith v. Masiello, Index No. 5836-1997 (New York State Supreme Court) (defended election law challenge to validity of nominating petitions) (1997) (unpaid)

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 1980 to 1981, I served as a law clerk to the Honorable Irving L. Goldberg, Circuit Judge of the United States Court of Appeals for the Fifth Circuit.

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

I have never practiced law alone.

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

1981 – 1986
Damon & Morey
200 Delaware Avenue, Suite 1200
Buffalo, NY 14202
Associate

1986 – present
Connors & Vilardo, LLP
1000 Liberty Building
Buffalo, NY 14202
Partner

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

I have served as a mediator or arbitrator in the following seven matters, the last of which involved a number of relatively small cases.

1. *Monarch Companies, Inc., and Monarch/DNC Buffalo Airport /f/k/a Buffalo Encounter v. Delaware North Companies Travel Hospitality Services, Inc., f/k/a CA One Services, Inc.* (three-person arbitration panel regarding a joint venture agreement and alleged breach of contract)

2. *Precimed, Inc., d/b/a/ Greatbatch Medical v. ECA Medical Instruments* (mediation regarding alleged breach of exclusive distribution agreement for certain medical products; case settled before mediation session was held)

3. *Lender Consulting Services, Lipuma, and Duffy v. Hiscock & Barclay and McCabe* (mediation regarding claim of legal malpractice)

4. *In the Matter of an Arbitration between Dearlove v. Deloitte & Touche, LLP, and Deloitte, LLP* (three-person arbitration panel regarding claims of legal malpractice, indemnification, and breach of fiduciary responsibility)

5. *Manufacturers and Traders Trust Co. v. First Tennessee Bank National Association* (three-person arbitration panel regarding multi-million dollar dispute between two banks over sale of Home Equity Lines of Credit)

6. *In the Matter of the Arbitration of Seneca One Realty, LLC v. HSBC Bank USA, N.A.* (three-person arbitration panel regarding disputes arising out of lease of office space in Buffalo's largest office building)

7. *In Matters involving DIRECTV* (numerous mediations of disputes involving alleged cable-TV theft)

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 always has been litigation. As an associate at Damon & Morey from 1981 to 1986, my practice primarily involved medical malpractice defense and criminal work. I wrote briefs and legal memoranda, argued motions and appeals, and assisted in several trials. In 1986, along with a partner with whom I had worked at Damon & Morey, I began Connors & Vilardo, now Connors & Vilardo, LLP. Since then, my practice has evolved to include appellate work, representation of lawyers and other professionals, business litigation, and alternative dispute resolution. I continue to write and edit briefs and memoranda, argue motions, and argue appeals. I also serve as a mediator or arbitrator and represent and advise attorneys on ethical matters.

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

As an associate at Damon & Morey, my typical clients included physicians being sued for medical malpractice and criminal defendants. Today, my clients include several Buffalo law firms, the Roman Catholic Diocese of Buffalo, one of Buffalo's largest health insurance carriers, and several individuals and businesses. More recently, I have been asked to be a mediator or arbitrator in a number of matters.

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

100% of my practice has been litigation. Over the years, I have appeared in court from occasionally to frequently. While my court appearances sometimes ebb and flow, there has been no real variance at the different stages of my career.

i. Indicate the percentage of your practice in:
   1. federal courts: 30%
   2. state courts of record: 50%
   3. other courts: 0%
   4. administrative agencies: 20%

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 four bench cases to verdict as sole or lead counsel and one jury case to verdict as associate counsel in courts of record. I also have served as sole or lead counsel in at least three trials before administrative law judges with the New York State Board of Professional Medical Conduct that resulted in panel decisions. In addition, I have provided substantial trial assistance in at least five other trials, including one bench trial and four jury trials, that resulted in a verdict.

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

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

I drafted or edited petitions for writs of certiorari in:

Mouawad v. United States, 510 U.S. 990, No. 93-366 (1993). Cert. Petition is available at 1993 WL 13074997.

Reinig v. New York, 493 U.S. 852, No. 89-138 (1989). I have been unable to locate a copy.

Bailey v. Grand Truck Lines New England, 484 U.S. 826, No. 86-1980 (1987). Cert. Petition is available at 1987 WL 954994.

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. DHL Express (USA), Inc.*, Case No. 1:08-cv-00301-JTC (W.D.N.Y.) (Hon. John T. Curtin, District Judge), 742 F.3d 51 (2d Cir. 2014) (Hons. Winter, Cabranes, and Livingston).

Since 2013, I have represented the defendant in this pending *qui tam* False Claims Act case in the United States District Court for the Western District of New York. The relators have alleged that the defendants overcharged the United States based on fuel surcharges that allegedly were improperly added. The district court dismissed the action based on a statutory notice provision, but the Second Circuit vacated that decision and remanded the case to the district court. I argued the appeal in the Second Circuit in 2013 and more recently was primarily responsible for handling the submission of our renewed motion for dismissal on alternative grounds. On September 11, 2014, the district court again dismissed the complaint. A second appeal to the Second Circuit is pending.

Attorneys for Relators:
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Daniel C. Oliverio, Esq.
Hodgson Russ, LLP
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(716) 848-1414

Attorneys for the United States:
Michael S. Raab, Esq.
Joshua Waldman, Esq.
U.S. Department of Justice
Civil Division
950 Pennsylvania Ave., N.W.
Room 7232
Washington, DC 20530
(202) 514-0236

2. *Cohane v. NCAA*, No. 04-cv-0943s, 2013 U.S. Dist. LEXIS 186713 (W.D.N.Y. Aug. 8, 2013) (Hon. William M. Skretny, District Judge; Hon. Kenneth Schroeder, Jr., Magistrate Judge).

Since 2005, I have served as co-counsel for the NCAA and several individual defendants in this lawsuit brought by the former head basketball coach at the State University of New York at Buffalo. The plaintiff alleged that the NCAA conspired with the State University of New York at Buffalo and the Mid-American Conference to violate his constitutional rights in connection with findings that he violated a number of NCAA rules in his tenure as head coach. The magistrate judge recommended that the court grant summary judgment in favor of the defendants, and, after objections and responses were filed, the district court granted summary judgment. An appeal to the Second Circuit is currently pending. Although my role began as local counsel, it soon evolved to co-counsel status. I helped to prepare all written submissions in this case and have made nearly all court appearances as well.

Attorney for Plaintiff:
Sean O'Leary, Esq.
O'Leary & O'Leary
320 Old Country Road
Garden City, NY 11530
(516) 741-8203

Attorney for Defendant Mid-American Conference:
Robert Todd Hunt, Esq.
Walter Haverfield, LLP
1301 East Ninth Street, Suite 3500
Cleveland, OH 44114
(216) 928-2935

Attorney for State Defendants:
Kim S. Murphy, Esq.
New York State Attorney General's Office
Main Place Tower, Suite 300A
350 Main Street
Buffalo, NY 14202
(716) 853-8400

Co-Counsel for Defendant National Collegiate Athletic Association, et al.:
William C. Odle, Esq.
Shook, Hardy & Bacon
2555 Grand Boulevard
Kansas City, MO 64108
(816) 474-6550

3. *Peters v. City of Buffalo*, 848 F. Supp. 2d 378 (W.D.N.Y. 2012) (Hon. William M. Skretny, District Judge; Hon. Jeremiah J. McCarthy, Magistrate Judge).

In a matter that has been pending since 2012, we represent the former District Attorney of Erie County, Mr. Clark, in a federal court action based on the alleged wrongful conviction of a woman for the murder of her daughter. After the woman had spent 13 years in jail, DNA tests provided evidence that called her guilt into question. In the ensuing investigation, medical experts retained by the prosecutor's office opined that the cause of death was not strangulation as previously concluded but rather was a drug overdose. Consequently, the District Attorney's Office declined to try the case again and moved for dismissal in the interest of justice, which was granted. The pending lawsuit alleges that the prosecutors improperly granted immunity to the individual responsible for the young woman's death, failed to obtain all the evidence, and incorrectly focused the investigation and eventual prosecution on the wrong person. I have been responsible for the pre-trial and discovery matters in this case to date and have made most court appearances before the magistrate judge.

Attorney for Plaintiff:
Steven M. Cohen, Esq.
Hogan Willig
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(716) 636-7600

Attorney for Defendant County of Erie:
Andrea Schillaci, Esq.
Hurwitz & Fine, P.C.
1300 Liberty Building
Buffalo, NY 14202
(716) 849-8900

Attorney for Defendants City of Buffalo and Buffalo City Police Department:
Timothy A. Ball, Esq.
City of Buffalo Department of Law
65 Niagara Square
Buffalo, NY 14202
(716) 851-4318

Attorney for Defendant Marusak:
Richard S. Atwater, Esq.
Gross, Shuman, Brizdle, & Gilfillan, P.S.
465 Main Street, Suite 600
Buffalo, NY 14203
(716) 854-4300

4. *Lincoln Trust v. Spaziano*, 969 N.Y.S.2d 804 (2013) (New York State Supreme Court)

(Hon. Anthony J. Paris, J.S.C.), aff'd, Lincoln Trust v. Spaziano, 118 A.D.3d 1339 (4th Dep't 2014) (New York State Supreme Court, Appellate Division, Fourth Department) (Hons. Centra, Fahey, Peradotto, Lindley, and Valentino).

From 2004 until 2014, I represented one of Buffalo's largest law firms in this legal malpractice suit alleging a conflict of interest and damages resulting from the alleged failure to protect the lender's interest in a sophisticated loan transaction. We obtained summary judgment on behalf of the law firm, and the New York State Supreme Court, Appellate Division, Fourth Department, unanimously affirmed. I took or defended all depositions, wrote or edited all the briefs that were submitted to the trial court and the appellate court, and argued both the motion for summary judgment and the appeal.

Attorney for Plaintiffs:
David L. Rasmussen, Esq.
Davidson Fink, LLP
28 East Main Street, Suite 1700
Rochester, NY 14614
(585) 756-5952

Defendant Albert D. Spaziano (pro se)

Attorney for Albert Mercury:
Richard T. Sullivan, Esq.
Harris Beach LLP
Larkin at Exchange
726 Exchange Street, Suite 1000
Buffalo, NY 14210
(716) 200-5050

5. *Dick Road-Blend All Hotel Development, Inc., et al. v. Cipolla, et al.* Index No. 4236/08 (New York State Supreme Court) (Hon. John M. Curran).

From 2008 to 2009, I served as the lead trial counsel in a contempt prosecution for violation of an injunction. In 2008, the plaintiffs moved for injunctive relief in connection with a contract that precluded the use of certain premises as a nightclub. After conducting an evidentiary hearing, the court issued the requested injunction. A few months later, however, the plaintiffs brought a contempt proceeding for violation of the injunction. I handled the trial of that contempt proceeding, offering factual and expert testimony to establish that the premises were being operated as a "nightclub, discotheque or dance hall," as opposed to a restaurant with a bar. The defendants offered the testimony of a marketing expert in the entertainment industry disputing that conclusion. The court issued a "Conditional Order of Contempt," finding the defendants in contempt of court but permitting them to purge their contempt by complying immediately with certain restrictions.

Co-Counsel for Plaintiffs:
Giuseppe A. Ippolito, Esq.
United States District Court
2 Niagara Square, Room 693
Buffalo, NY 14202
(716) 551-1864
(Formerly with Connors & Vilardo, LLP)

Attorney for Defendants Cipolla & Urbandale Development Company:
Charles C. Swanekamp, Esq.
JAECKLE FLEISCHMANN &
MUGEL, LLP
Avant Building, Suite 900
200 Delaware Avenue
Buffalo, NY 14202
(716) 856-0600

Attorney for Defendant Buffamonti:
Jill L. Yonkers, Esq.
HODGSON RUSS LLP
140 Pearl Street, Suite 100
Buffalo, NY 14202
(716) 849-1319

Attorney for Defendant Pasta Grill, Inc.:
Michael Bly Santa-Maria, Esq.
475 Virginia Street
Buffalo, NY 14202
(716) 203-1130
(Solo Practitioner)

Attorney for Defendants T.D.K. National Corporation & Schillo:
Hon. Mark A. Montour, J.S.C.
(now a New York State Supreme Court Justice)
50 Delaware Avenue, Part 30
Buffalo, NY 14202
(716) 845-2191
(Formerly in Solo Practice)

6. *Ramos v. Howard Indus., Inc.*, 10 N.Y.3d 218 (New York Court of Appeals 2008) (Hons. Kaye, Ciparick, Graffeo, Read, Smith, Pigott, and Jones).

In March 2006, I was retained to handle the appeal of this matter and to represent the defendant, which had lost a motion for summary judgment in a products liability case. The plaintiff claimed that he was injured by a product with a manufacturing defect, but the product – an electric transformer – could not be located for inspection when the

lawsuit was filed. The defendant moved for summary judgment on the grounds that the plaintiff could not make out a prima facie case that the missing product was defective, but the trial court denied the motion and the New York State Supreme Court, Appellate Division, Fourth Department, affirmed the ruling. In a six-to-one decision, the Court of Appeals reversed, found in favor of the defendant, and granted summary judgment dismissing the case. I wrote the briefs and argued before the Court of Appeals.

Attorney for Respondent:
Stephen C. Halpern, Esq.
Dolce Panepinto, PC
1600 Main Place Tower
Buffalo, NY 14202
(716) 852-1888

7. *Data-Track Account Servs. v. Lee*, No. 1999-960 (New York State Supreme Court 2002) (Hon. Joseph G. Makowski, J.S.C.), *aff'd* 17 A.D.3d 1115 (4th Dep't 2005) (Hons. Pigott, Gorski, Pine and Lawton).

From 2000 to 2003, I was the lead trial attorney for the plaintiffs – National Fuel Gas Company and its subsidiaries – in a contempt prosecution of a former attorney for the National Fuel Gas Company. The issues included the violation of court orders protecting sensitive information from disclosure and the disclosure of information protected by those court orders and the attorney-client privilege. After more than 30 days of bench trial and related proceedings conducted over the course of more than a year, the court held the defendant in contempt of court. In an appeal I did not handle, the appellate court affirmed the trial court's holding of contempt while vacating one paragraph of its order.

Co-Counsel for Plaintiffs:
Kenneth A. Manning, Esq.
John G. Schmidt, Jr., Esq.
Phillips Lytle LLP
1 Canalside
125 Main Street
Buffalo, NY 14203
(716) 847-8400

Attorney for Defendant:
David G. Jay, Esq. (deceased)

8. *Panczykowski v. Laborers' Int'l Union*, No. 97-cv-0832A, 2000 U.S. Dist. LEXIS 4847 (W.D.N.Y. March 31, 2000) (Hon. Richard J. Arcara, District Judge), *aff'd*, 2 F. App'x 157 (2d Cir. 2001) (Hons. Van Graafeiland, McLaughlin, Katzmann).

From 1996 to 2001, I represented the defendant union along with several of its attorneys and officers. This case involved a defamation claim arising out of a union complaint for trusteeship, disciplinary charges, and notices stating that the plaintiffs had committed

conduct that was prohibited under the union constitution. The district court dismissed all claims as pre-empted by federal labor law. On appeal, the Second Circuit affirmed the dismissals. I was lead counsel in both the district court and on appeal, and I wrote or edited all submissions and presented oral argument.

Attorneys for Plaintiffs-Appellants:
Eugene C. Tenney, Esq.
Law Offices of Eugene C. Tenney
5 Niagara Square
Buffalo, NY 14202
(716) 883-0355

Robert H. Perk, Esq.
995 Elmwood Avenue
Buffalo, NY 14222
(716) 883-0355
(Solo Practitioner)

9. *Fisher v. Goord*, 981 F. Supp. 140 (W.D.N.Y. 1997) (Hon. Richard J. Arcara, District Judge).

From 1996 to 1997, I represented Mr. Stiles, a prison guard, in a testimonial injunction hearing involving Ms. Fisher, who became infamous in the 1990s as "the Long Island Lolita" and pled guilty to shooting the wife of her lover, Mr. Buttafuoco. Ms. Fisher was incarcerated in an upstate New York prison facility, and she sought a transfer because of what she alleged was sexual harassment by certain prison guards. The district court judge conducted a lengthy testimonial hearing. Because there were numerous attorneys involved for the prison guards, Judge Arcara instructed defense counsel to choose one attorney to present closing arguments, and I was chosen as that attorney. Judge Arcara denied Ms. Fisher's motion for injunctive relief.

Attorney for Plaintiffs:
Glenn E. Murray, Esq.
295 Main Street, Room 360
Buffalo, NY 14203
(716) 851-8207
(Solo Practitioner)

Attorney for Defendant Schwartz:
Richard J. Barnes, Esq.
Cellino & Barnes
350 Main Street
Buffalo, NY 14202
(716) 566-2200
(Formerly with Cantor, Lukasik, Dolce & Panepinto)

Attorney for Defendant Desalvo:
Andrew Lipkind, Esq.
Office of Homeland Security
30 North 41st Street
Philadelphia, PA 19104
(Formerly with Law Office of Andrew Lipkind)

Attorney for Defendant Hemley:
Patrick B. Curran, Esq.
Damon Morey LLP
200 Delaware Avenue
Buffalo, NY 14202
(716) 856-5500

Attorney for Defendant Galbreath:
Mark R. Walling, Esq.
6225 Sheridan Drive, Suite 206
Buffalo, NY 14221
(716) 632-2782
(Solo Practitioner)
(Formerly with Watson, Bennett, Colligan, Johnson & Schechter (Now Watson Bennett))

Attorneys for Defendant Schmidt:
Corey J. Hogan, Esq.
Hogan Willig
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Amherst, NY 14068
(716) 636-7600

Stephen C. Ciocca, Esq.
Cellino & Barnes
350 Main Street
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(716) 854-2020
(Formerly with Hogan Willig)

Attorney for Defendant Kuttner:
Brian J. O'Donnell, Esq.
(Current address unknown)
(Formerly with Rowley, Forrest, O'Donnell & Beaumont, P.C.)

Attorney for Defendant Shimley:
Cheryl Smith Fisher, Esq.
Magavern Magavern Grimm LLP
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Attorneys for Defendant Thomas:
Mark D. Grossman, Esq.
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Niagara Falls, NY 14301
(716) 284-6513
(Solo Practitioner)

Anthony Ben, Esq.
Ben & Ben
193 East Avenue
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10. *Blum v. Schlegel*, 1996 U.S. Dist. LEXIS 21598, 1996 WL 925921(W.D.N.Y. May 9, 1996) (Hon. William M. Skretny, District Judge; Hon. Carol E. Heckman, Magistrate Judge), *aff'd*, 1997 U.S. App. LEXIS 5442 (2d Cir. March 21, 1997) (Hons. Cardamone, Leval, Circuit Judges; Ward, District Judge).

From 1992 until 1997, I represented Ms. Avery, an intervenor, in a lawsuit brought by Mr. Blum, a former law professor at the State University of New York at Buffalo School of Law who was denied tenure. In an attempt to support his lawsuit against the law school, and specifically his argument that his tenure denial was wrongful and discriminatory, the plaintiff requested access to the confidential tenure file of Ms. Avery, a fellow professor. The court granted access under a strict confidentiality order, but the plaintiff violated that order, and we sought sanctions. After a bench trial, the district court sanctioned the plaintiff by dismissing his claim against the law school. The plaintiff then appealed, and the Second Circuit affirmed. I handled all discovery, motion practice, and other pretrial matters; tried this contempt proceeding in the United States District Court; and handled the briefing and oral argument on appeal to the Second Circuit.

Attorneys for Plaintiff-Appellant:
Jeffrey M. Blum, Esq. (pro se)

James Ostrowski, Esq.
63 Newport Avenue
Buffalo, NY 14216
(716) 435-8918
(Solo Practitioner)

Attorney for Respondent-Appellant:
James Ostrowski, Esq. (pro se)
63 Newport Avenue
Buffalo, NY 14216

(716) 435-8918
(Solo Practitioner)

Attorney for Defendants-Appellees:
Peter B. Sullivan, Esq.
New York State Attorney General's Office
Main Place Tower, Suite 300A
350 Main Street
Buffalo, NY 14202
(716) 853-8400

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 courtroom experience, I have represented the Roman Catholic Diocese of Buffalo, New York, and have served as a confidential advisor to four bishops on matters that include defalcations by church employees and allegations of abuse against clerics and others associated with the church. I have represented targets or witnesses in a number of federal investigations involving possible False Claims Act or criminal liability. I have been retained as a legal expert on judgment enforcement, age discrimination, and attorney's fees by Buffalo's two largest law firms and by the New York State Attorney General, respectively.

    I served as an editor of Litigation Magazine for about 18 years, including two years as Editor-in-Chief. I also served a three-year term as a member of the governing Council of the ABA Litigation Section, as well as a one-year term as Co-Director of Publications of that Section. I currently serve on the New York State Bar Association Committee on Standards of Attorney Conduct, the committee charged with monitoring and evaluating the New York Code of Professional Responsibility and other provisions that regulate lawyers and the practice of law in New York State. I also serve on the Erie County Bar Association Nominating Committee (elected to a three-year term in 2012). That committee screens and chooses candidates to run for contested offices and positions on the board of directors of the Erie County Bar Association.

    I have not performed lobbying activities on behalf of any client.

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 about five years, from 1982 to 1987, I taught Constitutional Law at Canisius College. Copies of the syllabi for Spring 1983 and Fall 1984 are supplied.

In 1987, I also taught Appellate Practice at the State University of New York at Buffalo School of Law. I took the responsibility of teaching that course after its professor, the Honorable Charles S. Desmond, former Chief Judge of the State of New York, died early in the semester. I do not have a syllabus for that 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.

    Other than receipt of my share of law firm profits, which would be computed pro-rata depending on my termination date, and profit sharing and IRA plans to which my spouse and I have contributed, I have no anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts, or other 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.

    I currently serve without compensation on the Boards of Trustees of Canisius College and the Irish Classical Theatre Company. I would resign those positions, if necessary, if selected to serve as a district judge. I have no other plans, commitments, or agreements to pursue outside employment.

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

    See 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 believe that the ethical rules would preclude me from presiding over cases handled by my current law firm for a period of time. After that time expires, in the interest of candor and fairness to all sides, I would ensure that all parties and counsel know of my prior connection to the firm and partnership with individual attorneys. I also would keep a list of clients of my former firm, and I would do a conflict check to determine whether there are any issues in that regard. Likewise, I would keep a list of my investments and would follow the same conflict check and procedures for those companies as well. It is unlikely that any other persons, categories of litigation, or financial arrangements would present a conflict; if such a conflict arose, however, I would apply the applicable rules and procedures governing recusal.

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 meticulously follow the rules in 28 U.S.C. § 455, the procedures in 28 U.S.C. § 144, and Canon 3 of the Code of Conduct for United State Judges and recuse myself when those rules require or when I believe that my impartiality might reasonably be questioned.

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 done pro bono work over the years, but it often has been on an ad hoc basis and I have not kept track of the time spent. For example, I have charged modest retainers to clients in criminal matters and have voluntarily worked pro bono when those retainers ran out. I have advised and worked pro bono for attorneys facing disciplinary charges who could not afford to pay. I recently represented a young couple who were victims of credit card fraud, communicating with their credit card company until the problem was resolved. I also regularly consult with other attorneys in my office to assist with their pro bono cases.

In addition to this pro bono work and the considerable time spent volunteering in bar association activities, I also have given back to the community by volunteering my time on the boards of various organizations. I spent hundreds of hours volunteering for Canisius High School, first as a Board Member and then as Board Chair. While serving as Board Chair, I worked with the president of the high school to help ensure diversity by finding ways to offer financial aid to students who otherwise could not afford to attend. To encourage young people to serve, I have sponsored a partial scholarship at Canisius College for students with demonstrated need and a commitment to service. I also serve

without compensation on the boards of trustees of Canisius College and the Irish Classical Theatre Company. As Chair of the Student Life Committee for Canisius College and former Chair of the Trusteeship Committee for the Irish Classical Theatre Company, I have spent many hours chairing committee meetings and reporting to the boards of those organizations.

26. **Selection Process**:

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

On June 13, 2014, I submitted a questionnaire to United States Senator Charles E. Schumer's selection commission for vacancies for the Western District of New York. On July 17, 2014, I interviewed with the commission in New York, New York. On July 25, 2014, I interviewed with Senator Schumer and his New York State Director in New York, New York. On August 13, 2014, Senator Schumer called me to advise that he was submitting my name to President Barack Obama as a candidate for the district court opening. Since that day, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 19, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 4, 2015, 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.

Statement of Senator Charles Grassley
Chairman
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary regarding the Nominations of:

Dale A. Drozd, to be a United States District Judge for the Eastern District of California
Ann Donnelly, to be a United States District Judge for the Eastern District of New York
Lawrence J. Vilardo, to be a United States District Judge for the Western District of New York
LeShann DeArcy Hall, to be a United States District Judge for the Eastern District of New York

I'd like to welcome the nominees to the Senate Judiciary Committee. Being nominated to the federal judiciary is a significant accomplishment and reflects well on the career of each of the nominees. This a proud moment for you and your families. Congratulations on your nominations.

Today's hearing is the 5th nominations hearing this year during which we will have considered a total of 14 nominees (4 executive and 10 judicial nominees). This total includes hearings for both the Attorney General and the Deputy Attorney General. Under the Leahy standard set in 2007, this Committee, at the same point in the year, held only 4 nominations hearings for a total of 13 nominees. So far this year, we have exceeded the standard set by then-Chairman Leahy in 2007.

And regarding circuit court nominations, I would note that at this point in 2007, under the Leahy standard, the Committee had held a hearing for one circuit court nomination. Thus far in the 114th Congress, we have followed the Leahy standard and held a hearing and processed out of committee one circuit court nominee, Kara Stoll.

Regarding floor activity, there has been some confusion about the record from 2006 and 2007. At the end of 2006, during Bush's presidency, 13 district court judges who were already voted out of committee and awaiting consideration on the Senate floor were returned to the President. Those nominees were then re-submitted to the Senate in January of 2007, and processed in the new Congress. So, that's why the Senate had considered the number that it had by this point in 2007. This is the standard practice. And that practice is typically followed so that newly elected members have an opportunity for their voices to be heard.

Now, contrast that to what happened last November and December. The Democrats, without regard for Senate history or practice, rammed through 11 federal judges during the Lame Duck who, under regular order, should have been considered this Congress, just like was done in

2007. Had the historical practice been followed, we'd have about the same number of confirmations by now.

Overall, the Senate has confirmed 309 of President Obama's judicial nominees. At the same point in his presidency, President Bush only had 274 judicial nominees confirmed. So I will again point out that President Obama is doing significantly better in terms of judicial confirmations than President Bush was at this point in his presidency.

Senator Grassley
Questions for the Record

Ann Marie Donnelly,
Nominee, U.S. District Judge for the Eastern District of New York

1. 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. How will you handle, for instance, cases of first impression?

2. What role, if any, do you believe a federal judge should play in balancing seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.

3. How much discretion do you think is appropriate for judges to have during sentencing?

4. What is the most important attribute of a judge, and do you possess it?

5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

13. If confirmed, how do you intend to manage your caseload?

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

15. 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?

16. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?

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

Dale Alan Drozd
Nominee, U.S. District Judge for the Eastern District of California

1. In *Lewis v. Mayle,*[1] a case involving a *habeas* petition, you found that petitioner had effectively waived his right to conflict-free counsel by signing two written waivers and consenting verbally before the court and that the conflict did not adversely affect counsel's performance. The Ninth Circuit reversed and remanded, finding the waiver of conflict invalid because petitioner was not informed of continuing duties of loyalty to past clients. The Court also found that the conflict adversely affected counsel because he failed to impeach the witness and held that to conclude alternatively was "an objectively unreasonable application of clearly established federal law."[2] After reading the Ninth Circuit's opinion in this matter, do you believe the Court was correct in its conclusions?

2. You mentioned in your questionnaire that you have given several speeches on judicial independence. Please describe your current thoughts on what it means to be an independent judge as well as the importance of judicial independence.

3. Please identify the speeches by Justice O'Connor that you read, which are referenced multiple times in your questionnaire in response to Question 12(d).

4. In *Anderson v. Tehune*, you were faced with a Fifth Amendment issue. The petitioner in the case claimed that he had invoked his Fifth Amendment right to remain silent by stating the words "I plead the fifth," although he continued to respond to questions after that statement. You held that that was not an invocation of his right to remain silent. The Ninth Circuit disagreed with you, finding the statement to be an unambiguous declaration of the right to remain silent.

    a. I recognize that the Ninth Circuit's opinion is now binding. As a general matter, what is your approach regarding the scope and breadth of constitutional rights?

    b. As a general matter, should constitutional rights be interpreted narrowly or broadly?

5. In *South v. Gomez*, you were faced with an Eighth Amendment issue regarding the right to hormone therapy for transgender inmates. Your decision is fairly narrow, relying heavily on the sudden termination of the therapy and the medical issues that causes. Do you believe that denying taxpayer funded hormone therapy to an inmate would violate the Eighth Amendment?

6. What is the most important attribute of a judge, and do you possess it?

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[1] No. 2:99-cv-1751 FCD DAD, Docket No. 31 (E.D. Cal. Apr. 15, 2003).
[2] 391 F.3d 989, 997 (9th Cir. 2004).

7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

8. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

9. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

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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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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. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?

19. Please describe with particularity the process by which these questions were answered.

    a. Do these answers reflect your true and personal views?

Senator Grassley
Questions for the Record

LaShann Moutique DeArcy Hall,
Nominee, U.S. District Judge for the Eastern District of New York

1. From your questionnaire it appears that you have had limited experience with criminal matters. If confirmed as a federal district court judge, you will be presiding over both civil and criminal matters.

   a. What experience do you have with criminal law?
   b. What steps have you taken or will you take to familiarize yourself with the area of criminal law?

2. During your hearing Senator Tillis asked you about the pro bono work you did in a death penalty appeal. You said your involvement with the case focused on an ineffective assistance of counsel in jury selection. According to the appellate decision in *Ex parte Harris*, you and your team argued the prosecutor purposefully discriminated against potential black jurors during jury selection. Please describe the basis for this claim.

3. What role, if any, do you believe a federal judge should play in balancing seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.

4. How much discretion do you think is appropriate for judges to have during sentencing?

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?

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18. Please describe with particularity the process by which these questions were answered.

19. Do these answers reflect your true and personal views?

Senator Grassley
Questions for the Record

Lawrence Joseph Vilardo
Nominee, U.S. District Judge for the Western District of New York

1. You represented Dr. Ivan D'Souza in an appeal after New York's Administrative Review Board for Professional Medical Conduct sustained 14 charges against him. According to the New York Supreme Court's opinion in the matter, you argued that the Board did not have sufficient evidence to sustain the charges against the doctor, in part because "the patients' delay in reporting the alleged sexual contact to third parties rendered the reports so inherently unreliable as to preclude their admissibility."

    a. Notwithstanding New York's rules of evidence, including the prompt outcry rule, in your opinion, at what point is a sexual assault survivor's reporting of crimes against him or her no longer reliable?

    b. Do you believe that a survivor of sexual assault is less credible when she or he does not quickly report the crime?

2. You indicated in your questionnaire that you have unable to find notes, transcripts, or recordings for several of your speeches. Please provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the following talks:

    a. April 13, 2014: Panel Discussion at Buffalo Pediatric Society regarding legal, ethical, and moral issues arising from parents' refusing vaccinations for their children.

    b. December 19, 2013: "Real Life vs. Reel Life Ethics," New York State Bar Association, regarding legal ethics as seen in motion pictures.

    c. September 21, 2002: Panel Discussion, Jesuits for Upstate New York, regarding the clergy sex abuse crisis.

    d. March 2, 2000: "Mini-Medical School" Presentation at SUNY Buffalo Law School, regarding the legal issues connected with obstetrics and delivery resulting in an injured infant.

3. How will you handle the cases of litigants who are members of organizations to which you currently belong or once belonged to, or which you represented as an attorney?

4. What is the most important attribute of a judge, and do you possess it?

5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

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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?

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15. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?

16. Please describe with particularity the process by which these questions were answered.

17. Do these answers reflect your true and personal views?

QUESTIONS SUBMITTED TO HON. ANN DONNELLY, LASHANN DEARCY HALL, AND LAWRENCE J. VILARDO BY SENATOR VITTER

1. What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?
2. In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?
3. The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?
4. Do you agree that the ruling in Baker v. Nelson precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that US v. Windsor contradicts the Court's previous ruling in Baker?
5. What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?
6. How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?
7. Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?

QUESTIONS SUBMITTED TO HON. DALE A. DROZD BY SENATOR VITTER

1. What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?
2. In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?
3. The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?
4. Do you agree that the ruling in Baker v. Nelson precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that US v. Windsor contradicts the Court's previous ruling in Baker?
5. How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?
6. Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?
7. What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?
8. You gave seven speeches on the topic of judicial independence. In at least one of those speeches, you stated, "The main check the judicial branch has on the others is the power to declare statutes or executive acts unconstitutional, though sometimes we judges might check the political branches in a softer way, merely by interpreting a statute in light of constitutional values or by ruling that a regulation of executive act isn't authorized by statute." When you refer to "constitutional values," it appears as though you support the notions of the constitution as a living document and a non-textualist approach to statutory interpretation. Will you please explain your philosophy on judicial interpretation?
9. You also said, "Chief Justice John Marshall, who spent thirty-five years trying to nurture a culture where the political branches were, by and large, willing to acquiesce in the judicial branch's interpretation of the law. They don't always acquiesce, but fortunately, most of the time, politicians don't challenge the courts to come enforce their judgments themselves, as Andrew Jackson did in the wake of the Supreme Court's decision in *Worcester v. Georgia*. Creating a culture in the early Republic where, usually, courts' judgments were enforced by the other branches of government is an accomplishment that entitles John Marshall to take his place in the fresco of great lawgivers ...." This quote flies in the face of the checks and balances of government that is a cornerstone of the

Constitution and suggests that you support judicial strong arming. Does this quote embody your judicial philosophy on checks and balances and the role of the judicial branch?

10. Is it necessary within our system of checks and balances for all branches to challenge unconstitutional acts of the other branches?
11. In the same quote from above, you mention the case of *Worcester v. Georgia*, where the Supreme Court issued an order that would have caused the release from prison of Samuel Worcester, a Christian missionary to the Cherokee Indians, who was imprisoned pursuant to a Georgia law that the Supreme Court declared unconstitutional. President Andrew Jackson refused to enforce the Supreme Court's ruling and it appears that you disagree with his actions, is that fair to say?
12. Along the same lines, are there cases where you believe a President, Congress, and/or other officeholders should have properly refused to acquiesce to a Court order?

Senator Grassley
Questions for the Record

Ann Marie Donnelly,
Nominee, U.S. District Judge for the Eastern District of New York

1. **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. How will you handle, for instance, cases of first impression?**

   Response: I first familiarize myself with the complete factual record of a case. I review the submissions of both parties, and request oral argument when I believe that it will be helpful. I study applicable statutes and precedent, and apply the law to the relevant facts. I then prepare an opinion that clearly explains the reasons for my conclusions. In a case of first impression that does not involve statutory interpretation, I look at cases in my jurisdiction involving similar issues and consult decisions from other jurisdictions. I have not had a case of first impression involving the interpretation of a statute; if I were to confront such an issue, I would employ the canons of statutory construction.

2. **What role, if any, do you believe a federal judge should play in balancing seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.**

   Response: In imposing a sentence, a federal judge should give deference to the Federal Sentencing Guidelines. A federal judge must also consider the factors outlined in 18 U.S.C. Section 3553(a)(2): the nature of the offense and the defendant's history and circumstances, as well as the need for the sentence to reflect the seriousness of the crime, to promote respect for the law, to provide a just punishment for the offense, to deter criminal conduct, to protect the public and to provide the defendant with any necessary training and treatment. If confirmed, I will follow Supreme Court and Second Circuit precedent.

3. **How much discretion do you think is appropriate for judges to have during sentencing?**

   Response: If confirmed, I will give deference to the Federal Sentencing Guidelines. A federal judge should begin by consulting the guidelines, which although advisory, are a critical tool to ensuring uniformity and predictability in sentencing. A federal judge must also consider the factors set forth in 18 U.S.C. 3553(a)(2). The Supreme Court has determined that lower court judges have discretion to depart from the guidelines if there are aggravating or mitigating circumstances not adequately reflected in the guidelines.

4. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is fidelity to the rule of law. The foundations of this philosophy are impartiality, adherence to binding precedent, an even and respectful temperament, and a recognition of the limits of a district judge's authority under our Constitution. I believe that I have demonstrated a strong commitment to the rule of law throughout my six years on the New York Supreme Court.

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: An appropriate judicial temperament is vital to the fair and efficient functioning of a courtroom. A judge must treat all who appear before her with patience, dignity and respect, and yet maintain appropriate control of the courtroom and the docket. I believe that I have achieved this balance in state court, and that I have always demonstrated the appropriate judicial temperament.

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 time as a state court judge, I have always followed binding precedent, regardless of any personal opinion. If confirmed to be a federal district judge, I will continue to do so.

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 the issue involved the interpretation of a statute, I would first look to the text of the statute; if the statutory language is unambiguous, I would base my decision on the statute's plain meaning. If there were any ambiguity in the language, I would apply the canons of statutory construction, including looking to Supreme Court and Second Circuit case law interpreting analogous statutes, and case law from other jurisdictions.

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: As a federal district judge, I would be bound by decisions of the Supreme Court and the Second Circuit, and would apply that precedent, regardless of any personal opinions about the merits of that precedent.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Statutes enacted by Congress are presumed to be constitutional, and a judge is empowered to declare a statute unconstitutional only when it is clear that the statute is in conflict with the Constitution or exceeds congressional 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. Judges must base their decisions on binding precedent from the Supreme Court and the circuit courts in their jurisdictions.

11. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

    Response: As a judge on New York's Supreme Court, I have always based my decisions on established precedent and the rule of law, without regard to any personal opinion or ideology. If confirmed as a district court judge, I will continue that practice.

12. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

    Response: My tenure as a state court judge is the best evidence I can provide of my commitment to the rule of law and to treat all litigants fairly and impartially. If confirmed as a federal court judge, I will continue to abide by that commitment.

13. **If confirmed, how do you intend to manage your caseload?**

    Response: As a judge in one of the busiest court systems in the country, I have been obligated to manage heavy calendars, issue prompt and clear rulings, and conduct trials efficiently and fairly. If confirmed as a district court judge, I will make use of all case management tools available in the Eastern District of New York. I will take an active role in scheduling, and will hold conferences with lawyers, set realistic and firm timetables, and encourage resolutions where appropriate. I will also consult with magistrate judges to manage my docket. I will set definite and reasonable trial schedules, and issue decisions promptly.

14. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

    Response: Judges play a vital role in moving cases along fairly and efficiently. If confirmed as a district court judge, I will take the steps outlined in Question 13.

15. Do you believe there is a right to privacy in the U.S. Constitution?

Response: While the Constitution does not include a specific "right to privacy," the Supreme Court has recognized a right to privacy in the following contexts: a First Amendment protection in "the freedom to associate and privacy in one's associations," (*NAACP v. Alabama*, 357 U.S. 449, 462 (1958)); a Fourth Amendment right of privacy in the home and in one's person and possessions (*Mapp v. Ohio*, 367 U.S. 643, 656 (1961); *see also Riley v. California*, 134 S. Ct. 473 (2014)); a Fifth Amendment "zone of privacy" in the Self Incrimination Clause (*Griswold v. Connecticut*, 381 U.S. 479, 484 (1965); *Boyd v. United States*, 116 U.S. 616, 630 (1886)); and a Third Amendment privacy right in the prohibition against the nonconsensual quartering of soldiers (*Griswold*, 381 U.S. at 484; *Katz v. United States*, 389 U.S. 347, 350 n.5 (1967)). The Court has also held that the Due Process Clause of the Fourteenth Amendment includes a right to marital privacy, (*Griswold, supra*) and protects liberties that are "objectively, deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotations and citations omitted).

a. Where is it located?

Response: Please see above.

b. From what does it derive?

Response: Please see above.

c. What is your understanding, in general terms, of the contours of that right?

Response: Please see above.

16. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?

Response: As a state court judge, I make my decisions based on binding precedent, not on any personal feelings about the litigants or the issues. If confirmed, I will continue to adhere to this practice.

17. Please describe with particularity the process by which these questions were answered.

Response: The Office of Legal Policy at the Department of Justice forwarded these questions to me on May 13, 2015. I reviewed the questions, and did research where

necessary. I then drafted answers, discussed them with an attorney for the Office of Legal Policy, and then finalized them for submission to the Committee.

18. Do these answers reflect your true and personal views?

Response: Yes.

Senator Vitter
Questions for the Record

Ann Marie Donnelly,
Nominee, U.S. District Judge for the Eastern District of New York

1. **What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

   Response: The Supreme Court recently held that the President is empowered to make recess appointments during any recess of sufficient length, and that "in light of historical practice, a recess of greater than three days but less than ten days is presumptively too short to fall within the [Appointments] Clause;" the Court used the word "presumptively" to leave open the possibility that some "very unusual circumstance...could demand the exercise of the recess-appointment power during a shorter break." *NLRB v. Canning*, 134 S. Ct. 2550, 2567 (2014). If confirmed, I would apply this precedent and any applicable Second Circuit case law.

2. **In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?**

   Response: The constitutionality of a law that mandates state hospital admitting privileges for doctors who perform abortions is currently the subject of litigation. Neither the Supreme Court nor the Second Circuit have ruled on this issue. As a judicial nominee, I do not believe that it would be appropriate for me to address this subject.

3. **The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?**

   Response: *Roe v. Wade*, 410 U.S. 113 (1973), as clarified and modified by subsequent cases (*see, e.g., Gonzales v. Carhart,* 550 U.S. 124 (2007); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)) is binding Supreme Court precedent, and lower courts must follow it.

4. **Do you agree that the ruling in Baker v. Nelson precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that US v. Windsor contradicts the Court's previous ruling in Baker?**

   Response: In 1971, the Minnesota Supreme Court rejected a constitutional challenge to a state law that restricted marriage to members of the opposite sex. *Baker v. Nelson*, 291 Minn. 310 (Minn. 1971), *appeal dismissed*, 409 U.S. 810 (1972). The plaintiff appealed to the Supreme Court, at a time when the Court was required to accept the appeal as a matter of right, and the Court dismissed the case "for want of a substantial federal question." The precedential significance of the Supreme Court's dismissal is limited, since a "summary affirmance is an affirmance of the judgment only." *Mandel v. Bradley*, 432 U.S. 173, 176 (1977). In *United States v. Windsor*, 133 S. Ct. 2675 (2013), the Court found that it had jurisdiction to consider whether the federal Defense of Marriage Act precluded Ms. Windsor from claiming a federal tax exemption as a surviving spouse. *Windsor* is established precedent that a district court judge is obligated to follow.

5. **What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?**

   Response: The philosophy to which I have adhered in my six years on the state court bench, and to which I will adhere if confirmed as a district court judge, is one of strict adherence to binding precedent, regardless of personal beliefs.

6. **How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?**

   Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), made applicable to the states in *McDonald v. City of Chicago*, 561 U.S. 742 (2008), the Court struck down an ordinance that banned the possession of handguns in the home. The Court ruled that the Second Amendment protects the right to keep and bear arms, but cautioned that "[l]ike most rights, the right secured by the Second Amendment is not unlimited," and that nothing in the decision "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at 626-27. Since *Heller* and *McDonald*, the Second Circuit has had occasion to consider various laws regulating the possession of firearms. *See, e.g., Burgess v. Town of*

Wallingford, 569 Fed. Appx. 21 (2d Cir. 2014), *cert. denied*, 135 S. Ct. 1401 (2015); *Kwong v. Bloomberg*, 723 F.3d 160 (2d Cir. 2013), *cert. denied sub nom. Kwong v. de Blasio*, 134 S. Ct. 2696 (2014); *United States v. Bryant*, 711 F.3d 364 (2d Cir. 2013), *cert. denied sub nom. Bryant v. United States*, 134 S. Ct. 904 (2013); *Kachalsky v. County of Westchester*, 710 F.3d 81 (2d Cir. 2012), *cert. denied sub nom. Kachalsky v. Cacace*, 133 S. Ct. 1806 (2013). If confirmed, I will follow the binding precedent of the Supreme Court and the Second Circuit.

7. **Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?**

Response: The Supreme Court recently heard arguments on this issue in *Glossip v. Gross*, and stayed the executions of the petitioners pending the Court's decision. As a judicial nominee, I do not believe that it would be appropriate for me to opine on this subject. If confirmed, I will follow binding precedent from the Supreme Court and the Second Circuit.

Senator Grassley
Questions for the Record

Responses of Dale Alan Drozd
Nominee, United States District Judge for the Eastern District of California

1. **In *Lewis v. Mayle,*[1] a case involving a *habeas* petition, you found that petitioner had effectively waived his right to conflict-free counsel by signing two written waivers and consenting verbally before the court and that the conflict did not adversely affect counsel's performance. The Ninth Circuit reversed and remanded, finding the waiver of conflict invalid because petitioner was not informed of continuing duties of loyalty to past clients. The Court also found that the conflict adversely affected counsel because he failed to impeach the witness and held that to conclude alternatively was "an objectively unreasonable application of clearly established federal law."[2] After reading the Ninth Circuit's opinion in this matter, do you believe the Court was correct in its conclusions?**

   Response: Given my judicial oath and the Code of Conduct for United States Judges, I believe it would be inappropriate for me, as a sitting United States Magistrate Judge, to express a personal opinion regarding binding circuit precedent. In this regard, Canon 2 of the Code of Conduct states that "a judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." In issuing my findings and recommendations in *Lewis v. Mayle,* as I have in all cases, I applied binding precedent to the record before me to the best of my ability. I concluded that the state court decision was not contrary to or an unreasonable application of clearly established federal law and that recommendation was adopted by the assigned District Judge. The United States Court of Appeals for the Ninth Circuit reversed that decision. I am bound by this circuit precedent and, if fortunate enough to be confirmed, would apply and follow it as well as all other precedent of the United States Supreme Court and the United States Court of Appeals for the Ninth Circuit.

2. **You mentioned in your questionnaire that you have given several speeches on judicial independence. Please describe your current thoughts on what it means to be an independent judge as well as the importance of judicial independence.**

   Response: An independent judge is one who upholds his or her oath of office, recognizing the limited but important role of the federal courts. An independent judge follows binding precedent in addressing all issues that come before the court, avoids addressing the constitutionality of a statute unless required to resolve the case before the court, and presumes statutes enacted by Congress to be constitutional. An independent judge does all of this without any bias or concern of reprisal for judicial acts. Judicial independence is of vital importance to the enforcement of the rule of law and the

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[1] **No. 2:99-cv-1751 FCD DAD, Docket No. 31 (E.D. Cal. Apr. 15, 2003).**
[2] **391 F.3d 989, 997 (9th Cir. 2004).**

protection of individual freedoms. Without it, our constitutional democracy – with its system of checks and balances among the three branches – would break down.

3. **Please identify the speeches by Justice O'Connor that you read, which are referenced multiple times in your questionnaire in response to Question 12(d).**

   Response: For seven years I've been invited by the American Legion to address the high school students participating in California's Boys State. On each of those occasions I read a short excerpt from remarks given by Supreme Court Justice Sandra Day O'Connor in 2005. Justice O'Connor's complete speech was entitled "Remarks on Judicial Independence" and was delivered on September 9, 2005 at a dedication ceremony at the University of Florida, Levin College of Law. I used an excerpt of Justice O'Connor's remarks, with attribution, because it used language that high school students could quickly understand and because it made an important point about our constitutional democracy, the rule of law and judicial independence. Justice O'Connor's speech may be found in its entirety at 59 *Florida Law Review* 1 (January 2006).

4. **In *Anderson v. Terhune*, you were faced with a Fifth Amendment issue. The petitioner in the case claimed that he had invoked his Fifth Amendment right to remain silent by stating the words "I plead the fifth," although he continued to respond to questions after that statement. You held that that was not an invocation of his right to remain silent. The Ninth Circuit disagreed with you, finding the statement to be an unambiguous declaration of the right to remain silent.**

   a. **I recognize that the Ninth Circuit's opinion is now binding. As a general matter, what is your approach regarding the scope and breadth of constitutional rights?**

      Response: As a United States Magistrate Judge I address any issues presented to me regarding the scope and breadth of a constitutional right by first considering the language of the provision at issue. My analysis is guided by United States Supreme Court precedent and then that of the United States Court of Appeals for the Ninth Circuit.

   b. **As a general matter, should constitutional rights be interpreted narrowly or broadly?**

      Response: The scope and breadth of constitutional rights should be interpreted in the manner prescribed by United States Supreme Court and federal circuit court precedent. As a United States Magistrate Judge, when called upon to do so, I have interpreted constitutional rights by attempting to faithfully follow that binding precedent to the best of my ability.

5. **In *South v. Gomez*, you were faced with an Eighth Amendment issue regarding the right to hormone therapy for transgender inmates. Your decision is fairly narrow,**

relying heavily on the sudden termination of the therapy and the medical issues that causes. Do you believe that denying taxpayer funded hormone therapy to an inmate would violate the Eighth Amendment?

Response: I do not believe it would be appropriate for me to address this issue since it is one that could come before me as a magistrate judge or, if confirmed, as a district judge. It is my understanding that at least one district court in California has recently addressed a similar issue and that decision is now on appeal before the United States Court of Appeals for the Ninth Circuit. If the issue was presented in a case before me, I would faithfully follow the binding precedent of the United States Supreme Court and the Ninth Circuit Court of Appeals in resolving it.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: I believe that the most important attribute of a judge is a true commitment to uphold the law. That commitment requires adherence to binding precedent and to the oath in which a judge swears to treat all who come before the court fairly under the law and with dignity and respect. That commitment also includes the pledge to produce thoughtful and well-reasoned decisions to the best of the judge's ability. During my almost eighteen years as a United States Magistrate Judge, I have demonstrated my commitment to uphold the law.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be patient and treat everyone who comes before the court courteously and with dignity and respect. While remaining conscious of the need for efficiency, a judge must give litigants and their lawyers an opportunity to be heard fully and to have their positions considered fairly by the court. I believe that I have demonstrated this temperament throughout my judicial career.

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 I am fortunate enough to be confirmed, I would faithfully apply and follow the controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Ninth Circuit. I would abide by the doctrine of stare decisis and appropriately employ judicial restraint even were I to disagree personally with that binding authority or the result of its application. These principles must be followed in order to ensure that the citizenry has faith in the judicial branch and our system of justice.

I have followed these principles for the nearly eighteen years I have served as a United States Magistrate Judge and will continue to do so.

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: In resolving questions of first impression, I would first look to the plain meaning of the language used in the text of the statute or other authority at issue. In keeping with the canons of statutory construction recognized by the United States Supreme Court and the United States Court of Appeals for the Ninth Circuit, where that language is clear and unambiguous, I would apply its plain meaning. Where the language at issue is ambiguous, I would first determine whether decisions of the Supreme Court or the Ninth Circuit have addressed analogous language in other contexts and, if so, would apply that guidance to the issue of first impression before me. If there was no such guidance provided by the decisions of the Supreme Court or the Ninth Circuit, I would then turn to the decisions of the other federal circuit courts and, finally, to those of district courts in searching for guidance as to how to interpret the language in question.

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 fortunate enough to be confirmed, I would faithfully apply and follow the controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Ninth Circuit regardless of my personal beliefs. During my career as a United States Magistrate Judge, I have done exactly that and would continue to do so.

11. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

    Response: At the outset, a federal court is to avoid addressing the constitutionality of federal statutes unless required to resolve the case before it. Beyond that, federal statutes are presumed to be constitutional, and if there is a reasonable interpretation of the statutory language that permits the statute to survive a constitutional challenge, that interpretation should be employed. It is appropriate for a federal court to declare a federal statute unconstitutional only in those rare instances in which Congress has exceeded its authority under the Constitution in enacting the statute or where the statute otherwise violates a constitutional provision.

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: I give the Committee my complete assurance in that regard. As for evidence, in almost eighteen years as a United States Magistrate Judge, I have issued over 30,000 orders and 5,500 findings and recommendations that demonstrate my commitment to the rule of law and my adherence to the doctrines of stare decisis and judicial restraint. If I am fortunate enough to be confirmed, I would continue to be faithful to that commitment and would follow and apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Ninth Circuit to the very best of my ability.

14. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: My record as a United States Magistrate Judge over the last almost eighteen years stands as evidence that I will always put aside any personal views I may have and remain fair to all who appear before me if I am fortunate enough to be confirmed. My commitment in that regard has earned me the reputation of being a fair and impartial judge who treats both lawyers and litigants courteously and with respect. I assure the Committee I will do everything I can to honor and maintain that reputation.

15. If confirmed, how do you intend to manage your caseload?

Response: Given my almost eighteen years of experience on the bench of the United States District Court for the Eastern District of California, I fully appreciate how challenging it will be to manage what will be a very high caseload by any standard. As a magistrate judge, I have relied upon all of the available electronic case management tools available to me to track cases and deadlines. I also recognize that effective case management requires a total team effort by all chambers staff, often in coordination with the magistrate judges of the court and their staffs. If fortunate enough to be confirmed, I would continue to use all of those techniques. In addition, I would strive to make time for early, in-person scheduling conferences with the parties at which I would, with their input, set reasonable deadlines, anticipate and plan for issues likely to arise in the course of the litigation, and do all else necessary to avoid disruption of the court's scheduling orders. Finally, I will strive to issue prompt rulings to the very best of my ability.

16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. I know from my experience as a United States Magistrate Judge that the judge or judges to whom a case is assigned set the tone in maintaining a timely pace and proper conduct in all litigation. Employment of available electronic case management

tools and in-person scheduling conferences at the outset of the litigation are valuable in this regard. I also believe it is important that the assigned judges remain available to parties for conferences regarding discovery disputes or other matters that arise during the course of the case. If I am fortunate enough to be confirmed, I would continue these practices, which I have employed over the past eighteen years.

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: Throughout my career as a magistrate judge, I have authored thousands of decisions. Before writing each such decision, I first review the briefing of the parties. While the briefing is obviously quite important, I also believe oral argument plays a vital role in the decision-making process. I listen carefully to the arguments of the parties. Oral argument provides the parties an opportunity to address my questions and concerns regarding the arguments they have presented. After determining the facts before the court, I discern the applicable legal principles as established by the relevant statutes and the binding (or if no binding, instructive) precedent. I then prepare a reasoned, written order fully explaining the basis for my decision to the parties.

18. **President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?**

Response: I am not familiar with this quote or the context in which the President made this statement. A judge must always make decisions in a fair and impartial manner, applying binding legal precedent to the facts established by the evidence after fully considering the positions of the parties. Any personal beliefs or opinions of the judge have no role in that decision-making process.

19. **Please describe with particularity the process by which these questions were answered.**

Response: On May 13, 2015, I received these Questions for the Record from the Office of Legal Policy. I reviewed the Questions and drafted my answers. I submitted those answers to the Office of Legal Policy for review and then finalized my responses before submitting them to the Committee

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a. **Do these answers reflect your true and personal views?**

Response: Yes.

Senator Vitter
Questions for the Record

Responses of Dale Alan Drozd
Nominee, United States District Judge for the Eastern District of California

1. **What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

   Response: In *N.L.R.B. v. Noel Canning*, 573 U.S. ___, 134 S. Ct. 2550, 2567 (2014), the Supreme Court concluded that: "a recess of more than 3 days but less than 10 days is presumptively too short to fall within the [Recess Appointments] Clause. We add the word 'presumptively' to leave open the possibility that some very unusual circumstance—a national catastrophe, for instance, that renders the Senate unavailable but calls for an urgent response—could demand the exercise of the recess-appointment power during a shorter break." If fortunate enough to be confirmed, I will continue to faithfully apply and follow all precedent of the United States Supreme Court, including the decision in *N.L.R.B. v. Noel Canning,* and of the United States Court of Appeals for the Ninth Circuit.

2. **In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?**

   Response: In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court reaffirmed the essential holding of *Roe v. Wade* but announced a new standard for determining the validity of laws restricting abortions. The new standard asks whether a state abortion regulation has the purpose or effect of imposing an "undue burden," which is defined as a "substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." *Id.* at 877. Applying this "undue burden" standard, the Court invalidated the spousal notification requirement of the Pennsylvania Abortion Control Act of 1982, but it upheld other provisions of that Act. Because the issue presented in this question is being litigated in various federal courts, I do not believe it would be appropriate for me to address the issue in advance of a case that could come before me. If confirmed as a district judge, I would faithfully apply and follow the binding precedent of the Supreme Court and the United States Court of Appeals for the Ninth Circuit in addressing such issues.

3. **The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?**

   Response: The Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973), has not been overturned. Moreover, the Supreme Court has reaffirmed the holding in *Roe* that

"[r]egardless of whether exceptions are made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." *Planned Parenthood v. Casey*, 505 U.S. 833, 879 (1992). The Supreme Court holding in *Gonzales v. Carhart*, 550 U.S. 124 (2007), in which the court rejected a facial challenge to the Partial-Birth Abortion Ban Act of 2003, is also binding precedent. These precedents of the Supreme Court are entitled to respect under the doctrine of stare decisis. If confirmed as a district judge, I would faithfully follow the binding precedent of the Supreme Court and the United States Court of Appeals for the Ninth Circuit.

4. **Do you agree that the ruling in Baker v. Nelson precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that US v. Windsor contradicts the Court's previous ruling in Baker?**

Response: In *Baker v. Nelson*, 291 Minn. 310, 191 N.W.2d 185 (1971), the Minnesota Supreme Court held that a state law limiting marriage to persons of the opposite sex did not violate the United States Constitution. The United States Supreme Court dismissed appellant Baker's appeal "for want of a substantial federal question." *Baker v. Nelson*, 409 U.S. 810 (1972). In *United States v. Windsor*, 133 S. Ct. 2675 (2013), the United States Supreme Court held the federal Defense of Marriage Act to be unconstitutional. In doing so, the court recognized that the "regulation of domestic relations" is "an area that has long been regarded as a virtually exclusive province of the States." *Id.* at 2691 (quoting *Sosna v. Iowa*, 419 U.S. 393, 404 (1975)). However, the court acknowledged that state power to define and regulate marriage was subject to Congress' authority "in enacting discrete statutes [to] make determinations that bear on marital rights and privileges" and "subject to constitutional guarantees." 133 S. Ct. at 2690 & 2692 (internal quotation marks omitted). Earlier this year, the Supreme Court granted certiorari in *Obergefell v. Hodges*, to determine whether the Fourteenth Amendment to the U.S. Constitution requires states to issue marriage licenses to same sex couples and to recognize same sex marriages lawfully licensed and performed out-of-state. *See* 135 S. Ct. 1039 (Jan. 16, 2015). The Supreme Court's resolution of these issues will be binding on all other federal courts. If fortunate enough to be confirmed as a district judge, I would faithfully follow the binding precedent of the Supreme Court and the United States Court of Appeals for the Ninth Circuit with respect to these issues.

5. **How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?**

Response: The Supreme Court has held that "the Second Amendment protects an individual right to keep and bear arms, *District of Columbia v. Heller*, 554 U.S. 570 (2008), that is fully applicable to the states and municipalities, *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010)." *Fyock v. Sunnyvale*, 779 F.3d 991, 996 (9th Cir.

2015). However, the Supreme Court has also stated that the right conferred by the Second Amendment is "not unlimited, just as the First Amendment's right of free speech was not." *Heller*, 554 U.S. at 595. The Ninth Circuit has employed the following two-prong test in determining whether a firearms regulation comports with the Second Amendment: (1) the court should ask "whether the challenged law burdens conduct protected by the Second Amendment;" and (2) if so, what level of scrutiny should be applied. *Fyock*, 779 F.3d at 996 (citing *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013)). If I am confirmed, I would follow the binding precedent of both the United States Supreme Court, including the decisions in *Heller* and *McDonald*, and the United States Court of Appeals for the Ninth Circuit in analyzing the scope of the rights conferred by the Second Amendment if confronted with a case presenting that issue.

6. **Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?**

   Response: Because this question calls for my opinion regarding a legal issue that is currently the subject of litigation, I do not believe it would be appropriate for me to address it. If confirmed as a district judge, I would continue to adhere to the precedent of the Supreme Court and the United States Court of Appeals for the Ninth Circuit regarding all issues with respect to capital punishment.

7. **What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?**

   Response: During my career as a United States Magistrate Judge I have faithfully applied and followed the controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Ninth Circuit regardless of any personal beliefs. I would continue to do so if fortunate enough to be confirmed.

8. **You gave seven speeches on the topic of judicial independence. In at least one of those speeches, you stated, "The main check the judicial branch has on the others is the power to declare statutes or executive acts unconstitutional, though sometimes we judges might check the political branches in a softer way, merely by interpreting a statute in light of constitutional values or by ruling that a regulation of executive act isn't authorized by statute." When you refer to "constitutional values," it appears as though you support the notions of the constitution as a living document and a non-textualist approach to statutory interpretation. Will you please explain your philosophy on judicial interpretation?**

   Response: This quote is from a short excerpt from remarks given by Supreme Court Justice Sandra Day O'Connor which I have read, with attribution, to high school students participating in the American Legion's California's Boys State program. I believe the Justice's remarks employed language that high school students could quickly understand and made an important point about our constitutional democracy, the rule of law and judicial independence. Justice O'Connor's speech may be found in its entirety at 59 *Florida Law Review* 1 (January 2006). If I am fortunate enough to be confirmed, I would

address any issues presented to me that could only be resolved on constitutional grounds by first considering the language of the provision at issue. My analysis of the text would be guided by precedent of the United States Supreme Court and the United States Court of Appeals for the Ninth Circuit. I would resolve the constitutional question, if necessary, in accord with the plain meaning of the provision's language and that binding precedent.

9. **You also said, "Chief Justice John Marshall, who spent thirty-five years trying to nurture a culture where the political branches were, by and large, willing to acquiesce in the judicial branch's interpretation of the law. They don't always acquiesce, but fortunately, most of the time, politicians don't challenge the courts to come enforce their judgments themselves, as Andrew Jackson did in the wake of the Supreme Court's decision in *Worcester v. Georgia*. Creating a culture in the early Republic where, usually, courts' judgments were enforced by the other branches of government is an accomplishment that entitles John Marshall to take his place in the fresco of great lawgivers ...." This quote flies in the face of the checks and balances of government that is a cornerstone of the Constitution and suggests that you support judicial strong arming. Does this quote embody your judicial philosophy on checks and balances and the role of the judicial branch?**

   Response: This quote is also from remarks given by Supreme Court Justice Sandra Day O'Connor. Although I am not certain of her intent, I believe that it praises the role Chief Justice John Marshall played in establishing the federal judiciary as one part of a system of ordered liberty in a young American constitutional democracy. With respect to my judicial philosophy, I believe that the system of checks and balances among the three branches serves a critical role in our constitutional form of government.

10. **Is it necessary within our system of checks and balances for all branches to challenge unconstitutional acts of the other branches?**

    Response: It is the role of the courts to decide cases and controversies that are properly brought before the court and, in doing so, where necessary, to interpret the laws and Constitution of the United States in accord with binding precedent. It is not the role of the judicial branch to "challenge" the allegedly unconstitutional acts of the other two branches of government. That is left to parties who have standing to raise the particular constitutional challenge in court.

11. **In the same quote from above, you mention the case of *Worcester v. Georgia*, where the Supreme Court issued an order that would have caused the release from prison of Samuel Worcester, a Christian missionary to the Cherokee Indians, who was imprisoned pursuant to a Georgia law that the Supreme Court declared unconstitutional. President Andrew Jackson refused to enforce the Supreme Court's ruling and it appears that you disagree with his actions, is that fair to say?**

Response: No. In fact, the federal government was not a party in *Worcester* and the Supreme Court's ruling in that case imposed no obligation on the President. Moreover, Georgia essentially complied with the court's order by releasing the petitioners. To the extent anyone today may see virtue or vice in the notion of the executive branch refusing to enforce an order of the Supreme Court, such thought would have no effect on my duty as a federal judge to faithfully uphold the law and to order only what the law requires.

12. Along the same lines, are there cases where you believe a President, Congress, and/or other officeholders should have properly refused to acquiesce to a Court order?

Response: I believe the rule of law is absolutely vital to our system of ordered liberty. Willful disobedience of a lawful court order is completely at odds with that belief. Adherence to the rule of law is critical. Without it, our constitutional democracy – with its system of checks and balances among the three branches – would break down.

Senator Grassley
Questions for the Record

LaShann Moutique DeArcy Hall,
Nominee, U.S. District Judge for the Eastern District of New York

1. **From your questionnaire it appears that you have had limited experience with criminal matters. If confirmed as a federal district court judge, you will be presiding over both civil and criminal matters.**

   a. **What experience do you have with criminal law?**

      Response: I was part of a legal team that appealed the conviction and death sentence of an Alabama state prisoner. As part of that team, I participated in briefing in Alabama state court. In addition, in another case, I worked on a team appealing a criminal sentence before the Second Circuit Court of Appeals. Through my work on that matter, I had the opportunity to familiarize myself with certain aspects of federal criminal procedure and the United States Sentencing Guidelines.

   b. **What steps have you taken or will you take to familiarize yourself with the area of criminal law?**

      Response: Since my nomination, I have begun reviewing materials provided to me by the Federal Judicial Center, including the Manual on Recurring Problems in Criminal Trials. I have also begun reviewing the Federal Criminal Code and Rules. If confirmed, I would continue to utilize the resources available through the Federal Judicial Center to better familiarize myself with criminal law. In addition, I will seek the advice and counsel of experienced district court judges and take advantage of other educational opportunities available to me.

2. **During your hearing Senator Tillis asked you about the pro bono work you did in a death penalty appeal. You said your involvement with the case focused on an ineffective assistance of counsel in jury selection. According to the appellate decision in *Ex parte Harris*, you and your team argued the prosecutor purposefully discriminated against potential black jurors during jury selection. Please describe the basis for this claim.**

   Response: When I made this claim, I was fulfilling my professional and ethical obligations to represent my client. This claim was based on the following allegations of purposeful discrimination: (1) a pattern of strikes of black jurors as for which no race-neutral reason for striking was offered; (2) a history of purposeful discrimination by the prosecutor's office in Montgomery County, as confirmed by a judicial finding in *Sims v. State*, 587 So. 2d. 1271, 1277 (Ala. Crim. App. 1991); and (3) the characteristic most predictive of whether a juror was struck was their race, as no other shared characteristic emerged amongst the struck jurors. In addition, our brief included an argument based on trial counsel's failure to raise these issues.

3. **What role, if any, do you believe a federal judge should play in balancing seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.**

   Response: The Federal Sentencing Guidelines provide a framework for sentencing and should be the principal tool and starting point in all sentencing determinations. 18 U.S.C. Section 3553(a)(2) provides that, among other factors, a sentencing judge should consider "the need for the sentence imposed . . . to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." If confirmed, I would consider these factors as well as the other factors articulated under the guidelines in making any sentencing determination.

4. **How much discretion do you think is appropriate for judges to have during sentencing?**

   Response: The Sentencing Guidelines promote uniformity and predictability in criminal sentencing. Under 18 U.S.C. Section 3553(a), if warranted, judges are authorized to vary from the ranges set forth in the Sentencing Guidelines. If confirmed, I would give considerable deference to the Sentencing Guidelines and use them as my principal tool and starting point for any sentencing determination, as well as any binding precedent regarding sentencing.

5. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is the ability to fairly and impartially apply the rule of law. I am committed to strict adherence to the rule of law and, if confirmed, I would base my rulings on applicable law without regard to any personal views.

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 deliberate, thoughtful, patient, and fair. A judge should serve with integrity and humility. I believe I have demonstrated each of these qualities through my service on the New York State Joint Commission on Public Ethics, the New York City Taxi and Limousine Commission, and in the United States Air Force. If I am confirmed, I will continue to exemplify 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, it would be my privilege and obligation to faithfully follow binding United States Supreme Court and Second Circuit precedent without regard to any personal views.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: If confirmed, I would faithfully apply binding United States Supreme Court and Second Circuit precedent. In cases of first impression where a statute or regulation is at issue, I would first look to the plain language of the relevant statute or regulation. If the language is clear and unambiguous, I would apply the plain meaning of the text. If the language is ambiguous, I would employ the methods of construction articulated by the United States Supreme Court and the Second Circuit. I would also look to analogous cases from the United States Supreme Court and the Second Circuit for guidance. If I could not find guidance in the United States Supreme Court or the Second Circuit, I would look to analogous cases in other jurisdictions.

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, I would faithfully apply binding decisions from the United States Supreme Court and Second Circuit without regard to any personal views.

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 presumptively constitutional. Constitutional challenges to federal statutes should be considered only when necessary. To the extent a district court must address a constitutional challenge to a federal statute, it should construe the constitutional issues narrowly. A federal statute should not be declared unconstitutional unless it violates the Constitution or exceeds congressional 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. United States judges should determine the meaning of the United States Constitution by applying binding precedent. It is not proper for United States judges to rely

on foreign law or the views of the "world community" when interpreting the United States 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 served as a commissioner on the New York State Joint Commission on Public Ethics, which has oversight over the Executive and Legislative Branches and investigates potential violations of New York State ethics laws. In this quasi-judicial role, I was required to apply New York law and make determinations by referring to the applicable statutes. I did so fairly, impartially, and without regard to any political ideology or motivation. If confirmed to be a district court judge, I would continue this practice, and would decide the cases before me by faithfully following binding United States Supreme Court and Second Circuit precedent.

13. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: Throughout my career in the private sector, as well as my public service as a commissioner for the New York State Joint Commission on Public Ethics, a commissioner for the New York City Taxi and Limousine Commission, and as a member of the United States Air Force, I developed a general reputation for being fair. Because of my role on the Joint Commission on Public Ethics, I have a demonstrated record of applying the law to the facts fairly and without regard to my personal views. The greatest assurance I can give the Committee that future litigants before me would be treated fairly is my pledge that, if confirmed, I would continue to adhere to the rule of law and apply precedent in all matters before me.

14. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would commit myself to efficiently managing my docket by making appropriate use of magistrate judges; establishing reasonable but firm discovery deadlines; narrowing the scope of or resolving cases through the use of dispositive motions; promptly deciding motions by the parties; and encouraging settlement, where possible.

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. If confirmed, I would take the steps described above in order to control my docket.

16. Do you believe there is a right to privacy in the U.S. Constitution?

Response: If confirmed as a district court judge, I would be bound by precedent. The United States Supreme Court has addressed the right to privacy under various provisions of the

Constitution in a number of cases. For example, in *NAACP v. Alabama*, the Court addressed the rights to freedom of speech and assembly guaranteed under the Fourteenth Amendment's due process clause. 357 U.S. 449 (1958). The United States Supreme Court held that "immunity from state scrutiny of membership lists . . . [was] so related to the right of the members to pursue their lawful private interests privately and to associate freely with others . . . as to come within the protection of the Fourteenth Amendment." *Id.* at 466. In *United States v. Jones*, 132 S. Ct. 945 (2012), the Court stated that, with regard to the protections of the Fourth Amendment, "[a]t bottom, [the Court] must assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted." *Id.* at 950 (internal citation and quotation marks omitted). If confirmed and presented with a case on these issues, I would faithfully follow this binding precedent, as well as any other applicable precedent from the United States Supreme Court and the Second Circuit.

a. **Where is it located?**

Response: Please see Response to Question 16 above.

b. **From what does it derive?**

Response: Please see Response to Question 16 above.

c. **What is your understanding, in general terms, of the contours of that right?**

Response: Please see Response to Question 16 above.

17. **President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?**

Response: I am not familiar with the context of this statement. However, a judge's personal beliefs should not play a role in how he or she decides cases. A judge must be guided solely by adherence to the rule of law, which dictates that he or she apply binding precedent to the facts presented.

18. **Please describe with particularity the process by which these questions were answered.**

Response: I received these Questions for the Record from the Office of Legal Policy at the Department of Justice on May 13, 2015. After reviewing the questions, I drafted responses and discussed the same with an attorney at the Office of Legal Policy at the Department of Justice. I then finalized my responses and asked the Department of Justice to submit them on my behalf.

19. **Do these answers reflect your true and personal views?**

Response: Yes.

Senator Vitter
Questions for the Record

LaShann Moutique DeArcy Hall,
Nominee, U.S. District Judge for the Eastern District of New York

1. **What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

   Response: In *Nat'l Labor Relations Bd. v. Noel Canning*, the United States Supreme Court concluded that "the phrase 'the recess' applies to both intra-session and inter-session recesses. If a Senate recess is so short that it does not require the consent of the House, it is too short to trigger the Recess Appointments Clause. And a recess lasting less than 10 days is presumptively too short as well." 134 S. Ct. 2550, 2567 (2014) (internal citations and quotation marks omitted). If confirmed as a district court judge, I would faithfully apply this and any other binding precedent from the United States Supreme Court and the Second Circuit.

2. **In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?**

   Response: In *Planned Parenthood v. Casey*, the United States Supreme Court held that the standard to determine the validity of laws restricting abortions asks whether the law has the purpose or effect of imposing an "undue burden." 505 U.S. 833, 877 (1992). Undue burden is defined as "a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." *Id.* The question of whether requiring doctors who perform abortions to have admitting privileges imposes an undue burden under *Casey* is currently being litigated. If confirmed and presented with a case on this issue, I would apply any binding precedent and the legal standard articulated in *Casey* to the facts in the case.

3. **The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?**

   Response: *Roe v. Wade*, 410 U.S. 113 (1973), has not been overturned. Since *Roe*, the United States Supreme Court stated, in *Planned Parenthood v. Casey*, that "[r]egardless of whether exceptions are made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." 505 U.S. 833, 879 (1992). In *Gonzales v. Carhart*, the court held that the respondents had not demonstrated that the Partial Birth Abortion Act of 2003 was "void for vagueness, or that it imposes an undue burden on a woman's right to abortion based on its overbreadth or lack of a health exception." 550 U.S. 124, 168 (2007). If confirmed, I would faithfully follow these binding precedents as well as any other applicable precedent from the United States Supreme Court and the Second Circuit.

4. **Do you agree that the ruling in Baker v. Nelson precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that US v. Windsor contradicts the Court's previous ruling in Baker?**

   Response: In *Baker v. Nelson*, the Minnesota Supreme Court held that a state law limiting marriage to persons of the opposite sex "does not offend the First, Eighth, Ninth, or Fourteenth Amendments to the United States Constitution." 291 Minn. 310, 315, 191 N.W.2d 185, 187 (1971). The United States Supreme Court dismissed Baker's appeal "for want of a substantial federal question." *Baker v. Nelson*, 409 U.S. 810, 810 (1972). In *United States v. Windsor*, the United States Supreme Court held that the federal Defense of Marriage Act "is unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment of the Constitution," 133 S. Ct. 2675, 2695 (2013), but recognized that, "subject to [constitutional] guarantees, regulation of domestic relations is an area that has long been regarded as a virtually exclusive province of the States." *Id.* at 2691 (internal citations and quotation marks omitted). The United States Supreme Court recently granted certiorari in *Obergefell v. Hodges*, which addresses whether: (1) the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and (2) the Fourteenth Amendment requires a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. The United States Supreme Court's decision in that case will be binding precedent for lower courts. If confirmed, I would faithfully follow the binding precedent of the United States Supreme Court and the Second Circuit.

5. **What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?**

   Response: I believe that judges must strictly adhere to the rule of law by applying precedent fairly and impartially. If confirmed, I would faithfully follow binding United States Supreme Court and Second Circuit precedent without regard to any personal views.

6. **How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?**

   Response: In *District of Columbia v. Heller*, the United States Supreme Court held that "the [District of Columbia's] ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." 554 U.S. 570, 635 (2008). In *McDonald v. City of Chicago*, the United States Supreme Court held that, "the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*." 561 U.S. 742, 791 (2010). If confirmed and presented with a case on this issue, I would apply the law as articulated in *Heller* and *McDonald* and any other applicable binding precedent to the facts in the case before me.

7. **Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?**

   Response: This issue has not yet been decided by the United States Supreme Court. If confirmed as a district court judge, I would be bound by the United States Supreme Court and Second Circuit precedent existing at the time of my determinations.

Senator Grassley, Chairman
Questions for the Record

Lawrence Joseph Vilardo
Nominee, United States District Judge for the Western District of New York

1. **You represented Dr. Ivan D'Souza in an appeal after New York's Administrative Review Board for Professional Medical Conduct sustained 14 charges against him. According to the New York Supreme Court's opinion in the matter, you argued that the Board did not have sufficient evidence to sustain the charges against the doctor, in part because "the patients' delay in reporting the alleged sexual contact to third parties rendered the reports so inherently unreliable as to preclude their admissibility."**

   a) **Notwithstanding New York's rules of evidence, including the prompt outcry rule, in your opinion, at what point is a sexual assault survivor's reporting of crimes against him or her no longer reliable?**

      Response: I do not believe that a survivor's reporting of a crime is ever unreliable simply due to the lapse of time. When I made the New York "prompt outcry" rule argument referenced in this question, I was serving as an advocate for my client, as I was ethically and professionally bound to do, and I was attempting to rebut specific allegations against my client in light of several factual inconsistencies. Toward that end, I asked the court to preclude hearsay testimony about what had been said to others, not the alleged survivors' testimony about what had happened to them. If I am fortunate enough to be confirmed, I would apply the Federal Rules of Evidence and all controlling precedent regarding the admissibility or weight of evidence.

   b) **Do you believe that a survivor of sexual assault is less credible when she or he does not quickly report the crime?**

      Response: No. I do not believe that a survivor of any crime, including and especially sexual assault, is less credible simply because he or she does not quickly report the crime.

2. **You indicated in your questionnaire that you have unable to find notes, transcripts, or recordings for several of your speeches. Please provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the following talks:**

   a) **April 13, 2014: Panel Discussion at Buffalo Pediatric Society regarding legal, ethical, and moral issues arising from parents' refusing vaccinations for their children.**

Response: At this panel presentation, a medical ethicist and I discussed how pediatricians should handle situations when parents refuse to have their child receive vaccinations that the pediatrician believes are necessary. Although I do not have a complete recollection of all the issues raised and discussed, I recall addressing the importance of carefully documenting the parents' refusal so as to protect the pediatrician from liability in the event that the child contracts the illness that the vaccination was intended to prevent, as well as ways that a pediatrician might present the medical research in an understandable fashion to parents who fear possible side effects of vaccinations.

b) December 19, 2013: "Real Life vs. Reel Life Ethics," New York State Bar Association, regarding legal ethics as seen in motion pictures.

Response: I served on a panel with a New York State Supreme Court Justice, a Buffalo City Court Judge, and a former President of the New York State Bar Association. The panel viewed film clips from motion pictures that depicted attorneys facing ethical issues such as conflicts of interest, scope of representation, lawyer civility, and allocation of authority between the client and the lawyer, and the panelists answered the moderator's questions on those issues. I have participated in this seminar on two occasions, and although I do not recall the specifics of what I said, I do recall that the movies on one occasion or the other included *To Kill a Mockingbird, Adam's Rib, A Few Good Men, A Civil Action, The Verdict,* and others.

c) September 21, 2002: Panel Discussion, Jesuits for Upstate New York, regarding the clergy sex abuse crisis.

Response: Because I was one of the attorneys for the Roman Catholic Diocese of Buffalo in 2002, I was asked to participate in a panel discussion with a psychologist and a prosecutor regarding the clergy sex abuse crisis that had received considerable publicity at about that time. Although I do not recall the specifics of what I said, I believe that I would have addressed the policy of my client, the Diocese of Buffalo, in handling accusations by survivors, the code of conduct expected of clergy and anyone associated with the Diocese of Buffalo, and other such topics.

d) March 2, 2000: "Mini-Medical School" Presentation at SUNY Buffalo Law School, regarding the legal issues connected with obstetrics and delivery resulting in an injured infant.

Response: I have very little recollection of this seminar which occurred 15 years ago. I believe that it addressed a hypothetical delivery of a baby that presented challenges and complications to the obstetrician and that resulted in injury to the infant, as well as ways for physicians to meet the applicable standard of care and therefore avoid medical malpractice liability.

3. **How will you handle the cases of litigants who are members of organizations to which you currently belong or once belonged to, or which you represented as an attorney?**

Response: I will meticulously follow the statutory rules and the Code of Conduct for United States Judges when handling cases of litigants who are members of organizations to which I currently belong, to which I once belonged, or which I represented as an attorney. I will recuse myself when those rules require or when I believe that my impartiality might reasonably be questioned. In the interests of candor and fairness to all sides, I will, when appropriate, ensure that all parties and counsel know of my current or prior relationship with the organization at issue. If I have any doubt about whether my impartiality might reasonably be questioned, I will err in favor of notifying the parties and seeking their consent. Finally, I will recuse myself from all cases involving my current law firm for an appropriate period of time. After that time expires, in the interests of candor and fairness to all sides, I will ensure that all parties and counsel know of my prior connection to the firm and partnership with any individual attorneys involved in a pending case and entertain requests for recusal.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is respect: respect for the court and our judicial system; respect for precedent and the rule of law; respect for the decisions of the elected legislature; respect for lawyers and litigants; and respect for all who work as part of, or come into contact with, the judicial system, including court staff, marshals, and jurors. My parents taught me from a very young age to treat everyone with respect. Therefore, I believe that I do possess this important attribute.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: In addition to being respectful of all those who play a role in the legal system, a judge should be calm, dispassionate, and in control of the courtroom. Stated another way, judges should have a demeanor that is respectful but at the same time demands the same respect from the lawyers and the litigants toward each other and toward the court. I believe that I will be able to control the courtroom calmly and dispassionately, while at the same time respecting all those who appear in it.

6. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I am committed to following the precedents of higher courts faithfully and giving them full force and effect regardless of my personal feelings. A district judge has no business deciding cases based upon politics or his or her own personal agenda.

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 there were no controlling, dispositive precedent on an issue presented for decision, I would look first to the language of any statute, rule, or regulation at issue, and if the language were not dispositive, then to decisions on analogous issues from controlling jurisdictions, to decisions from other circuits on the issue presented or analogous issues, and to decisions from other district courts on the issue presented or analogous issues. My goal would be to surmise what the controlling jurisdictions would have decided if the issue had been presented to them.

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: As far as a district judge is concerned, neither the Supreme Court nor the controlling Court of Appeals can err in rendering a decision: just as Supreme Court precedent is controlling for all federal courts, so any decision by the Court of Appeals is controlling for the district courts in that circuit. I therefore pledge to follow the precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit regardless of my personal views.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: First, a court should entertain a constitutional challenge to a statute only as a matter of last resort. In other words, if a case can be decided without reaching the constitutional issue, then the constitutional issue should not be reached. If the court cannot avoid addressing the constitutionality of a statute, the court should give deference to the elected legislature and therefore to the statute. Only if the language of the Constitution or controlling precedent leads the court to the conclusion that the statute simply cannot pass constitutional muster should a judge 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.**

Response. No, it is not proper for a judge to rely on foreign law or the views of the "world community" to determine the meaning of the Constitution. Our Constitution is unique. Foreign law and the views of the "world community" shed no light on its meaning or interpretation.

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: The politics or personal motivation of a district judge should play absolutely no role in rendering a decision. I assure the Committee that my decisions will be grounded in precedent and the text of the law and not in any political ideology. Although I have never been a judge and therefore cannot point to any judicial decisions as evidence of this, I can point to decisions that I rendered as a judicial hearing officer and as an arbitrator. Whenever my personal feelings conflicted with what I believed was legally correct, I put my personal feelings aside and decided the case or voted among a panel of arbitrators to make what I believed was the objectively correct decision.

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: From a very young age, my parents taught me to be honest and fair to everyone. I have tried to live that way my entire life, and I assure the Committee and future litigants that if I am fortunate enough to be confirmed as a district judge, I will be vigilant in putting aside my personal views and will be fair and impartial to all who appear before me.

13. If confirmed, how do you intend to manage your caseload?

Response: If I am fortunate enough to be confirmed, I will manage my caseload – a heavy caseload in a backlogged district – in several ways. First, I will work hard. I work six or seven days a week now, and I do not plan to change that. Second, I will issue decisions promptly. Judges should not sacrifice justice for efficiency, but they owe it to the lawyers and litigants to make decisions promptly – that is, as soon as justice allows. Hard decisions do not get any easier simply with the lapse of time, and procrastination serves no one. Finally, I would carefully organize my docket and use meaningful scheduling orders to guide the parties and their lawyers and require them to litigate efficiently; I will not permit those orders or deadlines to be abused.

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: I believe that judges have an important role in controlling the pace and conduct of litigation. If confirmed, I would take the specific steps outlined in the previous answer to control my docket.

15. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?

Response: I am unaware of the context in which President Obama's statement was made. But I believe that judicial decisions should be based on the law and controlling precedent, not on a judge's personal politics or policy agenda.

16. 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 13, 2015. I reviewed the questions and personally prepared answers to them. I submitted my draft responses to the Office of Legal Policy and discussed them with staff from the Office of Legal Policy. I then finalized my responses and authorized the Office of Legal Policy to submit these responses on my behalf.

17. Do these answers reflect your true and personal views?

Response: Yes.

Senator Vitter
Questions for the Record

Lawrence Joseph Vilardo
Nominee, United States District Judge for the Western District of New York

1. **What is your opinion of the constitutionality of the majority ruling *NLRB v. Canning* and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

   Response: In *NLRB v. Canning*, ___ U.S. ____, 134 S. Ct. 2550 (2014), the Supreme Court held that if "a Senate recess is so short that it does not require the consent of the House, it is too short to trigger the Recess Appointments Clause"; moreover, the Court found that "a recess lasting less than 10 days is presumptively too short as well." 134 S. Ct. at 2567. If the Senate says that it is in session, then *pro forma* sessions of the Senate "count as sessions, not as periods of recess" as long as under the Senate's own rules, the Senate "retains the capacity to transact Senate business." *Id.* at 2574. If I am fortunate enough to be confirmed, I would dutifully follow this as well as any other binding precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit on the issue of recess appointments.

2. **In your opinion, is it an undue burden on a woman seeking an abortion under *Planned Parenthood v. Casey* if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?**

   Response: In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), a plurality of the Supreme Court held that "[a]n undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." *Id.* at 878. I understand that the issue raised in this question may be pending in a petition to the Supreme Court for a Writ of Certiorari from a decision rendered by the United States Court of Appeals for the Fifth Circuit, and I therefore do not believe that it would be appropriate for me now to address the issue further. If I am fortunate enough to be confirmed, I would dutifully follow all binding precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit on issues involving abortion as well as all other issues.

3. **The Court's ruling on the right to privacy in *Griswold v. Connecticut* laid the foundation for *Roe v. Wade*. From your perspective, is *Roe v. Wade* settled law?**

   Response: In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court revisited "the fundamental constitutional questions resolved by *Roe*" and concluded that "the essential holding of *Roe v. Wade* should be retained and once again affirmed" based on the "principles of institutional integrity, and the rule of *stare decisis*." *See Casey*, 505 U.S. at 845-46. The Supreme Court rejected *Roe's* "trimester framework," however,

which the Court found was not "part of the essential holding of *Roe*." *Id.* at 873. Neither *Casey* nor *Roe* has been overruled by subsequent decisions of the Supreme Court. If I am fortunate enough to be confirmed, I would dutifully follow those two cases, as well as *Gonzales v. Carhart,* 550 U.S. 124 (2007), and all other binding precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit on this issue.

4. **Do you agree that the ruling in *Baker v. Nelson* precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that *US v. Windsor* contradicts the Court's previous ruling in *Baker*?**

   Response: Last month, the Supreme Court heard oral argument in *Obergefell v. Hodges*, a case involving the refusal of certain states to recognize or license same-sex marriages. The Court's decision in that case may decide the issue. In the meantime, the decision of the Minnesota Supreme Court in *Baker v. Nelson*, 291 Minn. 310, 191 N.W.2d 185 (1971), holding that a state law limiting marriage to persons of the opposite sex does not violate the United States Constitution, is good law in Minnesota because the United States Supreme Court dismissed an appeal in that case "for want of substantial federal question." *See Baker v. Nelson*, 409 U.S. 810 (1972). In *United States v. Windsor*, ___ U.S. ___, 133 S. Ct. 2675 (2013), the Supreme Court struck down the federal Defense of Marriage Act on equal protection and due process grounds. In reaching its decision, the Court found that it was "virtually [the] exclusive province of the States" to define and regulate domestic relations "subject to constitutional guarantees," and that "[t]he State's power in defining the marital relation is of central relevance" to its decision. *Id.* at 2690-92 (internal quotations omitted). Because the issue raised by this question is currently pending, I do not believe it would be appropriate now for me to respond further. If I am fortunate enough to be confirmed, I would dutifully follow any decision rendered in *Obergefell* and all other binding precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit.

5. **What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?**

   Response: I believe that district court judges are bound to apply all precedent from controlling jurisdictions regardless of their personal views. Therefore, they have no business deciding cases based on any political or personal agenda. They are bound to apply the law as it is, not as they might think it should be or wish it were. I therefore would apply prior binding case law regardless of my personal views.

6. **How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in *McDonald v. City of Chicago* with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?**

   Response: In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court concluded that "it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." *McDonald*, 561 U.S. at 778. The Court therefore held "that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*," *id.* at 791, that is, the right to keep and bear arms for protection in the home and elsewhere. I am not familiar with lower federal court rulings upholding gun control laws, but if I am fortunate enough to be confirmed, I would follow the binding precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit with respect to any Second Amendment issue.

7. **Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?**

   Response: Last month, the Supreme Court heard oral argument regarding Oklahoma's method of imposing capital punishment. Because the issue is currently pending, I do not believe that it would be appropriate for me now to address the issue. If I am fortunate enough to be confirmed, I would dutifully follow any decision rendered in the Oklahoma capital punishment case and all other binding precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit.

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