

CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED FOURTEENTH CONGRESS FIRST SESSION

WEDNESDAY, JULY 22, 2015

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CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

WEDNESDAY, JULY 22, 2015

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

The Committee met, pursuant to notice, at 10:06 a.m., in Room 226, Dirksen Senate Office Building, Hon. Charles E. Grassley, Chairman, presiding.

Present: Senator Grassley [presiding], Senators Sessions, Tillis, Klobuchar and Franken.

Chairman GRASSLEY. To help our colleagues that want to introduce their nominees, we will go to the Senior Senator, Senator Mikulski and then Senator Cardin is here. We will do Maryland first. So, do you want to go ahead, Senator Mikulski. Then we will do our opening statements after our colleagues are done introducing their nominee.

STATEMENT OF HON. BARBARA A. MIKULSKI A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MIKULSKI. Thank you so much, Senator Grassley. As usual, you are the soul of Senator courtesy.

Senator Grassley, Senator Klobuchar, Members of the Committee thanks so much for organizing this hearing and including in your consideration for nomination to the District Court of Maryland, Paula Xinis, who is here today. Senator Cardin and I nominated her to serve on the United States District Court for Maryland.

We proudly recommended her to President Obama because we think she has the right stuff to render impartial justice in Maryland. She was nominated because of her breadth of legal knowledge, her desire to serve on the Federal bench, and her extensive relationships in our community in terms of advocacy for the public good.

Mr. Chairman, Senator Klobuchar, when I nominate working with my colleague Senator Cardin, I have four criteria: a person must have absolute personal integrity; judicial competence and temperament; a commitment to core constitutional principles; and a history of civic engagement in Maryland. I believe that it is crucial to have these characteristics to serve.

Ms. Xinis brings to the judiciary, or will bring if confirmed, extensive Federal experience. She has a long history of public service. She spent 14 years working in the Federal Public Defender's Office. Those of you who are so familiar with all of those proceedings know that that is really tough, gritty law.

She handled cases from simple misdemeanors to complex white collar crimes. She did not only the representation of the poor and the disenfranchised, she provided time and time again that—how dedicated she was, and made sure that everyone received competent judicial representation.

Ms. Xinis also clerked for Judge Diana Gribbon Motz, an incredibly well respected Fourth Circuit judge. Judge Motz, herself, is highly esteemed, and she recommended Ms. Xinis, who had clerked for her. She said she had such an intelligent quick mind.

She has an incredible heart. She is an incredible hard worker and at the same time, she is truly the story of America. She has also had extensive private practice experience, working as a trial partner in the Murphy Falcon & Murphy firm in complex civil litigation.

She is really the star and story of the American dream. Ms. Xinis' father arrived in the United States from Greece without a penny to his name. From him, she learned the value of hard work and helping others. Her whole resume is about how making use of the opportunity ladder of the United States of America she could go on to Vassar, went to the University of Virginia. She is a graduate of Yale Law School.

Nerve, grit, determination, hard work, a belief in America, a belief in an opportunity ladder, and a belief in a rule of law that in this country it should be equal and impartial justice under all.

She won dedication. She has done everything from being a single parent raising a wonderful son, to working in the community from extensive mentoring projects and other coaching of young lawyers through bar association work.

She is dedicated to public service. You are going to see she is really brilliant, has an incredible work ethic and really loves the law, loves the constitution and will really, I think, do justice well and do your vote well.

I urge your adoption of this outstanding—outstanding nominee.

**STATEMENT OF HON. BENJAMIN L. CARDIN
A U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator CARDIN. Chairman Grassley, Senator Klobuchar, Members of the Judiciary Committee, it is good to be back. I really enjoyed my experience of serving on this Committee, and I thank you very much for the courtesy to Senator Mikulski and me to introduce Paula Xinis, President Obama's nominee for the District Court of Maryland.

The oath that a judge takes is to administer justice without respect to persons and to do equal right to the poor and to the rich. Mr. Chairman, in my years in the Senate, I have never had more confidence that the person that President Obama has selected based upon our recommendations would carry that out. Paula Xinis understands the challenges of providing equal justice under the law to all.

As Senator Mikulski pointed out, her family is the American experience. Her father came to this country as a Greek immigrant and worked hard without resources and now his daughter is being nominated to the District Court of Maryland, Federal judge.

Senator Mikulski has taken the lead as to the process that we use in Maryland to fill our judicial vacancies. It is nonpartisan. It seeks to get the very best to serve on our courts because we understand the importance of our judges.

Senator Mikulski has also gone over Paula Xinis' outstanding record. She has gotten the highest recommendation from the ABA as far as "well-qualified."

She has experience in the private sector. Billy Murphy, her law partner, is here today, one of the great lawyers in Baltimore taking on some of the most difficult challenges recognizing the responsibilities of a lawyer.

She has had public experience. She has clerked for the Fourth Circuit. She understands trial work. She understands criminal work. She understands civil work. She has that experience, that demeanor that serves well.

What really impressed me about her is the fact that she has given back so much to our community. Her pro bono experience is incredible. She has worked for her church. She has helped people volunteering pro bono to get free legal advice.

She joined a formal mentoring program through the House of Ruth and was assigned an 11 year-old, as she describes now, as like being a son. She has made a difference in that person's life. Lawyers I know are very busy, but she took it upon herself to change a person's life through the mentoring program and made a difference as she has.

What really impressed me is the story she told me about some of her former clients who ended up in prison, that she represented. She had conversations with them as they came back in society and found a better path. In many cases, she told of her former clients praising the judges for getting the sentence right by helping them to wake up and ultimately to fly straight.

Paula Xinis understands the responsibilities of our judicial branch of Government. Yes, it is to administer the laws with impartiality, but it is also to understand that we have to do better as a society.

Mr. Chairman, it is with great pride that I recommend her confirmation to the Members of this Committee. We are very proud of her willingness to serve. I thank her for being willing to serve in the public life, and I thank her family.

Chairman GRASSLEY. If you want to go, I do not have any questions of the Senators from Maryland. Thank you very much. Senator Menendez.

[Laughter.]

**STATEMENT OF HON. ROBERT MENENDEZ,
A U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator MENENDEZ. Thank you Mr. Chairman and distinguished Members of the Committee. I come before you to introduce John Michael Vazquez and to express my enthusiastic recommendation for his nomination and confirmation to the United States District Court for the District of New Jersey.

Mr. Vazquez's credentials are impressive. He is a New Jerseyan who is eminently qualified and highly experienced. I am confident he will be an outstanding jurist whose judicial temperament, ob-

servance of precedent and personal integrity will be beyond reproach.

There is an inscription on the Tenth Street entrance to the Justice Department that I am sure many Members of the Committee has seen. It says, "Justice in the life and conduct of the State is possible only as it first resides in the hearts and souls of its citizens." I believe that justice does, in fact, reside in the heart and soul of John Vazquez, and he will bring that judicial heart and soul to the task as well as the benefits of a long and distinguished legal career in private and public service.

Mr. Vazquez began his legal career at the law offices of Michael Critchley and Associates after completing a clerkship with Hon. Herman Michaels of the New Jersey Appellate Division. He graduated summa cum laude from Seton Hall University School of Law and Rutgers College. He is a member of the Hispanic Bar Association, the New Jersey State Bar Association, and the Association of the Federal Bar of New Jersey.

He brings a long and distinguished legal career to the New Jersey District Court if approved. He is currently a partner at Critchley, Kinum & Vazquez, practicing commercial, securities and health care civil litigation as well as white collar criminal defense.

Before his time in private practice, he served the people of New Jersey in the Office of the Attorney General as the first assistant attorney general. As the second-highest ranking official in the office, Mr. Vazquez conducted the day-to-day operations of a 9,500 person department and various divisions within the department including criminal justice, consumer affairs, civil rights, elections and gaming enforcement divisions.

He previously served within that office as a special assistant to the attorney general where he prosecuted Medicaid fraud white collar crimes. Prior to this, he served as an assistant United States attorney and focused on health care fraud, securities fraud and terrorism investigations.

When I think about the breadth and scope of what comes before a Federal district court judge, I think about the breadth and scope of the experience of John Vazquez. He will make an extraordinary member of the judiciary. I want to thank the Chair and the Ranking Member and the distinguished Members of the Committee. I look forward to an expeditious vote before the Committee and confirmation before the Senate.

I will just add, Mr. Chairman, Senator Booker would have liked to been here with me in strong support of Mr. Vazquez. He is the Ranking Member of another Committee—Subcommittee, and he is in the midst of a hearing, so he wanted me to add his strong support of Mr. Vazquez as well.

Mr. Chairman, I have yielded back a lot of my time. So, I hope for the future you will keep that in mind.

[Laughter.]

Chairman GRASSLEY. Thank you, Senator. Senator Klobuchar for both her opening statement as well as her introduction of Justice Wright.

**OPENING STATEMENT OF HON. AMY KLOBUCHAR,
A U.S. SENATOR FROM THE STATE OF MINNESOTA**

Senator KLOBUCHAR. Thank you so much, Senator Grassley and thank you for holding this hearing with these highly qualified nominees.

It is my honor along with Senator Franken who will also speak to welcome all of you, but especially to introduce our Minnesota nominee, Justice Wilhelmina Wright to become a Federal District Court Judge for the District of Minnesota. I know that she is here with her husband and also with her mother and assorted relatives that I will let you introduce, Justice Wright.

Justice Wright is a dedicated public servant with a distinguished career spanning all levels of the State and Federal legal system. She is an Associate Justice of the Minnesota Supreme Court, a position she has held since her appointment in 2012.

She won her reelection swimmingly with a lot of bipartisan support. I said that for you.

[Laughter.]

Even before her appointment, Justice Wright has earned the respect of litigants, lawyers and judicial colleagues alike. I can say unequivocally that Minnesota will be fortunate if she is to sit on the Federal District Court.

She was born in Norfolk, Virginia where she first learned about the law by watching her mom fight public school segregation in order to ensure that her daughter received a good education. In fact, in a recent—I got this from one of her recent remarks. She talked about what this was like and she said, “massive resistance, as it was called, was recent history when I embarked on my academic career, first grade. It seemed to me and my household, aside from the bible, that the court order was the most important written document in my family’s life. The same way that the bible sustained my parents faith in daily life and the mortgage sustained our family shelter and domestic security, the court order sustained the promise of my brothers’ and my future. Thurgood Marshall had helped us secure that court order and my brother and I were going to have a better future than my parents as their’s was better than my grandparents’ because the law said so.”

She graduated from Yale College cum laude in 1986 and received her law degree from Harvard Law School in 1989. After law school, Justice Wright clerked for Judge Damon Keith of the Sixth Circuit Court of Appeals. She then went into private practice for 5 years, but she was drawn back into public service.

She joined the U.S. Attorney’s Office for the District of Minnesota in 1995 as a prosecutor where she received the United States Department of Justice Director’s Award and the United States Department of Justice Special Achievement Award. After 5 years in the office under two different U.S. attorneys, the Governor of Minnesota, Governor Jesse Ventura, appointed her as a Ramsey County District Judge where she presided from 2000 to 2002.

She was then appointed to the Minnesota Court of Appeals and then the Supreme Court. She is actually the first person in Minnesota history to sit on all three levels of State court.

She has over 25 years of legal experience, the past 20 in our State. As I said, she served as a judge in three courts. She sat on

panels deciding over 2,000 cases and presided over nearly 700. In other words, I think she is ready to fill the position her first day on the job.

She has obviously received the ABA's highest ranking. I think you know, Mr. Chairman, that we have received positive words about Justice Wright from Democrats and Republicans alike. She has been involved in a variety of civic and bar activities and though serving as a judge limits the type of pro bono work that she can perform, she devotes 50 hours per year to pro bono legal activities.

She served as a member of the Minnesota Judicial Council and a number of other Minnesota groups. She is the first African American to serve on our Minnesota Supreme Court.

Last, but not least—I am doing this for your potential future colleagues—it is very important to our State. I know you, Chairman Grassley, care a lot about judicial case load and the differences around the country and our district's caseload has increased significantly in recent years. In the past year the district has seen a 57 percent jump in the number of cases filed with over 6,800 cases currently pending. A judge is assuming senior status in less than 2 weeks. We really need Justice Wright to be confirmed as quickly as possible.

I just want to thank you so much, Mr. Chairman, for holding this hearing so quickly after her nomination given our situation in Minnesota. She will make a fine Federal district court judge. I think they would even like her in Iowa. Thank you, Mr. Chairman.

Chairman GRASSLEY. Thank you, Senator Klobuchar. By the way, before I forget this, you have had several Republicans that I know in Minnesota call me in support of your nomination. She is just reinforcing what I think she knows I all ready know.

[Laughter.]

Chairman GRASSLEY. Senator Franken.

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

Senator FRANKEN. Maybe we should stop there. Mr. Chairman, thank you. I am delighted to join Senator Klobuchar in introducing Justice Wilhelmina Wright to my colleagues and enthusiastically supporting her for her nomination to serve on the U.S. District Court for the District of Minnesota.

Justice Wright has been nominated to fill a vacancy that will be created when Chief Judge Michael Davis assumes senior status next month, so it is my hope that the Committee will process her nomination with all due speed and that the Senate will move to confirm Justice Wright so that Minnesotans seeking justice are able to have their day in court.

I would like to also thank Senator Klobuchar for joining with me in forming a bipartisan judicial selection Committee to assist us in recommending a candidate for this forthcoming vacancy. The Committee selected Justice Wright after considering a deep bench of incredibly qualified candidates, and I know I speak for both Senator Klobuchar and myself when I say that we were thrilled to recommend that she be nominated. There is no one better suited for this position.

I am going to repeat some of what Senator Klobuchar said, but it bears repeating. Not only has Justice Wright served as a State court judge for 15 years, but she is the only person in Minnesota history to serve as a judge at all three levels of our judiciary, on the Second Judicial District, the Minnesota Court of Appeals and currently, the Minnesota Supreme Court.

Before her appointment to the bench, Justice Wright served as an Assistant U.S. Attorney for the District of Minnesota where she earned a stellar reputation as a prosecutor. She understands the State and she knows its people.

Justice Wright's experience, her impeccable credentials and her unwavering commitment to equal justice will serve her well. I look forward to her confirmation. Again, thank you to the Chairman for the opportunity to join Senator Klobuchar in introducing Justice Wright this morning. I strongly urge my colleagues to support her nomination.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Chairman GRASSLEY. I thank all of my colleagues.

First of all, I congratulate the three nominees for judgeships that have all ready been introduced, John Vazquez, Justice Wright, Paula Xinis and I would ask each of the judicial nominees to come to the table while I introduce another person that will be at the table, the nominee for Assistant Attorney General for the Tax Division, Cono Namorato. You folks come to the table now, please. Also, Mr. Namorato come too. Yes.

Since you other folks have been introduced, I am going to introduce him right now. As long as you are standing, let me take care of something.

[Laughter.]

I would ask that you affirm. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. VAZQUEZ. I do.

Ms. WRIGHT. I do.

Ms. XINIS. I do.

Mr. NAMORATO. I do.

[Witnesses are sworn in.]

Chairman GRASSLEY. Thank you very much.

Mr. Namorato received his BA from Iona College, 1963; a juris doctorate Brooklyn Law School, 1968; after graduation, joined the Tax Division of DOJ. There he served as a trial attorney and conducted grand jury investigations of Title 26 which are the criminal tax offenses.

In 1974, he became Chief of the Criminal Division in the Tax Division. In 1976, he was appointed Deputy Assistant Attorney General in charge of criminal matters in the Tax Division.

In 1978, he joined the Washington, DC law firm of Caplin and Drysdale. There his practice is focused still on Federal criminal tax matters. He also advises clients with ongoing criminal tax investigations, defends clients on State tax matters and sometimes represents clients before Congress.

I, once again, congratulate you and say we are honored to have you. I guess we will go in the order of Mr. Vazquez, Wright, Xinis and Namorato. You have opportunities to make an opening statement, but I think each of you—before you make your opening statement, we have a tradition of anybody that is with you here today or not with you that you want to mention, you can introduce them and we encourage you to introduce them. Mr. Vazquez.

**STATEMENT OF JOHN MICHAEL VAZQUES, NOMINEE TO
SERVE AS UNITED STATES DISTRICT JUDGE FOR
THE DISTRICT OF NEW JERSEY**

Mr. VAZQUEZ. Thank you, Chairman. Good morning.

I want to start by thanking the Chairman, the Ranking Member and the entire Committee for this opportunity and for calling the hearing. I also have to extend my deepest gratitude to the President for the nomination. I would like to personally thank Senator Menendez for his kind remarks this morning as well as the support that both he and Senator Booker have given me throughout this process.

With me today, I do have family. I have my wife, Meredith Vazquez. Also with us are our two daughters, Samantha Vazquez and Kaitlin Vazquez. I am fortunate enough to also have my parents here, Tom and Mary Ann Vazquez as well as Meredith's parents, Michael and Dorothea Perkons.

Finally, I thank my law partner, Michael Critchley, who made the trip down from New Jersey to be here. I would also like to thank the many family members, including my brothers and their families, friends and colleagues who have indicated they are going to watch the webcast and be here in spirit.

I do not have any opening remarks other than to reiterate my thanks.

Chairman GRASSLEY. All right. Thanks. Congratulations to family and friends. Justice Wright.

**STATEMENT OF WILHELMINA MARIE WRIGHT,
NOMINEE TO SERVE AS UNITED STATES DISTRICT
JUDGE FOR THE DISTRICT OF MINNESOTA**

Justice WRIGHT. Thank you, Senator Grassley. Thank you Ranking Member Senator Klobuchar. Senator Franken, thank you for being here, and Senator Sessions, thank you for your presence.

Thank you to this group for having this hearing today and for the kind words and attention of you and your staff in terms of the hard work of preparing for an event such as this. I am grateful to President Obama for the nomination and the opportunity to be here.

In addition to being here myself, I have my family here. My husband, Dan Scmechel, is present. He is an executive at Ecolab and we maintain that it was Minnesota that was the State that allowed us to end the longest long distance relationship happily in marriage.

It is a happy marriage that has produced our daughter, Kathryn Schmechel who is not here. Kathryn is a rising junior who would love to be here and instead is at Stanford at debate camp. Maybe

she will be here at another time in another setting. Certainly learning important skills, she is our pride and joy.

My mother, who Senator Klobuchar mentioned, is here, Dr. Lillian Wright. As Senator Klobuchar mentioned, my mother and my father, Dr. William Wright who is here in spirit but has since passed away, really are the reason, foundationally, that I have been able to achieve the dreams that I was able to dream.

First of all, they told us to dream big and then supported us and gave us the ingredients of being able to have the work ethic and the integrity to be able to pursue those dreams.

My brother, Bill Wright, William H. Wright, II, is here who is a wonderful supporter and a former rival. We are now on the same team, but we certainly urged each other on in competing for our parents approval, but also certainly in supporting each other in times of real hard work and dedication.

My cousin, My fawny, is here from North Carolina. I believe my aunt and uncle, Leory and Marjorie Parker are here. Then David Simmons, Judge David Simmons is here. He is a former law clerk of Judge Damon Keith. Judge Keith is the head of our judicial family. David is here in that capacity as well as a friend.

Also, a family friend who is here is Joel Motley. About 50 years ago, Joel Motley's mother sat in a hearing just like this for a district court appointment to the Southern District of New York. I thank him for being here.

There are lots of well-wishers in Minnesota. I understand, to my shock and chagrin, that even Minnesota Lawyer has a live feed for this hearing. I better do well. That really is significant to me in terms of the kind of support that the legal community, my colleagues on the Supreme Court, as well as my judicial family and the members of the bench and bar and family friends, former law clerks and all and current law clerks who have supported me and who send wonderful well wishes.

Thank you. I am grateful to be here and grateful for the opportunity to answer your questions. Thank you.

Chairman GRASSLEY. All right. Now, Ms. Xinis.

**STATEMENT OF PAULA XINIS, NOMINEE TO
SERVE AS UNITED STATES DISTRICT JUDGE
FOR THE DISTRICT OF MARYLAND**

Ms. XINIS. Thank you, sir. It is okay. My brother got our last name wrong for the first 15 years of his life.

[Laughter.]

I am so grateful to be here and I want to first thank you all for convening this session. I want to extend a personal and deep thanks to Senators Mikulski and Cardin for their kind, kind words. They have been tremendously supportive and for that I will be eternally grateful.

I do want to thank President Barack Obama for giving me this wonderful opportunity to even conceive of returning to public service in this important capacity.

I want to congratulate my fellow nominees. It has been a pleasure to meet them all.

With me too are very, very important people with whom none of this would be possible. I want to first start with my fiancé and

partner, Ken Roesel. He is my rock and it is his unending support that brings us here today. His parents are with us as well, John Tinker Williamson and Patricia Williamson. It is important to me that they are here because my parents are not and having gotten to know them over the many years, it is clear to me where Ken gets all of his virtues.

I have my best friend here of 30 years. She is my sister, Susan Bowen. She hopped on a plane from Chicago. She said she would not miss it for the world and she is holding my hand right now.

With her is my dearest friend from law school, Allison Peck. My cousin, Dr. Christopher Constance who also jumped on a plane to be here less than 12 hours, but to bear witness to today. And for that, I am also grateful. His mother, Mary Constance, is here from New York as well.

I have been fortunate to come from a long line of beautiful, smart, tenacious women, many of whom are not with us any more. My mother, Betty Xinis; my grandmother, Sophia Constance; my mother's twin sister, Halene Andreas. They are watching from above, but they know they have a good ambassador in my Aunt Mary who has been a shining example for me. I thank her for that.

My law partners, Billy Murphy and Hassan Murphy are also here, two of the most dedicated and brilliant legal minds I have ever and will ever have the pleasure of working with. I thank them for their support.

Those who are not here, at least in body, but in spirit, my son, Adoma Ross Adams. He is eight and right now it is best that he is swinging a baseball bat in baseball camp, than trying to sit still behind me.

[Laughter.]

Ms. XINIS. He thanks you for considering his mother. He was really heartened to hear that my physical prowess on a ballfield will have no moment today, or lack their of.

Last but not least, my brother, Neil Xinis and my father, Dimitri Xinis. They, right now, are in Greece supporting our family in some very difficult times, but I know that they are watching. As Senators Mikulski and Cardin pointed out, my father is truly an American dream. Without him, I would not be half the parent I am and half the person I am. Today is just as much his day as it is mine and I thank him.

I look forward to answering all of your questions and thank you for this opportunity.

Chairman GRASSLEY. Thank you. Mr. Namorato.

**STATEMENT OF CONO NAMORATO, NOMINEE TO
SERVE AS ASSISTANT ATTORNEY GENERAL, UNITED
STATES DEPARTMENT OF JUSTICE, TAX DIVISION**

Mr. NAMORATO. Thank you, Chairman Grassley.

Chairman GRASSLEY. Is the button on? Push the button.

Mr. NAMORATO. Thank you Chairman Grassley, Senator Klobuchar and distinguished Members of this Committee.

Accompanying me today are my wife, Fran, sitting behind me; my children, Susan, Regina, and Jim; their spouses and two of my grandchildren, Mattie and Ryan are here.

Also, I would like to introduce my law partner, Mortimer Caplin, who is sitting next to my wife. Mr. Caplin was the Commissioner of Internal Revenue under Presidents John F. Kennedy and Lyndon Johnson. He turned 99 this year, just a couple of weeks ago. I am honored that he is here attending this hearing with me today.

Senator KLOBUCHAR. Where is he? There you are. He looks to young for 99.

[Laughter.]

Mr. NAMORATO. Senator, I was born and raised in Brooklyn, New York in the Greenpoint neighborhood. I grew up in a large Italian-American family with wonderful parents and grandparents.

I attended Bishop Loughlin High School and then Iona College in New Rochelle. After graduation from college, much to the puzzlement of my father, I turned down a higher paying job with a national accounting firm to take a job as a special agent with was then known as the Intelligence Division of the Internal Revenue Service. It is currently called the Criminal Investigation Division.

Since then, I have spent my entire career in some aspect of tax enforcement. For 6 years with the IRS in New York I investigated all kinds of tax fraud.

While serving as an agent I attended Brooklyn Law School at night. When I graduated, I moved to Washington to join the Tax Division of the Department of Justice. There I prosecuted criminal tax cases as a trial attorney, Chief of the Criminal Section and then Deputy Assistant Attorney General.

One might imagine given my background, I believe firmly in the importance of a vigorous and aggressive criminal civil tax enforcement program in order to foster and promote voluntary compliance and to deter wrongdoing. For this reason in 2003, I left my law firm to become the Director of the IRS Office of Professional Responsibility. This was at a time when there were growing revelations that a number of tax professionals—some at very large reputable accounting and law firms—were designing abusive tax shelters and helping clients break the law.

My priority as OPR Director was to invigorate the enforcement of the agency's long-standing ethical regime and educate tax practitioners on their professional obligations.

The Tax Division shaped the formative years of my practice. I was lucky to have many outstanding mentors there and my work there gave me many close and lifelong friends.

I have always had enormous respect for the Department of Justice, especially the career professionals who have given some or all of their lives to public service. The Department is rightly considered one of the finest law firms in the world which operates with the utmost good faith to help protect Americans from wrongdoing and to enforce the law.

A strong Tax Division is critical to tax enforcement and I would look forward to serving my country again and helping to lead this effort. If I am fortunate enough to be confirmed, I will focus on advancing the mission of the Tax Division and zealously representing the United States and all of its activities while adhering to the law, promoting integrity, listening to all sides of an issue, providing candid advice, treating everyone I encounter with fairness and respect,

and honoring, supporting and advancing the efforts of the career professionals who are the core of the Division.

I, again, thank you all very much for this opportunity to appear before you and I look forward to answering any questions you may have. Thank you.

Chairman GRASSLEY. I will ask each one of the judicial nominees one question and Mr. Namorato a couple of questions.

Before I do that, you can see that all of the Members are not here and you may get questions from other people as well as us for answer in writing and we usually like—well, I should not say “we usually”. We want those back before we would—be voted out of Committee. So, make sure that you do that.

Let us start with Ms. Xinis. You once said that—you probably just love to have me quote. It is something you probably said 25 years ago.

[Laughter.]

You once said that, quote, “Federal judges can be reluctant to impose concurrent time,” unquote, for defendants at sentencing. Why do you think this? If you are confirmed, will you impose concurrent sentences and why or why not?

Ms. XINIS. Thank you, Senator. Judges are reluctant, I believe, in imposing concurrent time because often the second time a defendant appears before the judge it is because of a second crime or a second violation, second wrongdoing which requires warrants under the Federal sentencing guidelines and under the statutory mandates, additional sentencing. It is only in the extraordinary circumstance in which concurrent time would be warranted.

If I were so fortunate as to be confirmed, I too would follow the law and follow those principles based on the evidence that is brought before me with regard to what often happens in that case and that is the second sentence is often because of new offense conduct.

Chairman GRASSLEY. All right. Then for Justice Wright, once again you wrote something like this, quote, “our legal system is not without its threats and challenges which include the perception that justice is only for certain people or certain organizations, not for all,” unquote. In your view, do judges have a responsibility to change people’s perception?

Justice WRIGHT. I do not think we have a responsibility to change people’s perceptions, but I believe it is my responsibility—first of all, thank you Senator Grassley, Chairman Grassley for asking the question. I am a bit nervous here and want to make sure that—

Chairman GRASSLEY. You do not need to be. We address the same way all the time.

[Laughter.]

Justice WRIGHT. Thank you. To answer your question, I think it is part of my personal mission because I think that the justice system does respect everyone and we have certain obligations to make sure that we provide equal justice under law. While we cannot control a person’s perception, it is my view that when I have the opportunity to speak to individuals who may doubt that there is, in fact, equal justice under law, I help them understand that that is

what we live by as a country and that is what judges are obligated to provide.

Speaking for myself and the colleagues with whom I have served at the trial court, at the Minnesota Court of Appeals and also at the Supreme Court that is not only a value, that is in fact what we provide. Thank you.

Chairman GRASSLEY. Mr. Vazquez, a lot of nominees who come before this Committee say that it is important for judges to show humility. Whether or not you agree with this—do you agree with this and if so, what does that look like for a judge to show humility and I would like to have you elaborate.

Mr. VAZQUEZ. Thank you, Chairman. I do agree with the statement that it is important for judges to show humility. I was watching other hearings in preparation for today and I heard another Senator refer to it as robitis, kind of the robes go to your head and how that concerned him. I could not agree more.

In my personal view I think the way you show humility is how you treat the attorneys, the litigants, the jury members, and all court personnel who come before you with respect and dignity. Always in the back of your mind as a sitting judge, I think it is incredibly important to remember how extraordinarily fortunate you are to be in that position and that it is a privilege to be able to serve as a United States District Court Judge.

If I was lucky enough to be confirmed, the way I would try to demonstrate humility would be through the way I treated other folks who appeared and also always to remember that I am lucky to be where I am and never to forget that.

Chairman GRASSLEY. Thank you.

Mr. Namorato, in your view what is the appropriate criteria to consider when determining whether a tax fraud case should be pursued civilly or criminally?

Mr. NAMORATO. Thank you for the question, Mr. Chairman. As you know, given our complicated tax code it is very easy to make a mistake. Anyone who makes a mistake should have no problem at all with a criminal prosecution. However, if there is an intentional disregard of a known legal obligation, that would be a red flag that would justify criminal prosecution.

There is a very, very thin line between civil fraud and criminal fraud. A very shallow difference in the burden of proof. However said all of that, I guess the best way to answer that question is I know it when I see it.

Chairman GRASSLEY. The next question may be a little more difficult for you to answer, but it is something that I have had an interest in. You have previously applauded the IRS decision to focus on the enforcement of abusive tax shelters and target offshore accounts.

As I have said, I have long expressed concern about corporate uses of foreign tax shelters, particularly where there is no economic substance. Do you believe that there is more that the Department of Justice could be doing to combat the use of abusive foreign tax shelters?

Mr. NAMORATO. Yes. Yes. I do believe that there is more that we could be doing. I do think we are getting information from the offshore voluntary disclosure program about various offshore entities

that have been used to funnel money away from the national—through this offshore entities through a series of these convoluted transactions.

This is something that I would be interested in if I were fortunate enough to be confirmed, to look into it further, Senator.

Chairman GRASSLEY. I had 5 questions I was going to ask you. I may submit some of those for answers in writing to you. I do not want to abuse my colleagues time.

I will turn to Senator Klobuchar.

I was wondering. I have got to meet with the British Parliamentarians. Is there a chance you could finish this?

Senator SESSIONS. If you promise not to cause an international incident.

[Laughter.]

No. I would be glad to. I had the honor of meeting with them yesterday and they are a delightful group. Thank you.

Chairman GRASSLEY. Thank you.

Senator KLOBUCHAR. All right. Very good. Thank you very much, Mr. Chairman and thank you to all the nominees for your openings.

Also, Senator Franken mentioned something that made me think in the case of Justice Wright, to also thank the bipartisan committee that we had set up led by Ann Hutton, a lawyer in Minnesota and then former U.S. Attorney Tom Heffelfinger, who was the U.S. Attorney under both the first President Bush and the second President Bush. They did a great job.

I thought I would start, Justice Wright, I know you have been on the Minnesota Supreme Court. How would you see that experience helping you on the Federal District Court? What do you see as the differences?

Justice WRIGHT. Thank you, Senator Klobuchar. First, I will begin with how it would help me. It is wonderful as a trial judge to have some insight into how appellate decisions are made. The record, the record, the record is so important at the trial court level and I know that certainly because of my experience as a trial judge having been reviewed by the Court of Appeals or the Supreme Court, but I know it firsthand as well as an appellant judge when I am digging into the record and I want to make sure that a certain right has been explained or certain findings have been made. So, it is very important in that regard.

That is how I would respond to your question in terms of the importance of having served at each level of the courts in the State of Minnesota.

My experience I think as a Federal prosecutor and in private practice in basically Federal courts not in Minnesota has—that experience has given me the opportunity to appear in trial court. I know what it means to be a lawyer representing a party in their most important affairs and what it means to have a judge who listens carefully, who applies the law fairly, who ensures that a party's interests are heard and weighed carefully and then who writes a decision that is carefully analyzed and that it is clearly written.

One of my goals as a judge is to author an opinion or an order that the party themselves, the person who is bringing their case to the court can understand, that is not in legalese, that does not

have to be translated by their lawyers. Certainly lawyers provide important assistance, but it really is the case that belongs to the client, the party in it.

Senator KLOBUCHAR. Right. Think that shows only 2 percent of the cases you either authored or joined have been reversed. It seems like a pretty good percentage. I do not know what the averages are. Very good.

Just last, on your pro bono work, why do you think this is important for lawyers to continue to be involved in pro bono work and have that be our standard?

Justice WRIGHT. You know I think it is so important because everyone should have the benefit of access to justice. That is what our constitution guarantees, equal justice under law.

The legal system is a complicated one. Certainly a person can choose to represent him or herself, but it is a daunting proposition. When lawyers step forward and provide pro bono legal services, which in Minnesota we have a robust contribution from Minnesota lawyers throughout the State, to step forward and help those who cannot afford a lawyer navigate our legal system and come forward and receive a fair hearing of their legal matters, I think that is important.

From my perspective as a judge, I am not off the hook. I cannot represent clients, but I can represent the judiciary and I can help Minnesotans and people beyond Minnesota understand the importance of the role of the judiciary, what to expect when they come to court and to understand the important constitutional values that our Minnesota judiciary represents.

Senator KLOBUCHAR. Thank you very much.

Quickly, Mr. Vazquez, just like in Minnesota, I think New Jersey has a high number of patent cases just because of the companies that are located there and the work that goes on. How do you feel about taking on the patent cases? And talk about your background and how that will help you.

Mr. VAZQUEZ. Thank you, Senator. You are absolutely correct. Because of the pharmaceutical industry, we have a tremendous number of patent cases, primarily under what is commonly called abbreviated new drug application.

My background as a Federal prosecutor and then State prosecutor really did not prepare me for that area. However, I have been fortunate enough through an unusual series of events in the last 2 years to be actively involved as a local counsel to a number of patent issues.

It is a real issue for the courts of New Jersey because we have a high docket load. Those cases do not tend to settle. They tend to go through at least what we call the Markman hearing.

I think the challenge for the judiciary more so than any other type of experts is that the scientific background that is required to understand those cases takes a tremendous amount of time. At least it does for me. I have gotten to the point where I can understand the science, but I do not feel confident cross examining a scientist at this point.

I think what it requires is a lot of diligence and I never thought I would say this, but I have actually grown to like chemistry since

taking on those cases and at least get a better appreciation for what it is. I hope I answered your question with that response.

Senator KLOBUCHAR. Thank you very much. We are working on patent reform here and have a bill that got through the Committee that I want to get to the floor. It is kind of a selfish question.

[Laughter.]

Just one last—I will save, if we have remaining time to ask Ms. Xinis something later. I know we are going to hand it over to Senator Franken which I appreciate, Mr. Chairman.

Mr. Namorato, we have received numerous letters of bipartisan support for your nomination, 2 formal Attorney Generals, 6 former IRS Commissioners, 46 prominent tax attorneys which I think is important. As we know, tax law can always be a little controversial.

When I was the Chief Prosecutor in Hennepin County, I once went after seven people who had pretended to be living in Minnesota—pretended to be living elsewhere in post office boxes. Unfortunately, they were not the size of Stuart Little, so it did not work very well for them.

[Laughter.]

Senator KLOBUCHAR. They were basically ripping off hundreds of thousands of dollars from our taxpayers. It was a pretty open and shut case. I was just so surprised at, one, the reaction. The public was glad we were going after them. Two, just the push back. They actually went to the legislature, tried to get amnesty. They were all pilots, airline pilots and it was quite an amazing situation to try to actually bring the case to fruition.

Could you just talk about, very briefly, what lessons you have learned so far from enforcing the tax laws from your time in the Department of Justice, how you will apply them to this job?

Mr. NAMORATO. Sure and thank you for the question, Senator. I have had a long and varied career on both sides of the table, as a prosecutor and as a defense lawyer. I think I will bring a balance to my job, a balance to make sure that I always act fairly, objectively and with integrity, will treat everyone with dignity and respect and only take actions consistent with the law.

I think these are the most important things to take when you are going to be taking over this type of prosecutorial role, Senator.

Senator FRANKEN. First of all I would like to thank now Chairman Sessions for his courtesey.

Senator SESSIONS [presiding]. One brief moment.

[Laughter.]

Senator FRANKEN. That is true, but well deserved.

[Laughter.]

Senator FRANKEN. All right. I will just go.

Justice Wright, you have spoken on several occasions about the importance of ensuring the criminal defendants that they are represented by counsel. It has been more than 50 years since the Supreme Court unanimously ruled in *Gideon v. Wainwright* that defendants facing criminal charges have a right to counsel regardless of their ability to pay for legal representations.

Right now in jurisdictions across the country and including some in Minnesota, misdemeanor defendants are appearing before judges without an attorney because they cannot afford one. States and lo-

calities facing record backlogs and shrinking budgets are not consistently providing these defendants with access to counsel despite their constitutional obligation to do so.

You voiced concern about this problem and I share your concern. I think it is important that we acknowledge this problem and make it part of the conversation that many of us are having about mass incarceration and the state of our criminal justice system.

From your perspective as a State court judge with 15 years on the bench there, how can we as a Nation act to correct this failure and make real the promise of *Gideon*?

Justice WRIGHT. Thank you very much for the question, Senator Franken. You are correct that there are places in which misdemeanor defendants are not receiving counsel. I believe any person who is coming before the court is facing a very daunting challenge. While one may choose to not have counsel, when one does not make that choice that is an unfortunate circumstance when they proceed without counsel.

I think it is very important for, frankly, leaders like yourself and leaders within the legal community to impress upon those who can make the decision to ensure that the Sixth Amendment right to counsel is being, in fact, seen in all of our criminal cases and effectuated. I also think that there are opportunities for pro bono services that can be provided by competent criminal defense lawyers. I know that that is, in fact, what happens in Minnesota at times when someone falls between that position where they would qualify for a public defender and where they can in fact afford an attorney.

Senator FRANKEN. These sometimes are misdemeanor offenses for which there is jail time that they do not get representation.

Justice WRIGHT. I must say in my practice as a lawyer and then also as a Supreme Court Justice, in the jurisdictions that I have served in I have not seen that as the case that one does not have access to an attorney when that person is——

Senator FRANKEN. Minnesota is better than some other States in this regard.

Justice WRIGHT. I think that is right and we have places like Legal Right Center which may serve as, in Minnesota, which may either serve as the public defender and not have any cost or provide a, as I understand it, a sliding cost scale to make legal services more affordable.

When one stands before a court facing a loss of—well first of all, being accused of a crime and facing a penalty that attaches to that, I certainly believe that it is incumbent upon our justice system to provide the opportunities for counsel. When that person chooses to proceed without an attorney, it is just the hard work of judges, frankly, remaining neutral, but ensuring that they understand the case that a pro se defendant is putting forward and making sure that while remaining neutral, they clarify the arguments and clarify the legal basis for those arguments so that both sides, the prosecution and the defense, are receiving a fair trial.

Senator FRANKEN. All right. I am out of time. Ms. Xinis, I notice you have not been asked a question yet. Mr. Chairman, are you planning to ask Ms. Xinis a question?

Senator SESSIONS. Yes.

Senator FRANKEN. In that case, goodbye.

[Laughter.]

Senator FRANKEN. It is nice. Congratulations to you all.

Senator SESSIONS. Thank you for enlivening a normally boring Judiciary Committee.

Senator FRANKEN. It is never boring, sir, when you are here.

[Laughter.]

Senator SESSIONS. Mr. Namorato, it is an honor to see you again. You are clearly one of the more experienced and skilled practitioners of Internal Revenue Service law in the country. I think it reflects well on the President that he has chosen you for this office. I want to say that.

Mr. NAMORATO. Thank you.

Senator SESSIONS. I remember well your representation of a rather important case of an individual in the Southern District of Alabama and you handled yourself with great skill, great integrity and delivered a fine service for your client in the process. That is the kind of professionalism I think we need to look for. We had a nomination previously for the IRS Chief who had almost no experience in this area a few years ago. Eventually I think that nominee took another position in the administration.

Would you share with us your thoughts about why particularly you need someone in the position you would attain that understands and has the judgment to decide between issues like civil and criminal and mistake and fraud and is aware of the traditions of the Tax Division that seeks certainty and predictability in cases?

Mr. NAMORATO. Sure, Senator. Thank you very much for the question. I do remember being in your office in Alabama when you were U.S. attorney in the case you were referring to.

With respect to your question, Senator, we have a very, very, very complex tax code. It is easy to make a mistake. It is easy to not understand everything. If you did not have a tax administrator who knew the difference between civil and tax fraud, you could have the Department of Justice in effect taking out cases that should not be brought. More importantly, you could have the tax laws being abused for non-tax purposes.

For all of these reasons, you should only use the tax laws when there is a clear violation of a known legal obligation and when it will foster and promote voluntary compliance.

Senator SESSIONS. I agree with that completely. Voluntary compliance is absolutely essential to the American system of taxation and actually funding this Government.

Mr. NAMORATO. Completely agree, Senator.

Senator SESSIONS. People need to have respect for the system. The scandal at the IRS with Lois Lerner and other incidents are really problematic. I talked to some of the Tea Party people in Alabama who felt their request for tax exemption was held up for political reasons.

I am sure you remember the Nixon situation in which the tax code was used to punish political enemies. Would you share with us your view about the essential requirement that the Tax Division be seen as not being involved in politics, but being apolitical?

Mr. NAMORATO. Absolutely. I could not agree more with you, Senator. The Tax Division should be viewed as a pinnacle of integrity, there to protect as well as to prosecute, to make sure that the

wrong cases are not brought, but only the appropriate cases are brought. I could not agree more with you.

Rest assured, if I am fortunate enough to be confirmed, there will never be any political consideration in any case that crosses the threshold of the Tax Division.

Senator SESSIONS. I thank you for saying that because right now there is a lot of angst out among the American people. I do think your appointment can help restore public confidence in the Tax Division and people who cheat need to be prosecuted. I try to pay my taxes. Most people try to pay theirs. It is not right for people to cheat and avoid their taxes, so you need to be firm when you need to be firm. You need to understand the complexities of modern commercial life. I think you understand that and are a good nominee for the office.

Mr. NAMORATO. Thank you very much, Senator.

Senator SESSIONS. I look forward to supporting your nomination.

Senator KLOBUCHAR, my time is up. I would have some other questions for other Members. Do you want me to go next?

Senator KLOBUCHAR. You are in charge. Go ahead.

Senator SESSIONS. All right. Ms. Xinis, I have a fabulous daughter-in-law of Greek ancestry.

Ms. XINIS. Hopefully an easier name to pronounce.

Senator SESSIONS. Yes. It is a little.

You have extraordinary talents and skills and I am impressed with that, and good background for the choice this position. We have a situation that is occurring I think throughout the country, in Maryland, Baltimore in particular, that involves the ability of police officers to create safety in the city at the same time to be able to defend themselves from violence and attack and to try to bring order out of disorder.

You agree that a disorderly neighborhood is bad for people? If that is a poor neighborhood, is particularly bad for the people there and that the police have a responsibility to try to maintain an orderly and safe environment for the people who live in a city, for example?

Ms. XINIS. Senator, I would say this. Thank you for that question. I think it is first and foremost to note that police officers have among the hardest jobs in our society. They risk their lives every day to serve and protect.

It is a complicated and delicate balance that were I to be confirmed and be so fortunate, I would imagine at points would, with different factual predicates, be before me.

Senator SESSIONS. That is correct. As a Federal judge, you will be hearing police civil rights complaints and trying, perhaps, a number of cases involving civil rights complaints against police officers.

Ms. XINIS. For each and everyone of them, each and every officer will have the same presumption as any other witness with any other case before me. It is so paramount that a judge remain objective, open-minded, at no point prejudge facts or circumstances, listen to all of the evidence fully and completely and give each and every litigant and each and every witness their due dignity. I believe that that is fundamental to the oath of being a judge.

Senator SESSIONS. That applies to the police officer.

Ms. XINIS. Correct.

Senator SESSIONS. He is the same protections also.

Ms. XINIS. That is right.

Senator SESSIONS. He has to make decisions on the streets that often have to be made instantaneously. Perhaps they have not gone to Harvard or Yale and they have to make a decision right then in what they think is in the public interest.

Do you think a judge in recognizing the challenges they place should show empathy for the difficulties police officers face as well as the complainants?

Ms. XINIS. I think with regard to empathy, empathy is in my view the ability to for one, place oneself in the shoes of another. There is a particular place for that in our judicial system and it is paramount for every witness, law enforcement as well as lay. There are many times that the system, and I mean the law enforcement system, works well. For that, law enforcement should be applauded.

When it breaks down on occasion, the way our system deals with it is to bring it to the courts. It would be my job to fully and faithfully fulfil that oath to make sure that all of the facts come to light and they are laid bare before me so that I can decide if there is a question of law before me fully and fairly or it is presented to the jury in the most fair and comprehensive way possible. And that is most fair, I believe, to the police officers as well.

Senator SESSIONS. That is certainly the way you conduct a trial. I am concerned that you listed six cases in which you served as District of Columbia's Review Officer for Police Activities. All six of those you submitted to the Committee involved a finding against a police officer and I believe on every single charge against the police officers. So, that gives me a little concern.

You will be taking on a situation in Baltimore, perhaps, come before your court. Morale of police officers is low there. You have a situation, and I know it is one of those close calls in how you decide, but one of those cases you submitted to the Committee involved a police officer who apparently received a call. He goes up to a store. About 8 to 10 individuals were congregated in the same area. He asked them to move on and one witness launched into a very, apparently, profane attack on the police officer. The officer arrested him for disorderly conduct and you found that the officer was in error.

I do not know. First, what did that finding mean for the officer? What kind of consequences resulted from your decision in that case?

Ms. XINIS. That is a very good question. It allows me, if I may, to explain the process more generally.

The process in the District of Columbia for the Office of Police Complaints was that there was a team of investigators and staff who would weed out the frivolous and the baseless complaints because there were many of those. The Committee determined, the Agency determined it would be a waste of important resources to bring those to a office—hearing officer.

By and large, these cases were ones in which there was no genuine issue, often, of disputed material fact even from the perspective of the police officer. It was not my job to mete out punishment.

That was left to the department itself. There were times that no punishment was meted out is my understanding.

Rather I was deciding a very narrow question after often being given no genuine issue of dispute in material fact which is did the officers——

Senator SESSIONS. Could your findings have been used in a civil lawsuit in any way?

Ms. XINIS. I would have to look at that, Senator. I do not know the answer immediately and I would not want to speculate for you. It has been—I think I handled—over 6 years, I handled six cases.

Senator SESSIONS. Are you familiar with the broken windows policy in New York? The law enforcement policy known as broken windows?

Ms. XINIS. I am not, Senator.

Senator SESSIONS. You are not familiar with that? It is a well-known process by which Mayor Giuliani and the Chief of Police concluded that small crimes lead to big crimes and that being clear in enforcing smaller crimes would make the public safer and, in fact, it was dramatically effective, leading to a dramatic decline in murders in New York. Really many say, saved the city of New York. You are not familiar with that and being a police review officer?

Ms. XINIS. Senator, my job in that regard was to review the fact—the case that appeared before me in the District of Columbia and it was——

Senator SESSIONS. Well——

Ms. XINIS. I am sorry.

Senator SESSIONS. You have answered it, I guess. What I would say to you is, this caused the officers to come in more direct contact every day with situations in an early stage on the streets of New York and other cities have adopted this all over the country. It has become a predominate theory of law enforcement and they confront people.

You have the frisk situations, or the stops in New York that now have been reversed resulting in a decline in morale of police officers and increase, it appears, in crime rates and innocent people may be dying as a result of the failure of police officers to actually get out and confront people who appear to be problematic, like the man here on the store that launches into a tirade against the police officer. All I am saying to you is in a real world of law enforcement, I want to know you as a Federal judge understand that.

Ms. XINIS. Absolutely.

Senator SESSIONS. When a police officer is out trying to do his duty to make this community safer, he is not going to have a Federal judge second guessing everything that he does. Do you understand the danger of that happening?

Ms. XINIS. Senator, what I would say is this, I do. For 15 years, almost 15 years, I acted as a assistant Federal defender. One of the most important lessons I learned because I formed very important professional relationships with the assistant United States attorneys that prosecuted these crimes and with the agencies that helped those assistant United States attorneys prosecute those crimes and I can say to you, they do good work. It is important work.

As a judge, however, it would be my position that my oath is to fully and fairly decide the case before me on the facts. I think my record would speak to—and the individuals whom I know are supporting my nomination would speak to my record of fairness, of open mindedness and of integrity. I would bring that to every case——

Senator SESSIONS. Can you assure the police officers in Baltimore and all over Maryland that might be brought before your court that you will give them a fair day in court?

Ms. XINIS. Absolutely.

Senator SESSIONS. That your history would not impact your decisionmaking? I raise that particularly because I see your firm is representing Mr. Freddie Gray in that case that has gathered so much attention in Maryland and there are lots of law enforcement officers throughout the State that want to know that they do not have someone who has an agenda to bring to the bench. Can you assure them that you will not bring that to the bench?

Ms. XINIS. Absolutely. Senator, I have never had an agenda, even in my private practice, even in my practice as an assistant Federal defender. I took the oath of being a zealous advocate, taking positions that would best serve my clients.

The carry through if I were to become a judge, if I were so fortunate, is to take that same dispassion that one has to bring to advocacy, that same recognition that important policy decisions need to be made by policymakers, but that is not a court's role and that there is no agenda for a well-trained judge. There is no agenda for me, sir, and there would not be if I were nominated and I can absolutely confirm——

Senator SESSIONS. I hope you understand and I would just say that theory is one thing, but human interactions with police officers—it's awfully difficult sometime to second-guess a decision they have to make on the spot.

Ms. Wright, I was curious about a law review article you wrote in UCLA Law Review which not many people are honored to be able to write a law review article there. You said some things that I think we ought to ask you about and understand more fully what you mean.

The title of the article was in 1990, "Defining the Property Right in Whiteness." You had this, I believe concluded your article—well first you led off, the first sentence was, "the practice of American racism is based on two principles, the sanctity of property and the belief in the hierarchy of a races."

The belief in the hierarchy of races, as you note, is totally unacceptable and contrary to American law. I am curious about your equating the sanctity of property rights with that. You go on to say, "the liberal conception we face today is, however, equally damaging and little discussed that property is worth more than life or liberty, the fact that whites own the vast majority of what Americans define as property does not usually enter this argument and, therefore, appears nonracist." Then you conclude saying, "the failure of today's racial discourse is its reliance on the notion that property is neutral, that the deed to a suburban home is property while the opportunity to move out of a slum is not. The fungibility of property can be no better exemplified than it is by slavery, the fact that

our constitution once recognized one person's very life and liberty as another's property should teach us the danger of letting property determine liberty, rather than looking to liberty to define property."

Can you give me an incite into what you mean and as a Federal judge how you consider property?

Justice WRIGHT. Senator Sessions, thank you so much for the question. I think it is an important one and I am very happy to have the opportunity to address it because it goes to the fundamental qualifications of any person with experience as a judge or without experience as a judge to be a judge, and that is it goes to the fundamental question of can I fairly render decisions in every case.

Addressing that writing that occurred more than 25 years ago, before I was a lawyer as I was studying law, I think is important to place first of all the statements of a law student and a—

Senator SESSIONS. You were a member of the Law Review at that time?

Justice WRIGHT. At that point, those were reflections from a class that—so I was not a member—I was a member of the Harvard Civil Rights Civil Liberties Law Review, but that writing did not appear in the Harvard Civil Rights Civil Liberties Law Review.

What I think I inartfully said or tried to say was a critique on racially restrictive covenants. That was my concern. The assignment does not—my writings do not reflect the nature of the assignment that I was commenting on. In my articulation—and inartfully, many years ago without a JD degree and all of the training and experience that I have now, but owning that I did write those words.

I think it is important that I explain the context. It was in the instance where despite fair housing laws, there were racially restrictive covenants that existed. Those covenants were ones in which a person who was of an ethnic background or a racial background who did not fit the criteria for the neighborhood could, even though they had the same amount of money, were prepared to pay the house that the seller wanted to have paid, they were in fact excluded because of their race.

That is what I was addressing. I will tell you I did so inartfully. I will tell you that—

Senator SESSIONS. I did not write so well in college either and still do not.

[Laughter.]

Justice WRIGHT. As someone who has strived to improve over the course of my time after law school and in my career, throughout my career, I am not saying that that is what I would write now and how I would communicate now.

Senator SESSIONS. You would recognize as a Federal judge that property rights provided for under the constitution and the laws of our States and that deeds to property represent ownership—

Justice WRIGHT. Yes.

Senator SESSIONS [continuing]. That should be respected by the court?

Justice WRIGHT. Absolutely. I would, Senator Sessions. I absolutely would. I think my writing as a judge, as a Justice on a Min-

nesota Supreme Court reflects that understanding and frankly, that respect for the rule of law and property rights that are provided for under the rule of law.

Senator SESSIONS. All right. Thank you. I think those are important issues to raise and give you an opportunity to explain. I will review your writings, both of you that I have asked about these two aspects of your practice.

I think you all should be honored to receive the nomination of the President. It is significant positions that you are seeking to hold and you owe the taxpayers honest adjudication of your best judgment on how to handle these matters.

I do feel like we have gotten into a mode where courts have exceeded their jurisdictional powers. Congress is really put in a position of being an inferior branch and I do not believe that courts are the superior branch and entitled to have the final word on every social issue facing the country. This is a big issue and the American people are not happy about it. It represents an erosion of democracy. As Justice Scalia recently noted, if a committee of nine, five of which decide something can set policy for America.

Anyway, we have a situation that requires a national thoughtful approach.

It is good to be with you Senator Klobuchar. Yield any time you may.

Senator KLOBUCHAR. Senator Sessions and I share a background as a prosecutor. When I came into my job, we worked really hard on those property crimes. I did not do misdemeanors, but some of the lower level crimes with this idea that it helped this neighborhoods that saw—crimes, but as I was listening to your questions of Ms. Xinis, from a policy standpoint, I came in as a elected official. I think her role of deciding individual cases, which is different and that is probably why you were not as familiar with some of those policies that were going on.

I just had one question of you and that was, have you also represented police officers in your practice at all?

Ms. XINIS. Absolutely. I have on a number of occasions proudly.

I would also too, if I may, because there is one important aspect of the Office of Police Complaints process that I left out and that is the review process. At any point the officer and the agency could review my decisions and could reverse them and I was never told anything of the sort had happened in the case, in those cases and was kept on and proudly served in that capacity.

Senator KLOBUCHAR. All right. Well that was just—I thought it was important to get on the record.

Ms. XINIS. Thank you.

Senator KLOBUCHAR. I want to thank all of the nominees. I thank Chairman Grassley who we hope has not caused some kind of new war with Great Britain as we are sitting here.

[Laughter.]

I want to just thank you for your tremendous job, your service today and hope that these nominations will be considered as soon as possible and we thank your family and friends for being here, thanking your son for not being here, Ms. Xinis.

[Laughter.]

Ms. XINIS. Thank you.

Senator KLOBUCHAR. We will keep the record open for a week and with that, the hearing is adjourned. Thank you very much.

Mr. NAMORATO. Thank you.

Mr. VAZQUEZ. Thank you.

Ms. WRIGHT. Thank you.

[Whereupon, at 11:33 a.m., the hearing was adjourned.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

Cono Rocco Namorato

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

Assistant Attorney General, Tax Division, U.S. Department of Justice

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

(O) Caplin & Drysdale
One Thomas Circle, NW, Suite 1100
Washington, DC 20005

(H) Arlington, VA

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

1942; Brooklyn, NY

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

Brooklyn Law School (1965 – 1968); J.D. degree received in June 1968

Iona College (1959 – 1963); B.B.A., *summa cum laude*, received in June 1963

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

2006 – present
Caplin & Drysdale
One Thomas Circle, NW, Suite 1100
Washington, DC 20005
Member of the Firm

2004 – 2006
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224
Director of the Office of Professional Responsibility
(Also designated as Acting Deputy Commissioner for certain matters.)

1978 – 2004
Caplin & Drysdale
One Thomas Circle, NW, Suite 1100
Washington, DC 20005
Member of the Firm

1968 – 1978
Department of Justice, Tax Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Attorney; Assistant Chief of the Criminal Section; Chief of the Criminal Section;
Deputy Assistant Attorney General

1963 – 1968
Internal Revenue Service
Intelligence Division (now known as the Criminal Investigation
Division)
250 Livingston Street
Brooklyn, NY 11201
Special Agent (Criminal Investigator)

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

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

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

U.S. Department of Justice John Marshall Award (1974)

ABA Section of Taxation (Civil & Criminal Tax Penalties Committee) Jules Ritholz Award (2000)

Accounting Today Magazine, Top One Hundred Most Influential People in Accounting, (2005)

University of California, Los Angeles Tax Controversy Institute, Bruce I. Hochman Award (2006)

Received several outstanding attorney awards while with the Department of Justice Tax Division (1968 – 1978)

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 (ABA)

Chair, Subcommittee on Criminal Tax Policy, Taxation Section (1991 – 1998, est.)

Member, Committee on Civil and Criminal Tax Penalties (1991 – 2015)

Chair, Committee on Tax Litigation, Litigation Section (1999, est.)

Co-Chair, Committee on Complex Criminal Litigation, Litigation Section (2000, est.)

American Bar Foundation

Fellow (1994 – present)

American College of Tax Counsel

Fellow (2006 – present)

10. **Bar and Court Admission:**

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

New York State Bar, 1968

District of Columbia Bar, 1969

No lapses in membership.

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.

Appellate Division of the Supreme Court of New York (Second Judicial Department), 1968

District of Columbia Court of Appeals, 1969

U.S. Bankruptcy Court for the District of Columbia, 1969

U.S. Tax Court, 1969
 U.S. Court of Appeals for the District of Columbia, 1969
 U.S. District Court for the District of Columbia, 1969
 U.S. Court of Appeals for the Second Circuit, 1971
 U.S. Supreme Court, 1972
 U.S. Court of Appeals for the Fifth Circuit, 1985
 U.S. Court of Appeals for the Fourth Circuit, 1986
 U.S. District Court for the Southern District of New York, 2006
 U.S. District Court for the Eastern District of New York, 2006

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.**

Civilian Member, Army Navy Country Club (1975 – 1985, est.)

Honorary Member, National Association of Former United States Attorneys (1980 – present)

Civilian Member, Fort Myer's Officers' Club (2004 – 2005, est.)

In addition, I have made financial contributions to charitable organizations over the years. I have not included in the list above any organizations to which I gave funds but did not otherwise participate in programmatic activities, even though those organizations may consider me a member by virtue of my contribution.

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

To my knowledge, none of these organizations discriminate on the basis of race, sex, religion or national origin, nor am I aware of any instance in which they did while I was a member.

12. Published Writings and Public Statements:

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

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

I have authored or co-authored at least 14 articles or outlines dealing with tax practice and professional responsibility. Following is a list of these publications:

Recent Developments in the use of Internal Revenue Service Summonses in Criminal Tax Investigations; Institute on Federal Taxation 40 n.2 39-1 (28) (1982). Copy supplied.

Criminal Exposure of the Tax Practitioner; The Practical Accountant; (February 1985). Copy supplied.

Voluntary Disclosure Policy, An Alternative to Legislative Amnesty; Institute on Federal Taxation, 45 n.2, 38-1 (18) (1987). Copy supplied.

Tax Violations Not Willful Opinion: McKay's Accusations Rebutted; Legal Times v. 11, n.9, p.12 (07/25/88). Copy supplied.

Representing a Taxpayer in a Grand Jury Investigation; ALI-ABA CLE Course of Study (Apr. 27, 1989). Copy supplied.

Pre-Prosecution Review: Defense Strategy During Conferences with CID, District Counsel, the Tax Division and United States Attorney's Office; ALI-ABA CLE Course of Study (Apr. 27, 1989). Copy supplied.

What to Do When IRS Special Agents Arrive; The Practical Accountant 23, no. 12, 28-39 (December 1990). Copy supplied.

What to Do When the Special Agents Arrive; 36th Ann. Tax Conf. 1, at The College of William & Mary (1990); also printed in 42 Tul. L. Sch. Ann. Inst. On Fed. Tax'n 3-1 (1992-1993). Copy supplied.

International Criminal Tax Cases; 50 U. Miami L. Rev. 617 (1995-1996).

Criminal Tax Fraud and Ethics; 48 Tul. L. Sch. Ann. Inst. On Fed. Tax'n 201-1 (1998-1999). Copy supplied.

Update on the IRS's Office of Professional Responsibility: The Importance of Firm Responsibility; 57 Tax Executive 43 (2005). Copy supplied.

Overview of OPR and Circular 230 Cases; 52nd Ann. Tax Conf. 1, at The College of William & Mary (2006). Copy supplied.

Program Falls Short (Tax Scofflaws); The National Law Journal (2009). Copy supplied.

DOJ Deal With Swiss Banks Impacts U.S. Taxpayers And Financial Firms Around The World; Mondaq (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.**

I have done my best to identify any reports, memoranda, or policy statements, including a thorough review of my personal files and searches of publicly available electronic databases. I have located the following:

American Bar Association, "Redirecting Criminal Tax Enforcement to Improve Voluntary Compliance" (1991). Copy supplied.

American Bar Association, "The Future of the Criminal Investigation Division" (1998). Copy supplied.

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

None.

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

summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

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

Following is a list of 40 speeches I have given over the years. I do not have information prior to 2004.

Tax Executive Institute (TEI), Ethical Issues in Cross-Border Taxation. Boston, MA (2004). Copy supplied.

Center for the Study of Ethics and Human Values, Ethics Form for Tax Practitioners. Washington University, St. Louis, MO (2004). Copy supplied.

American Institute of Certified Public Accountants (AICPA), Office of Professional Responsibility. Washington, DC (2004). Copy supplied.

American Law Institute-American Bar Association (ALI-ABA), Exempt Organizations Meeting – Relevance of Circular 230 to E.O. Practitioners. Washington, DC (2004). Copy supplied.

Kansas City Bar, Current State of Tax Practice. Kansas City, MO (2005). Copy supplied.

University of Virginia (UVA), Role of the OPR. Charlottesville, VA (2005). Copy supplied.

University of Denver, Role of the OPR. Denver CO (2005). Copy supplied.

Speech to British Tax Professionals Sponsored by Her Majesty's Revenue & Customs, Role of OPR. London, England (2005). Copy supplied.

American Bar Association (ABA), Speech on Firm Responsibility. Washington, DC (2005). Copy supplied.

TEI, Office of Professional Responsibility. Orlando FL (2005). Copy supplied.

Southern Federal Tax Conference, Circular 230. Atlanta, GA (2005). Copy supplied.

San Diego Tax Institute, Circular 230. San Diego, CA (2005)
Copy supplied.

South Carolina Bar Association, Role of OPR. Charleston, SC (2006).
Copy supplied.

Speech to London Tax Practitioners, State of Tax Practice in the U.S.
London, England (2006). Copy supplied.

Vermont Bar Association, Role of OPR. Burlington, VT (2006). Copy
supplied.

University of California, Los Angeles (UCLA) Tax Institute, Current
Enforcement Priorities of the IRS. Los Angeles, CA (2006). Copy
supplied.

CBIZ Tax Program, State of Tax Practice. Washington, DC (2006).
Copy supplied.

UVA Tax Institute, Ethical and Professional Responsibility Issues.
Charlottesville, VA (2006). Copy supplied.

William & Mary Tax Institute, State of Tax Practice and Role of OPR.
Williamsburg, VA (2006). Copy supplied.

Seattle Bar Association, Current State of Tax Practice. Seattle, WA
(2006).

Kansas City Bar Association, Current State of Tax Practice. Kansas City,
MO (2006). Copy supplied.

ABA Tax Institute on Criminal Tax Fraud, Circular 230. San Francisco,
CA (2006). Copy supplied.

Kansas City Bar Association, Circular 230. Kansas City, MO (2006).
Copy supplied.

Iowa State Bar Association, Circular 230. Des Moines, IA (2006). Copy
supplied.

Heckerling Institute on Estate Planning, University of Miami, Ethical
Rules of Circular 230 and the Estate Planner. Miami, FL (2007).
Copy supplied.

ALI-ABA Tax Exempt Charitable Organizations State of Tax Practice,
Washington, DC (2007)

ABA Criminal Tax Institute, Criminal Tax Investigations. San Francisco, CA (2007, est.).

AICPA (Tax Section), State of Tax Practice. Washington, DC (2007). Copy supplied.

UVA Tax Institute, OPR and Circular 230. Charlottesville, VA (2007). Copy supplied.

Dallas Tax Alliance, OPR and Circular 230 Dallas, TX (2007). Copy supplied.

UVA Tax Institute, Various topics: Circular 230, Preparer Standards, Voluntary Disclosure and Criminal Investigations. Charlottesville, VA (2008). Copy supplied.

North Carolina Tax Institute, Criminal Tax Investigations. Chapel Hill, NC (2008). Copy supplied.

Dallas Tax Alliance, Ethical Issues: Recent Developments and Perennial Problems. Dallas, TX (2008). Copy supplied.

ABA Institute on Criminal Tax Fraud, Current State of Tax Enforcement. San Francisco, CA (2008). Copy supplied.

North Carolina Tax Institute, Criminal Tax Enforcement. Chapel Hill, NC (2009). Copy supplied.

UVA Tax Institute, Ethical Issues in Administrative and Controversy Practice. Charlottesville, VA (2009). Copy supplied.

George Washington University, Offshore Tax Compliance in Today's Economy. Washington, DC (2009). Copy not supplied.

Internal Revenue Service, 22nd Annual Institute on Current Issues in International Taxation, Offshore Tax Compliance in Today's Economy. Washington, DC (2009). Copy not supplied.

Florida Bar Association, Foreign Bank Account Report – Treasury Form 90.22.1. Miami, FL (2010). Copy supplied.

UVA Tax Foundation, 64th Annual Conference on Federal Taxation, The Ethical Framework – Duties of the Tax Practitioner to the Client and to the System. Charlottesville, VA (2012). Copy not supplied.

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

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

Grand Jury Data Limits Give IRS Hard Choices, W. John Moore, Legal Times, July 11, 1983. Copy supplied.

New Bill Would Impose Burden On Criminal Defense Lawyers, W. John Moore, Legal Times, July 9, 1985. Copy supplied.

Laundering Bill Would Burden Defense Counsel, W. John Moore, Legal Times, July 15, 1985. Copy supplied.

Premier Tax Firm Diversifies Some – D?? Not Too Much, Legal Scene, Caplin and Drysdale Chartered, Larry Lempert, Legal Times, April 7, 1986. Copy supplied.

Justice Official Discloses That Proposal To Elevate Failure To File Offense To Felony Tax Evasion Is Being Considered (NCSA), Tax Notes Today, May 4, 1987. Copy supplied.

Justice Department Considers Plan To Make Failure To File A Felony, Tax Notes, May 11, 1987. Copy supplied.

The Week In Review: Direct Referral Of Criminal Cases: Justice's Internecine Feud, Tax Notes, May 25, 1987. Copy supplied.

Direct Referral Of Criminal Cases Stirs Heated Debate (NCSA), Tax Notes Today, June 1, 1987. Copy supplied.

McKay's Accusations Rebutted; Weingarten: No Conflict In Phone Stocks, Verbatim, Legal Times, July 25, 1988. Copy supplied.

IRS, Other Federal Agents Are Trying To Catch Practitioners At Money Laundering, Tax Notes, June 20, 1988. Copy supplied.

Did the McKay Report Treat Meese Unfairly?, Washington Brief, The National Law Journal, August 1, 1988. Copy supplied.

Threaded Through The Criminal Tax Enforcement Maze, J. Andrew Hoerner, Tax Notes Today, May 30, 1989. Copy supplied.

Tax Fraud Conference At Georgetown, J. Andrew Hoerner, Tax Notes, June 19, 1989. Copy supplied.

IRS Should Switch Enforcement Emphasis, Says ABA Report, Tax Notes Today, August 23, 1991. Copy supplied.

A Special Summary and Forecast of Federal and State Tax Developments, Tom Herman, The Wall Street Journal, September 11, 1991. Copy supplied.

IRS To Consider Reorganizing Criminal Investigation Division, Rita L. Zeidner, Tax Analysts, Tax Notes Today, December 23, 1991. Copy supplied.

SafeCard Services' Co-Founder Quits Post as Consultant – Correction Appended, Kyle Pope, The Wall Street Journal, December 17, 1992. Copy supplied.

SafeCard Co-Founder Sues The IRS, Gus Carlson, The Miami Herald, January 20, 1993. Copy supplied.

Cisneros Fights to Keep Housing Post As Ex-Girlfriend Claims He Lied to FBI, Michael K. Frisby, The Wall Street Journal, October 6, 1994. Copy supplied.

Justice Department Broadens Cisneros Inquiry, Dow Jones News Service, October 14, 1994. Copy supplied.

Justice Department To Investigate Cisneros, The Miami Herald, October 15, 1994. Copy supplied.

Justice Department Granted 60-Day Extension In Cisneros Probe, Dow Jones News Service, January 13, 1995. Copy supplied.

Reno Requests Counsel to Probe Cisneros Matter – Justice Department Inquiry, Finds He Understated Payments to Mistress, Viveca Novak, The Wall Street Journal, March 15, 1995. Copy supplied.

IRS Regionalizing 'DIF' Approach, Gibbs Tells UNC, Tax Conference, Joe Spellman, Tax Notes Today, May 26, 1995. Copy supplied.

Experts Advise On Criminal Tax Practice, Tax Practice & Controversies, June 5, 1995. Copy supplied.

Fund-Raisers to Plead Guilty to Charges Of Illegally Contributing to Kennedy, Glenn R. Simpson, The Wall Street Journal, May 22, 1997. Copy supplied.

DNC Knew of Fund-Raisers' Illegalities In 1992 Election, Letter to House Alleges, Glenn R. Simpson, The Wall Street Journal, October 9, 1997. Copy supplied.

Former HUD Chief Cisneros Indicted In Payments To Mistress, Kevin Galvin, Associated Press, The Star-Ledger (Newark, New Jersey), December 12, 1997. Copy supplied.

Cisneros Indicted, Accused of Lying To Federal Agents, Eva M. Rodriguez, The Wall Street Journal, December 12, 1997. Copy supplied.

Monica: In Search of a Life, Ben Wildavsky, The National Journal, August 22, 1998. Copy supplied.

When They Shout 'Hey, Cono,' Heads Turn in Williamsburg—Many Brooklyn Italians Favor It as a Name for Their Sons; The Teggiano Connection, Charles Gasparino, The Wall Street Journal, November 10, 1998. Copy supplied.

American Bar Association Comment on Future of Criminal Investigation Division, Bloomberg BNA, Daily Tax Report, January 4, 1999. Copy supplied.

Caplin, Panel Ponder Consequences Of Finance, Hearing Horror Stories, Joe Spellman, Tax Notes Today, June 23, 1999. Copy supplied.

Deals & Deal Makers: Rich's Lawyer Didn't Follow Usual Channels To Win Pardon, Gary Fields, Tom Herman, and A. Craig Copetas, The Wall Street Journal, January 23, 2001. Copy supplied.

Clinton Draws Fire For Giving Pardon To Fugitive Tycoon – Rich's Lawyers Took Case Straight to White House, Gary Fields, The Wall Street Journal Europe, January 23, 2001. Copy supplied.

ABA Tax Section Meeting: IRS Office Of Professional Responsibility Director Outlines Changes, Tax Notes Today, May 10, 2004. Copy supplied.

Namorato Promises More Vigorous Activity In Office of Professional Responsibility, Kathleen David, Bloomberg BNA, Daily Tax Report, May 11, 2004. Copy supplied.

IRS OPR Officials Assess Changes During Past Year, Allen Kenney, Tax Analysts, Tax Notes Today, July 8, 2004. Copy supplied.

Shelter Investors Queried by OPR, About Possible Jenkins & Gilchrist Conflicts, Kathleen David, Bloomberg BNA, Daily Tax Report, October 5, 2004. Copy supplied.

Jenkins Settlement Info Reveals 'Wealth' Of Shelter Advisers, Sheryl Stratton, Tax Analysts, Tax Notes Today, October 12, 2004. Copy supplied.

IRS, Justice Officials Discuss Booming Criminal Tax Business, Sheryl Stratton, Tax Analysts, Tax Notes Today, November 4, 2004. Copy supplied.

OPR Working to Utilize Increased Authority, To Push for Adherence to Tax Rules, Ethics, Stephen Joyce, Bloomberg BNA, Daily Tax Report, November 8, 2004. Copy supplied.

New Tools Help IRS Combat EO Abuses, Says OPR Chief, Christopher Quay, Tax Analysts, Tax Notes Today, November 8, 2004. Copy supplied.

New Tools Help IRS Combat EO Abuses, Says OPR Chief (Section 501(c)(3) – Charities), Exempt Organizations Text, November 10, 2004. Copy supplied.

OPR Cracking Down On Practitioner 'Bad Apples', Karla L. Miller and Christopher Quay, Tax Notes, November 15, 2004. Copy supplied.

US Tax Professionals Face New Ethical Standards, Dow Jones International News, December 17, 2004. Copy supplied.

IRS toughens ethical rules on tax advice, The Star-Ledger (Newark, New Jersey), December 18, 2004. Copy supplied.

IRS Issues Final Circular 230 Regulations, Proposed Rules on Municipal Bond Opinions, Stephen Joyce, Bloomberg BNA, Daily Tax Report, December 20, 2004. Copy supplied.

IRS Announces Regs Amending Circular 230 (Section 6700 – Promoting Abusive Tax Shelters), Tax Notes Today, December 20, 2004. Copy supplied.

OPR To Continue Careful Watch On Standards Of Practice, Namorato Says, Heather Bennett, Tax Analysts, Tax Notes Today, January 25, 2005. Copy supplied.

IRS Aims to Use All Resources to Ensure Circular 230 Compliance, Namorato Says, Alison Bennett, Bloomberg BNA, January 26, 2005. Copy supplied.

News Analysis: Shelter Penalties: Or Else What? Part 3, Lee A. Sheppard, Tax Notes, February 21, 2005. Copy supplied.

Does IRS Want To End Justice Dept. Review Of Tax Cases?, Sheryl Stratton, Tax Analysts, Tax Notes Today, February 28, 2005. Copy supplied.

Circular 230 Clarifications On The Way, Namorato Says, Allen Kenney, Tax Analysts, Tax Notes Today, April 29, 2005. Copy supplied.

IRS to Release Circular 230 Clarifications On Ethical Standards for Tax Professionals, Michael Bologna, Bloomberg BNA, Daily Tax Report, April 29, 2005. Copy supplied.

Namorato Says IRS Will Issue Clarifications For Circular 230 Standards Implementation, Stephen Joyce, Bloomberg BNA, Daily Tax Report, May 11, 2005. Copy supplied.

Common Sense Urged By IRS At Circular 230 Program, Sheryl Stratton, Tax Analysts, Tax Notes Today, May 11, 2005. Copy supplied.

Reform Panel Not Sold On National Retail Sales Tax, Robert J. Wells, Tax Notes, May 16, 2005. Copy supplied.

Namorato Chastises Errant Professionals, Sheryl Stratton, Tax Analysts, Tax Notes Today, May 24, 2005. Copy supplied.

Practitioners Laud New Circular 230 Rules, Continue to Seek Implementation Guidelines, Stephen Joyce, Bloomberg BNA, Daily Tax Report, May 24, 2005. Copy supplied.

Tax Report: IRS Revises Rules for Advisers in Shelter Crackdown, Tom Herman, The Wall Street Journal, May 25, 2005. Copy supplied.

Chicago's Mayor Seeks IRS' Help To Go After Gangs, Mark Battersby, Investment News, May 30, 2005. Copy supplied.

Penalty Protection For The Taxpayer: Circular 230 And The Code, Burgess J.W. Raby and William L. Raby, Tax Analysts, Tax Notes Today, June 2, 2005. Copy supplied.

Putting Tax Advisers On the Line, Albert B. Crenshaw, The Washington Post, June 5, 2005. Copy supplied.

IRS, Treasury Revise Standards For Tax Professionals, Mark Battersby, Investment News, June 6, 2005. Copy supplied.

Prepping For New Era After Tax-Shelter Shocker: Firms Get Ready For KPMG's Rich Refugees, Revamp Strategies To Keep Noses Clean, Tommy Fernandez, Crain's New York Business, September 26, 2005. Copy supplied.

Service May Further Restrict Agreements On Contingency Fees in Circular 230 Rules, Barney Tumey, Bloomberg BNA, Daily Tax Report, September 30, 2005. Copy supplied.

Damage Control; Sidley Agrees To Pay \$40 Million For a Rogue Partner's Tax Shelter Schemes, But The Tab Is Still Running, Ben Hallman, The American Lawyer, November, 2005. Copy supplied.

ABA Sections, Including Taxation, Suggest, IRS Retain Current OPR Hearing Structure, Stephen Joyce, Bloomberg BNA, Daily Tax Report, December 12, 2005. Copy supplied.

Report On Cisneros Alleges IRS, Justice Interference, Tax Notes Today, January 20, 2006. Copy supplied.

Transparency At The IRS Office of Professional Responsibility: A Two-Way Street, Sheryl Stratton, Tax Analysts, Tax Notes Today, February 6, 2006. Copy supplied.

IRS Not Offering Amnesty From Prosecution, In Shelter Promoter Settlement, Officials Say, Alison Bennett, Bloomberg BNA, Daily Tax Report, February 16, 2006. Copy supplied.

IRS Considering Principle-Based Rules For Opinion Standards, Sheryl Stratton, Tax Analysts, Tax Notes Today, March 6, 2006. Copy supplied.

Namorato Says Service's Study Group To Consider Changing Circular 230 Rules, Stephen Joyce, Bloomberg BNA, Daily Tax Report, March 6, 2006. Copy supplied.

IRS Officials Discuss Accountability, Proposed Circular 230 Changes, Sheryl Stratton, Tax Analysts, Tax Notes Today, March 7, 2006. Copy supplied.

IRS Should Consider Principles-Based Rules, In Place of Circular 230 Section, AICPA Says, Stephen Joyce, Bloomberg BNA, Daily Tax Report, March 7, 2006. Copy supplied.

IRS Rethinking Opinion Standards While Defending Transparency, Sheryl Stratton, Tax Notes, March 13, 2006. Copy supplied.

Whitlock Named Acting Director Of Professional Responsibility Office, Stephen Joyce, Bloomberg BNA, Daily Tax Report, April 5, 2006. Copy supplied.

OPR Allowing Convicted Practitioners To Continue Work Before IRS, TIGTA Says, Stephen Joyce, Bloomberg BNA, Daily Tax Report, April 6, 2006. Copy supplied.

Some Tax Preparers Remain On the Job Despite Violations, Rob Wells, The Wall Street Journal, April 6, 2006. Copy supplied.

Namorato Leaves IRS for Private Sector After Expanding, Improving OPR, Stephen Joyce, Bloomberg BNA, Daily Tax Report, April 14, 2006. Copy supplied.

Florida Bar Tax Section Members Comment On Proposed Regs Modifying Circular 230, Tax Notes Today, April 25, 2006. Copy supplied.

Covered Opinion Standards Should Be Repealed, Namorato Says, Sheryl Stratton, Tax Analysts, Tax Notes Today, May 9, 2006. Copy supplied.

Tax Report: Congress Probes Tax Preparers, Presses Bill to Set Standards, Tom Herman, The Wall Street Journal, May 10, 2006. Copy supplied.

Namorato Recommends Eliminating Circular 230's Covered Opinion Provision, Kathleen David, Bloomberg BNA, Daily Tax Report, May 10, 2006. Copy supplied.

Circular 230 Panel Looks At Fees, Conflicts, And Transparency, Tax Practice & Controversies, May 26, 2006. Copy supplied.

IRS Criminal Division Increasing Activities, In Scrutinizing Highly Technical Tax Cases, Stephen Joyce, Bloomberg BNA, Daily Tax Report, May 31, 2006. Copy supplied.

Korb Urges Practitioners to Aid In Efforts to Expand Role of OPR, John Herzfeld, Bloomberg BNA, Daily Tax Report, June 5, 2006. Copy supplied.

IRS Collects Only 11% Of Fines On Tax Preparers; \$518,000 Of \$4.7M Obtained In 3 Years, Kevin McCoy, USA Today, June 21, 2006. Copy supplied.

Amendments to Circular 230 Coming Soon; Radical Changes to Section 10.35 Possible, Stephen Joyce, Bloomberg BNA, Daily Tax Report, June 21, 2006. Copy supplied.

IRS Headquarters Closed Until Late July; Flood Damage Repairs to Exceed \$10 Million, Stephen Joyce and Heather M. Rothman, Bloomberg BNA, Daily Tax Report, June 30, 2006. Copy supplied.

Little Progress Made in Considering Written Advice Standards Changes, Practitioners Say, Stephen Joyce, Bloomberg BNA, Daily Tax Report, September 19, 2006. Copy supplied.

Former Foley Aide To Testify Thursday, Larry Margasak, The Associated Press, October 10, 2006. Copy supplied.

Kolbe Says He Told House GOP Staff Aide Years Ago Of Foley E-Mails, Andrew Taylor, The Associated Press, October 10, 2006. Copy supplied.

More Foley Fallout; Hastert Says He'll Dismiss Staffers Involved In Cover-Up, Chicago Tribune, October 11, 2006. Copy supplied.

US House Page Program Supervisor Questioned By Panel, Dow Jones International News, October 11, 2006. Copy supplied.

House Panel Will Hear Ex-Foley Aide, Larry Margasak, Orlando Sentinel, October 11, 2006. Copy supplied.

Boehner, Former House Clerk Testify In Foley Investigation, Andrew Taylor, The Associated Press, October 20, 2006. Copy supplied.

Majority Leader Testifies In Foley Case, Leaves Open Rift With Hastert, Larry Margasak, The Associated Press, October 20, 2006. Copy supplied.

House GOP Leaders Seek to Shift Debate From Ethics to Policy Issues, Heather M. Rothman, Bloomberg BNA, Daily Tax Report, October 20, 2006. Copy supplied.

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Korb Praises, Practitioners Question Enforcement Pendulum Shift, Sheryl Stratton, Tax Analysts, Tax Notes Today, October 24, 2006. Copy supplied.

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OPR to Review Circular 230 Changes, Initial Monetary Penalties Use in 2007, Stephen Joyce, Bloomberg BNA, Daily Tax Report, January 16, 2007. Copy supplied.

What to Know When Choosing A Tax Preparer, Tom Herman, The Wall Street Journal, March 7, 2007. Copy supplied.

Confirming IRS Leader Could Prove Difficult; Vacancy Might Require Political Arrangement, Stephen Joyce, Bloomberg BNA, Daily Tax Report, May 17, 2007. Copy supplied.

The IRS Has A New Weapon: Your Tax Pro – Law ‘Deputizes’ Preparers To Police Their Clients; Higher Fees a Likely Result, Tom Herman, The Wall Street Journal, July 11, 2007. Copy supplied.

OPR Director Offers Warning For Appraisers And In-House Tax Counsel, Dustir Stamper, Tax Analysts, Tax Notes Today, October 11, 2007. Copy supplied.

Ex-IRS Official Says Agency ‘Won War’ On Shelters, Has ‘Fallen Short’ on Tax Gap, Steve Burkholder, Bloomberg BNA, Daily Tax Report, October 11, 2007. Copy supplied.

Namorado Calls Return Preparer Standards ‘A Total Mess,’ Says Language Is Overbroad, Alison Bennett, Bloomberg BNA, Daily Tax Report, December 3, 2007. Copy supplied.

Office of Professional Responsibility Unveils Groundbreaking Settlement With Attorneys, Diane Freda, Bloomberg BNA, Daily Tax Report, December 7, 2007. Copy supplied.

OPR Settlement Announcement Could Be First Of Many, Jeremiah Coder, Tax Notes, December 10, 2007. Copy supplied.

Tax Practitioners Face Landscape of Uncertainty, Change in 2008, Alison Bennett, Bloomberg BNA, Daily Tax Report, January 14, 2008. Copy supplied.

Offshore-Account Holders Bite Their Nails, Tom Herman, The Wall Street Journal, May 21, 2008. Copy supplied.

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Firm Asks IRS To Investigate Alliance Defense Fund’s Activities, Tax Notes Today, September 9, 2008. Copy supplied.

‘Values Voter Summit’ Tries To Push Churches Into Illegal Partisan Politicking, Says Americans United, Targeted News Service, September 10, 2008. Copy supplied.

Group Says It Will Report Politically Active Churches To IRS, Americans United For Separation of Church and State, Tax Notes Today, September 25, 2008. Copy supplied.

Ohio Clergy Call For IRS Action Against Religious Right Pulpit Politicking Project, Church & State, October 2008. Copy supplied.

I.R.S. Debates How to Deal With Foreign Tax Shelters, Lynnley Browning, The New York Times, December 3, 2008. Copy supplied.

IRS Considers Response To Offshore Tax Cheats, Randall Jackson, Tax Analysts, Tax Notes Today, December 4, 2008. Copy supplied.

Tax Evasion Investigation Expands As U.S. Considers Options, Randall Jackson, Tax Notes, December 8, 2008. Copy supplied.

Justice Department sees rash of end-of-year settlements, Carrie Johnson, Record Searchlight (Redding, California), January 1, 2009. Copy supplied.

Companies Clamoring For Government Settlements; UPI, January 2, 2009. Copy supplied.

End of the Year Brings A Burst of Settlements With Justice Department, Carrie Johnson, The Washington Post, January 2, 2009. Copy supplied.

U.S. cracks down on Swiss accounts, Thomas Grillo, The Boston Herald, February 20, 2009. Copy supplied.

Secrecy Isn't What It Used To Be For UBS; Swiss Bank Could Be Forced To Uncover American Tax Evaders, Ann Woolner, The Daily Report (Fulton County GA), March 2, 2009. Copy supplied.

Scope Of UBS Case Could Lead To Administrative, Enforcement Difficulties, Jeremiah Coder, Tax Analysts, Tax Notes Today, March 9, 2009. Copy supplied.

Tax Practitioners Urge IRS to Provide Penalty Protection for Voluntary Disclosure, Kathleen David, Bloomberg BNA, Daily Tax Report, March 10, 2009. Copy supplied.

Countries in Europe and Asia Agree to Modify Treaty Provisions; Profound Implications for Noncompliant U.S. Taxpayers with Foreign Accounts, PR Newswire, March 15, 2009. Copy supplied.

Caplin & Drysdale Says Treaty Changes Will Affect Taxpayers With Foreign Accounts, Tax Notes Today, March 18, 2009. Copy supplied.

Caplin & Drysdale; Countries in Europe and Asia Agree to Modify Treaty Provisions, Asian Business Newsweekly, March 31, 2009. Copy supplied.

Caplin & Drysdale; Countries in Europe and Asia Agree to Modify Treaty Provisions, China Weekly News, March 31, 2009. Copy supplied.

Getting Personal: Unit Should Help IRS Track Rich Tax Dodgers, Arden Dale, Dow Jones News Service, November 3, 2009. Copy supplied.

UBS client wins case on transfer of tax data to U.S., The Daily Report (Fulton County GA), January 25, 2010. Copy supplied.

Swiss Back Away From Deal to Give Names of Rich UBS Clients to U.S., Lynnley Browning and Matthew Saltmarsh, New York Times, January 28, 2010. Copy supplied.

A Husband's Secret, Carol Ross Joynt, Washingtonian, May 2011. Copy supplied.

Spousal Tax Secrets Exposed: A Review Of Innocent Spouse, Tax Notes Today, August 10, 2011. Copy supplied.

In Innocent Spouse Review, A Regrettable Omission, Tax Analysts, Tax Notes, August 29, 2011. Copy supplied.

U.S. Swiss Tax Deal Impacts U.S. Account Holders and Dozens of Swiss Financial Institutions, Indian Banking News, August 29, 2013. Copy supplied.

DOJ Deal With Swiss Banks Impacts U.S. Taxpayers And Financial Firms Around The World, Mondaq, November 1, 2013. Copy supplied.

Grimm and Capone: A Tax Connection, Rachael Bade, Politico.com, April 29, 2014. Copy supplied.

13. Public Office, Political Activities and Affiliations:

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

Deputy Assistant Attorney General, Tax Division (1977). Appointed by Attorney General Griffin Bell.

IRS OPR Director (2004 – 2006) and Acting Deputy Commissioner (2004 – 2006). Appointed by Commissioner Mark Everson.

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

None.

14. Legal Career: Answer each part separately.

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

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

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

2006 – present
Caplin & Drysdale
One Thomas Circle, NW, Suite 1100
Washington, DC 20005
Member of the Firm

2004 – 2006
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224
Director of the Office of Professional Responsibility
(Designated as Acting Deputy Commissioner for certain matters.)

1978 – 2004
Caplin & Drysdale
One Thomas Circle, NW, Suite 1100
Washington, DC 20005
Member of the Firm

1968 – 1978

Department of Justice, Tax Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Attorney; Chief of the Criminal Section; Deputy Assistant
Attorney General

1963 – 1968

Internal Revenue Service
Intelligence Division (now known as the Criminal Investigation
Division)
250 Livingston Street
Brooklyn, NY 11201
Special Agent (Criminal Investigator)

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

I have never served as a mediator or arbitrator.

b. Describe:

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

I graduated from law school in 1968 and joined the Tax Division of the U.S. Department of Justice as an “Honors Program” hire.

I began at the Tax Division as a trial attorney and conducted grand jury investigations of Title 26 (criminal tax) offenses, reviewed prosecution recommendations from the Internal Revenue Service and the various U.S. Attorneys’ Offices, and tried numerous cases on behalf of the government to verdict. In 1974, I became the Chief of the Criminal Section in the Tax Division, and while I continued to participate in investigations and litigation, my practice on behalf of the government began to encompass more management responsibilities. In 1976, I was appointed Deputy Assistant Attorney General in charge of criminal matters in the Tax Division, and took over supervisory responsibility for all criminal tax cases nationwide.

In 1978, I joined the Washington, DC law firm of Caplin & Drysdale. Since that time, except for a two and one-half year term as IRS Director of the Office of Professional Responsibility (2004 – 2006), I have engaged in the private practice of law full time to the present. Since joining Caplin & Drysdale, my practice has encompassed mostly matters relating to federal criminal tax cases, and some additional matters, as follows:

- Advising individual and corporate clients in connection with ongoing criminal tax investigations, covering all aspects of such investigations, *i.e.*, representing targets, subjects and witnesses during the investigative phase of such cases, participating in litigation over summonses and subpoenas where privilege or other issues are involved, engaging with prosecutors in the Tax Division and U.S. Attorneys' Office during the review phases of potential prosecutions, negotiating plea agreements, trying cases as defense counsel, and representing clients during sentencings and appeals.
- Providing client consultation and advice in IRS civil matters where possible fraud or criminal issues may arise.
- Representing clients in civil tax examinations subsequent to federal criminal tax cases.
- Counseling clients with regard to domestic and offshore IRS voluntary disclosures and providing related advice to clients on coming into tax compliance, including advising individuals seeking elected or appointed state or federal office as to rectifying potential tax problems.
- Conducting and/or supervising internal corporate investigations with regard to tax or related matters.
- Defending clients in certain state tax or related matters, nearly all of which were in the State of New York or the District of Columbia, and often connected to ongoing or related federal tax matters.
- On a few occasions, representing clients before Congress, including matters in the jurisdiction of the Senate Permanent Subcommittee on Investigations and the House Ethics Committee.
- Handling non-criminal tax cases on occasion, including antitrust, government contracting fraud, Medicare fraud, campaign finance violations, political corruption, Title 31 structuring and money laundering offenses and Independent Counsel investigations (prior to the statute's repeal).
- Representing practitioners in disciplinary actions and before the IRS Office of Professional Responsibility.

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

Since I became a private practitioner, my typical clients have largely been individuals who have come under audit or criminal investigation and companies ranging from small businesses to Fortune 100 entities with criminal tax or related

issues. My clients have been located throughout the United States and in various countries around the world.

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 entire practice currently consists of tax litigation and tax controversy work, and I occasionally appear in court.

i. Indicate the percentage of your practice in:

1. federal courts – 20%
2. state courts of record – 5%
3. other courts – 0%
4. administrative agencies – 75%

ii. Indicate the percentage of your practice in:

1. civil proceedings – 25%
2. criminal proceedings – 75%

Most of my client representations have not involved court appearances, as much of the work is done in defending clients during investigations and in advocating for the government to decline prosecution in cases. Only some of my representations have become a matter of public record, and my court appearances have been limited to the occasional subpoena or summons matters, trials, guilty pleas, and sentencings that arise in my cases. Most of these courtroom appearances have been in federal court. In general, I would estimate that my practice has been approximately 85%-90% related to criminal matters, and the remaining items relating to civil tax matters.

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

As a government lawyer between 1968 and 1974, I tried approximately 6 cases to verdict, some of them to a jury, and argued several cases before the Second Circuit Court of Appeals. In these 6 cases, I was either sole counsel or chief counsel. In private practice, I have been involved in occasional cases that involved pre-trial and/or trial proceedings.

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.**

United States v. Doe, 487 U.S. 201 (1988). Copy of brief supplied.

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

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

United States v. Schipani, 293 F. Supp. 156 (E.D.N.Y. 1968)

This was a bench trial I handled before United States District Judge Jack Weinstein in the Eastern District of New York. Mr. Schipani was indicted on charges of income tax evasion, and convicted in 1968.

I also argued this case before the Second Circuit Court of Appeals, and the conviction was affirmed. *See* 414 F.2d 1262 (2d Cir. 1969).

Jacob Lefkowitz, defense attorney, address and phone number unknown.

United States v. Coppola, 296 F. Supp. 903 (D. Conn. 1969)

This case was an extensive net worth and expenditures investigation that resulted in the indictment of Paul Coppola on charges of income tax evasion in 1969. Mr. Coppola pled guilty to one count of the indictment and thereafter, unsuccessfully moved for arrest of judgment and dismissal of the indictment.

Judge Robert Zampano; Jack Zeldes, defense attorney; address and phone number unknown.

United States v. Levy, 326 F. Supp. 1285 (D. Conn. 1971)

Mr. Levy was a former Attorney General of Connecticut who was charged with tax offenses in 1971. I was lead prosecutor on this case, which was tried without a jury before Senior Judge Richard H. Levet, S.D.N.Y. (sitting by designation in the District of Connecticut). I obtained a conviction.

I also argued this case before the Second Circuit Court of Appeals, and the conviction was upheld on appeal. *See* 449 F.2d 769 (2d Cir. 1971).

Curtiss K. Thompson, defense attorney; address and phone number unknown.

United States v. Coblentz, 453 F.2d 503 (2d Cir. 1970)

Bernard Coblentz, a New York City attorney, was charged in a three-count indictment with income tax evasion in 1970. I tried this case before a jury in the Eastern District of New York and obtained a conviction on one count.

I also argued this case before the Court of Appeals for the Second Circuit and the conviction was affirmed. *See* 453 F.2d 503.

Judge Jacob Mischler; Henry Singer, defense attorney; address and phone number unknown.

United States v. Omni International Corp., 634 F. Supp. 1414 (D. Md. 1986)

Omni International Corp., its President, Chief Financial Officer (CFO), and return preparer were indicted on charges of tax evasion. I represented the CFO and was part of a team of four law firms that were involved in the defense of this matter. During a lengthy pre-trial hearing, the defense team was able to establish very credible acts of prosecutorial misconduct which resulted in the dismissal of the indictment.

This matter was decided by Judge Walter E. Black, Jr., in 1986 in the District of Maryland.

The other members of the defense team were Marvin J. Garbis, 101 West Lombard Street, Baltimore, MD 21201 (410-962-2600); Paula Junghans, 1800 M Street, NW, Washington, DC 20036 (202-778-1800); and Brendan V. Sullivan and Barry S. Simon; 725 12th Street, NW, Washington, DC 20005 (202-434-5000). The Government was represented by John R. Maney, Jr., formerly of the Tax Division of the Department of Justice, address and phone number unknown.

United States v. Doe, 487 U.S. 201 (1988)

This representation, listed above, involved counseling a client during a grand jury investigation in the Southern District of Texas. Prosecution was declined, though,

as noted, a matter in the case resulted in a Supreme Court decision. The issue in this case involved a novel Fifth Amendment claim. The Supreme Court held that a court order compelling the target of the grand jury investigation to authorize foreign banks to disclose records of his accounts, without identifying those documents or acknowledging their existence, does not violate the target's Fifth Amendment privilege against self-incrimination.

Co-counsel in the matter was Otis Carroll, 6101 S. Broadway Avenue (Suite 500), Tyler, TX (903-561-1600).

Independent Counsel Investigation of Henry Cisneros (1999)

This matter involved the representation of then Secretary of Housing and Urban Development Henry Cisneros during a preliminary investigation under the Independent Counsel Act and an ensuing Independent Counsel investigation. Another law firm replaced Caplin & Drysdale after indictment, although Caplin & Drysdale then advised Mr. Cisneros during an ensuing civil tax matter following the conclusion of the criminal case.

Independent Counsel David Barrett (deceased).

United States v. Georgia Pacific, Docket No. 1:91-cr-00321 (N.D. Ga. 1991)

In this matter, I represented a senior corporate executive of the Georgia Pacific Corporation who was involved in a criminal tax investigation of the company. Prosecution against our client was declined, but the company entered a guilty plea in 1991.

Co-counsel was Seth Waxman, then at Miller Cassidy Larocca & Lewin, and now at WilmerHale, 1875 Pennsylvania Avenue, NW, Washington, DC (202-663-6800).

Former Assistant United States Attorney Martin Weinstein, now with Willkie Farr & Gallagher, 1875 K Street, NW, Washington, DC 20006 (202-303-1000).

United States v. Calcagno, Docket No. 1:05-cr-00298 (E.D.N.Y. 2008)

I represented a businessman who pled guilty to criminal tax offenses in the Eastern District of New York before Judge Raymond Dearie.

Co-counsel was Michael Rosen, 61 Broadway (Suite 2602), New York, NY 10006 (516-381-6690).

Assistant United States Attorney Michael Warren, 271 Cadman Plaza East, Brooklyn, NY 11201 (718-254-6355).

United States v. Hager, Docket No. 2:08-cr-00996 (C.D. Cal. 2009)

I represented a real estate businessman who was charged with overstating his deductible expenses on his tax returns. The case ended in a guilty plea before Judge John F. Walter in Los Angeles. Co-counsel in this matter was Richard Steingard, 800 Wilshire Boulevard, Los Angeles, CA 90017 (213-260-9449).

Assistant United States Attorney Daniel O'Brien, 1200 U.S. Courthouse, 312 North Spring Street, Los Angeles, CA 90012 (213-894-2468).

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

The answers to questions 14 and 15 summarize the nature of my practice and major cases that I have been involved with. In addition, there are numerous matters that are not of public record as to which I have served as lead or participating counsel. These include the following:

- Advising numerous individuals with unreported offshore accounts regarding voluntary disclosures, and representing them during such disclosures. Prior to 2009, I would estimate that I handled 20 such cases, some of which involved substantial accounts. Since 2009, I estimate that I have advised in nearly 100 such cases.
- Representing individuals in criminal tax investigations for failure to report substantial offshore accounts. In such cases I have engaged in significant fact finding and participated in conferences at the Department of Justice Tax Division and at various U.S. Attorneys' Offices around the country.
- Representation of a Fortune 500 corporate executive in a criminal tax investigation. In this case I served as lead counsel for an individual as to whom prosecution was declined. I participated in factual investigative activity, advised the client as to tax filings, and advocated against prosecution before the Tax Division.
- Representation of the founder and principal owner of a high-tech company in connection with a joint investigation by the Tax Division and a U.S. Attorney's Office involving a sizable foreign trust. In this case I served as lead counsel during a series of conferences aimed at negotiating a guilty plea. The client died before the matter was concluded.

- Representation of a large privately held company engaged in commodity trading in an investigation into government export subsidies. Prosecution was declined and the matter was resolved civilly. I served as co-lead counsel and engaged in significant fact finding work during the investigation, advising the company on issues regarding its employees, and advocating against prosecution before the U.S. Attorney's office.
- I served as lead counsel in conducting an internal investigation for one of the then "Big 8" accounting firms that had become involved in a public corruption matter. I supervised the fact finding, interviewed key personnel, advised the firm on addressing employee and related issues, and reported on the matter to the pertinent U.S. Attorney's Office.
- I acted as lead counsel during a criminal tax investigation of the CEO of a then Fortune 100 company arising from allegations of improper personal expenditures from corporate funds. I supervised the fact gathering and participated in a series of conferences with representatives of the pertinent U.S. Attorney's office and the IRS. The case was closed prior to any recommendation to prosecute.

I have never participated in lobbying activities on behalf of a client.

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

None.

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

I have a 401-K, as described on my Statement of Net Worth.

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

None.

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

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

See my SF-278 as provided by the Office of Government Ethics.

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

See attached Statement of Net Worth.

22. Potential Conflicts of Interest:

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement I have entered into with the Department's designated ethics official.

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

In the event of a potential conflict of interest, I will consult with ethics officials in the Department of Justice.

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

My law firm, Caplin & Drysdale, is an active supporter of "Buildable Hours," a program aimed at encouraging law firms nationwide to contribute time and money to local affiliates of Habitat for Humanity. I am an active supporter of Buildable Hours and have participated in annual builds with the D.C. affiliate of Habitat for Humanity.

I have volunteered time supervising junior attorneys in my firm who have handled various pro bono representations. One matter involved a criminal tax case in the U.S. District Court

for the District of Columbia. Another case was a substantial civil tax litigation. On occasion, I have also supervised attorneys handling matters in the Superior Court of the District of Columbia.

During and after my tenure as the IRS OPR Director, I spent considerable hours lecturing on the ethics of tax practice and educating accountants and lawyers on best ethical practices.

I have devoted substantial time volunteering on various ABA reports dealing with criminal tax enforcement policy in the United States. I have also been a frequent lecturer at continuing legal education programs at the University of Virginia, the University of North Carolina, the University of California – Los Angeles, the University of Denver and Washington University.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

John Michael Vazquez

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

United States District Judge for the District of New Jersey

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.

Critchley, Kinum & Vazquez, LLC
75 Livingston Avenue
Roseland, New Jersey 07068

Residence: Mendham, New Jersey

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

1970; Honolulu, Hawaii

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

1993 – 1996, Seton Hall University School of Law, J.D. (*summa cum laude*), 1996

1988 – 1992, Rutgers College, B.A., 1992

Summer 1991, County College of Morris, summer course, no degree awarded

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

2008 – present

Critchley, Kinum & Vazquez, LLC
75 Livingston Avenue
Roseland, New Jersey 07068
Partner

2006 – 2008
Office of the Attorney General
Department of Law and Public Safety
Richard J. Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625
First Assistant Attorney General (2007 – 2008)
Special Assistant to the Attorney General (2006 – 2007)

Spring 1996; 2001 – 2006
United States Attorney's Office for the District of New Jersey
970 Broad Street
Newark, New Jersey 07102
Assistant United States Attorney (2001 – 2006)
Health Care Fraud Coordinator (2004 – 2006)
Legal Intern (Spring 1996)

1997 – 2001
Law Offices of Michael Critchley and Associates
354 West Main Street
West Orange, New Jersey 07052
Associate

1996 – 1997
Honorable Herman D. Michels, Presiding Judge for Administration
New Jersey Superior Court, Appellate Division
155 Morris Avenue
Springfield, New Jersey 07081
Law Clerk

Approximately 1992 – 1996
T.V. Janitorial Service, Inc.
55 Downs Avenue
Wharton, New Jersey 07885
Supervisor and Laborer

1994 – 1995; Spring 1996
Seton Hall University School of Law
1109 Raymond Boulevard
Newark, New Jersey 07102
Immigration Clinic Student Attorney (Spring 1996)

Law Tutor (1994 – 1995)

Summer 1995
Sussex County Prosecutor's Office
19-21 High Street
Newton, New Jersey 07860
Legal Intern

1992 – 1993; Summer 1995
Rick Younkers Landscaping
160 Lake Hiff Road
Andover, New Jersey 07821
Landscaper

Summer 1994
Law Offices of Joseph A. Bottitta (now defunct)
80 Main Street
West Orange, New Jersey 07052
Law Clerk

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

I have not served in the military. I registered for selective service upon turning 18.

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

Professional

Recognition from the New Jersey County Prosecutors' Association and the New Jersey State Police (2008)

Latino Legal Community Award, Seton Hall University School of Law's Latin American Law Students Association (2008)

Excellence in Hispanic Leadership Award, New Jersey Department of Community Affairs' Center for Hispanic Policy, Research and Development (2007)

Recognition from several law enforcement agencies, including the Federal Bureau of Investigation; the U.S. Department of Health and Human Services, Office of the Inspector General; and the Securities and Exchange Commission (2006)

Academic

Member, Seton Hall Constitutional Law Journal (1994 – 1996)

Wallace Vail Scholarship (1994 – 1996)

Centennial Scholarship (1994 – 1996)

New Jersey State Bar Foundation Scholarship (1994 – 1995)

Dean's List, Rutgers College (1990 – 1992)

National Political Science Honor Society (1992)

International History Honor Society (1992)

Masonic Tuition Scholarship (1988 – 1992)

National Honor Society, Morris Hills High School (1986 – 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

Association of Criminal Defense Lawyers of New Jersey

Association of the Federal Bar of New Jersey

C. Willard Heckel Inn of Court

Essex County Bar Association

Governor's Safe Streets and Neighborhoods Oversight Committee (2008)

Hispanic Bar Association of New Jersey

New Jersey State Bar Association

New Jersey Supreme Court Committees

Committee on the Rules of Evidence (2008 – 2009)

Joint Committee on Criminal Justice (2013 – 2014)

Special Committee on Telephonic and Electronic Search Warrants (2009 – 2010)

United States Attorney's Office for the District of New Jersey Alumni Association

United States Attorney's Office for the District of New Jersey
Defense Counsel Committee (2014 – present)

10. **Bar and Court Admission:**

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

State of New Jersey, 1996

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.

United States Court of Appeals for the Third Circuit, 1998
United States District Court for the District of New Jersey, 1997

There have been no lapses in my memberships.

11. **Memberships:**

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

Mendham Golf and Tennis Club (2006 – present)

Class of 1996 Reunion Committee, Seton Hall University School of Law (2011)

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

To the best of my knowledge, neither the club nor the committee listed above

currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through the formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

Note, Regional Shopping Malls Must Permit Leafletting on Societal Issues Subject to Reasonable Time, Place and Manner Constraints Created by the Mall Owners – New Jersey Coalition Against War in the Middle East v. J.M.B. Realty Corp., 650 A.2d 757 (N.J. 1994), 6 SETON HALL CONST. L.J. 389 (1995). Copy supplied.

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

Report of the Joint Committee on Criminal Justice, New Jersey Supreme Court Joint Committee on Criminal Justice, March 10, 2014. Copy supplied.

Report of the Supreme Court Special Committee on Telephonic and Electronic Search Warrants, New Jersey Supreme Court Special Committee on Telephonic and Electronic Search Warrants, January 22, 2010. Copy supplied.

2007 – 2009 Report of the Supreme Court Committee on the Rules of Evidence, New Jersey Supreme Committee on the Rules of Evidence, January 30, 2009. Copy supplied.

Use of Less-Lethal Impact Projectiles Pending Approval of Ammunition Specifications and Training Course, Office of the Attorney General, Department of Law and Public Safety, April 24, 2008. Although I did not prepare this document, during my tenure at the New Jersey Attorney General's Office I provided input on this memorandum, which was made available to the public. Copy supplied.

Attorney General Policy on Less-Lethal Ammunition (Less-Lethal Impact Projectiles) Directed Against Persons, Office of the Attorney General, Department of Law and Public Safety, March 19, 2008. Although I did not prepare this document, during my tenure at the New Jersey Attorney General's

Office I provided input on this memorandum, which was made available to the public. Copy supplied.

Attorney General Law Enforcement Directive No. 2007-3, Office of the Attorney General, Department of Law and Public Safety, August 22, 2007. Although I did not prepare this document, during my tenure at the New Jersey Attorney General's Office I provided input on this memorandum, which was made available to the public. 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.

September 24, 2007: Participant, Public Hearing, New Jersey Advisory Committee on Police Standards, Trenton, New Jersey. 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 following list reflects my best efforts to identify the speeches or talks I have delivered, but there may be other speeches or talks that I have been unable to recall. Please note that when I have supplied an outline of my remarks, I cannot say that all topics listed were covered during the panel session. In addition, other topics may have been discussed during the question and answer section of each program.

November 22, 2014: Panelist, "Bail Reform and Speedy Trial Issues," Eighth Annual Criminal Law Institute, Criminal Law Institute, New Jersey State Bar Association (Criminal Law Section), New Brunswick, New Jersey. Audio recording supplied.

June 25, 2013: Panelist, "Anatomy of a *Qui Tam* Suit," New Jersey Association of Corporate Counsel, Basking Ridge, New Jersey. Outline supplied.

April 9, 2013: Panelist, "Health Care Fraud Investigations and Prosecutions: How the Cases Are Brought, Litigated, and Defended," Rutgers School of Law – Camden, Camden, New Jersey. Outline supplied.

February 5, 2013: Panelist, "Building or Defending a Case: Social Media as a Catalyst for Tangible Employment Decisions and the Ethical Conundrum It Presents," Third Annual Seton Hall Circuit Review, Seton Hall University School of Law, Newark, New Jersey. Outline supplied.

May 16, 2012: Panelist, "The Challenge of Handling Parallel Criminal and Civil Proceedings after Citigroup," C. Willard Heckel Inn of Court, Newark, New Jersey. The panel discussed the benefits and potential pitfalls of conducting parallel civil and criminal investigations. I have no notes, transcript, or recording. The address for the C. Willard Heckel Inn of Court is S.I. Newhouse Center for Law and Justice, 123 Washington Street, Newark, New Jersey 07102.

2010 – 2012: Substitute Professor, Seton Hall University School of Law. On two to three occasions I taught a class on trial advocacy when the regular professor was unavailable. I have no notes, transcript, or recording. The address for Seton Hall University School of Law is 1109 Raymond Boulevard, Newark, New Jersey 07102.

Approximately 2003 – 2010: Panel Speaker, Seton Hall University School of Law and Rutgers University School of Law – Newark. On approximately four to five occasions I spoke on panels addressing groups of law students as to potential career paths and practical considerations in future careers. On one occasion I was invited by Seton Hall to address potential employment in government service. On two occasions, I was asked by the Hispanic Bar Association of New Jersey to address future employment considerations for minority law students, although the discussions were open to all students to attend. I have no notes, transcripts, or recordings. The address for Seton Hall University School of Law is 1109 Raymond Boulevard, Newark, New Jersey 07102. The address for Rutgers University School of Law – Newark is 123 Washington Street, Newark, New Jersey 07102.

March 12, 2008: Panelist, "From Wannabes to Youth Offenders: How Gangs are Permeating New Jersey Communities and What Intervention Efforts Can Stem the Violence," New Jersey State Bar Foundation and the New Jersey State Bar Association, New Brunswick, New Jersey. The panel was on the current state of gang membership and related violence in New Jersey and strategies on prevention. I have no notes, transcript, or recording. The address for the New Jersey State Bar Foundation and the New Jersey State Bar Association is the New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901.

November 18 – 20, 2007: Speaker, 65th Annual Training Institute, Probation Association of New Jersey, Atlantic City, New Jersey. I delivered the keynote address, which concerned the vital role of probation officers in the criminal justice system. I have no notes, transcript, or recording. The address for the Probation Association of New Jersey is 617 Union Avenue, Brielle, New Jersey 08730.

October 4, 2007: Speaker, Tenth Annual New Jersey Insurance Fraud Summit, New Jersey Office of the Insurance Fraud Prosecutor, Trenton, New Jersey. The speech concerned the importance of insurance fraud prevention, investigation, and prosecution. I have no notes, transcript, or recording. The address for the New Jersey Office of the Insurance Fraud Prosecutor is Richard J. Hughes Justice Complex, 25 West Market Street, Trenton, New Jersey 08625.

October 3, 2007: Participant, "Radicalization: Global Trend, Local Concern," Fifth Annual Counter-Terrorism Conference, New Jersey Office of Homeland Security and Preparedness, Trenton, New Jersey. The conference concerned counter-terrorism efforts at the local and state level in light of national and international developments and trends. I have no notes, transcript, or recording. The address for the New Jersey Office of Homeland Security and Preparedness is 1200 Negron Drive, Hamilton, New Jersey 08691.

August 24, 2007: Commencement Speaker, New Jersey State Police Academy Graduation Commencement, Toms River, New Jersey. The speech congratulated the graduates on their successful completion of the academy and discussed their future. I have no notes, transcript, or recording, but the press release is supplied. The address for the New Jersey State Police is River Road, Ewing Township, New Jersey 08628.

July 20, 2007: Commencement Speaker, New Jersey State Police Academy Graduation Commencement, Toms River, New Jersey. The speech congratulated the graduates on their successful completion of the academy and discussed their future. I have no notes, transcript, or recording, but the press release is supplied. The address for the New Jersey State Police is River Road, Ewing Township, New Jersey 08628.

Spring 1997: Moot Court Judge, Seton Hall University School of Law, Newark, New Jersey. As a moot court judge, I reviewed students' appellate briefs, heard oral argument, and then provided positive feedback along with constructive criticism. I have no notes, transcript, or recording. The address for Seton Hall University School of Law is 1109 Raymond Boulevard, Newark, New Jersey 07102.

- 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.

Seth Augenstein, "Accomplice in Alleged Sussex Boy Scout Molestation Murder to Have March Trial," *NJ.com*, October 24, 2014. Copy supplied.

Seth Augenstein, "Former Scout Leader Had Child Porn on Computer when

Stabbed to Death by Former Scout, Court Filing Says," *NJ.com*, October 23, 2014. Copy supplied.

Christopher Maag, "'Real Housewives' Judge Esther Salas Shaped by Her Own Reality," *Bergen Record*, October 5, 2014. Copy supplied (reprinted in multiple outlets).

Joe Moszczynski, "Judge Says Detective Violated Suspect's Rights in Sussex Slaying," *Star-Ledger*, June 27, 2014. Copy supplied.

Joe Moszczynski, "Man Accused in Killing of Former Sussex Sheriff's Officer Loses Bid to Have Trial in Morris," *Star-Ledger*, July 31, 2013. Copy supplied.

Ryan Hutchins, "East Orange Utility Fined for Solvents in the Water," *Star-Ledger*, March 6, 2013. Copy supplied.

"Lawyers Defend Two in New Jersey Accused of Hiding Pollutant," *Legal Monitor Worldwide*, March 5, 2013. Copy supplied.

Christopher Baxter, "East Orange Water Executives Accused of Hiding Pollutant Levels," *Star-Ledger*, February 14, 2013. Copy supplied (reprinted in multiple outlets).

David Porter, "New Jersey: Two Water Executives Rigged Samples to Hide Pollutant," *Associated Press*, February 13, 2013. Copy supplied (reprinted in multiple outlets).

Nina Youngstrom, "Hospital Settles Case over Payments for Advisors Who Allegedly Did Little Advising," *AISHealth.com*, February 4, 2013. Copy supplied.

Press Release, *Office of the Governor* (relating to nomination of Robert Hanna to Supreme Court of New Jersey), January 30, 2013. Copy supplied.

"Not a Dream, But a Nightmare," *National Journal*, December 13, 2012. Copy supplied (reprinted in multiple outlets).

Program Guest, "Let's Make a Deal: The Plea Bargain," *Due Process Television Program, Season 18*, December 9, 2012. Video available at <https://www.youtube.com/watch?v=pW6jTwpXlSs>.

Martin Bricketto, "Executive Denies Bribes for New Jersey Port Terminal, Road Contracts," *Law360*, October 12, 2012. Copy supplied (reprinted in multiple outlets).

Peter J. Sampson, "Owner Indicted in Bribe Scheme," *Bergen Record*, October 5,

2012. Copy supplied.

Jason Grant, "Key Figure in 'Bid Rig III' Money-Laundering Takedown to Be Sentenced Today," *Star-Ledger*, July 3, 2012. Copy supplied.

Bruce A. Scruton, "Attorneys Chosen to Represent Murder Suspects," *Careersatquincy.com*, June 20, 2012. Copy supplied.

David Giambusso, "Essex County Freeholder to Resign and Enter PTI," *Star-Ledger*, March 9, 2011. Copy supplied.

Jonathan Stempel, "New Jersey Man Gets 14 Years for \$140 Million Mortgage Fraud," *Reuters*, February 24, 2011. Copy supplied.

David Porter, "Acquittals, Ruling Show Cracks in Corruption Case," *The Associated Press*, January 10, 2011. Copy supplied.

Peter J. Sampson, "Ridgefield Mayor Celebrates Full Acquittal: 'I Always Had Faith,'" *Bergen Record*, October 28, 2010. Copy supplied (reprinted in multiple outlets).

Aruna Viswanatha, "In Shakeup, New Jersey Appoints New Health Care Coordinator," *Mainjustice.com*, April 29, 2010. Copy supplied.

Matthew Van Dusen, "Lawyers in New Jersey Corruption Cases Won't Seek Deals," *Bergen Record*, February 14, 2010. Copy supplied.

Peter J. Sampson, "'Sting' Mayor Indicted; FBI Alleges Bribery Scheme," *Bergen Record*, December 19, 2009. Copy supplied (reprinted in multiple outlets).

Peter J. Sampson, "Indictments Begin in Federal Corruption Case," *Bergen Record*, August 20, 2009. Copy supplied (reprinted in multiple outlets).

Matt Dowling, "Governor Corzine Targets Towns with Officials in New Jersey Corruption Probe," *Times of Trenton*, August 3, 2009. Copy supplied (reprinted in multiple outlets).

"U.S. Mortgage Executive Pleads Guilty to Defrauding Customers," *States News Service*, June 12, 2009. Copy supplied.

Press Release, "Attorney General Names Ricardo Solano Jr. First Assistant Attorney General – Milgram Taps Former Federal Prosecutor to Succeed John Vazquez," *Office of the Attorney General*, September 29, 2008. Copy supplied.

Press Release, "Five Indicted in Probe by New Jersey State Police into Drug Network Linked to Farm Labor Camps," *Office of the Attorney General, Division*

of Criminal Justice, May 12, 2008. Copy supplied (reprinted in multiple outlets).

Press Release, "Fifty Attorneys General Announce Agreement with Facebook to Make Site Safer for Underage Users – Agreement Incorporates New Jersey's Report Abuse! Icon for Social Networking Sites," *Office of the Attorney General*, May 8, 2008. Copy supplied (reprinted in multiple outlets).

Press Release, "Attorney General Milgram Names John Vazquez First Assistant Attorney General, Former Federal Prosecutor Was Special Assistant to Rabner on Criminal Justice Issues," *Office of the Attorney General*, July 2, 2007. Copy supplied (reprinted in multiple outlets).

Press Release, "Attorney General Names Robert J. Gilson as Director of the Division of Law, Former Federal Prosecutor John Vazquez also Named Special Assistant to the Attorney General," *Office of the Attorney General*, October 26, 2006. Copy supplied.

Bill Bregar, "Sigma's Teo Admits Guilt in Fraud Trial," *Plastics News*, July 3, 2006. Copy supplied.

"Judge Delays Prison for VNA Embezzler," *Asbury Park Press*, January 4, 2006. Copy supplied.

Press Release, "Former Senior Manager for Non-Profit Nursing Association Sentenced to 15 Months for Health Care Fraud," *U.S. Attorney's Office*, January 3, 2006. Copy supplied.

Margaret F. Bonafide, "Dover Man Admits Scamming \$900G from Visiting Nurses, Former Staffer Could Get Ten-Year Prison Sentence," *Asbury Park Press*, September 23, 2005. Copy supplied.

Press Release, "Former Senior Manager for Non-Profit Nursing Association Admits Health Care Fraud," *U.S. Attorney's Office*, September 22, 2005. Copy supplied.

Bill Swayze, "Businessman Wants Fraud Case Dropped," *Star-Ledger*, February 11, 2005. Copy supplied.

Joseph Pryweller, "Sigma Chairman Teo Indicted Again," *Plastics News*, August 23, 2004. Copy supplied.

Kristen Alloway, "Rags-to-Riches Tale Takes Troubling Twist, Kinnelon Resident and Colleagues Indicted on Charges of Insider Trading," *Star-Ledger*, August 21, 2004. Copy supplied.

John P. Martin, "Memorabilia Dealer Sentenced in Fraud," *Star-Ledger*, June 9,

2004. Copy supplied.

John P. Martin, "Ex-Umpire Sentenced in Fraud," *Star-Ledger*, June 4, 2004. Copy supplied.

"North Carolina Man Sentenced for Posing as Agent," *Home News Tribune*, June 17, 2003. Copy supplied.

Carol Gorga Williams, "Court Closes Manzie Case; Killer, Others Could Go Free Early," *Asbury Park Press*, July 19, 2001. Copy supplied.

Carol Gorga Williams, "Manzie Ruling Issued in Error," *Asbury Park Press*, July 11, 2001. Copy supplied.

"New Jersey Seeks Tiebreaker on Manzie," *Asbury Park Press*, June 16, 2001. Copy supplied.

Kathy Barrett Carter, "Supreme Court Allows Early Parole for Manzie," *Star-Ledger*, June 14, 2001. Copy supplied.

Carol Gorga Williams, "Manzie May Go Free Early, Court Deadlocks over Killer Teen's Parole Eligibility," *Asbury Park Press*, June 14, 2001. Copy supplied.

Kathy Barrett Carter, "Justices to Decide Manzie Sentence, High Court Will Clarify Law against Early Parole," *Star-Ledger*, March 11, 2001. Copy supplied.

William Kleinknecht, "Theft Charges Dropped against Cop, A Second Newark Detective Still on Trial," *Star-Ledger*, February 16, 2001. Copy supplied.

Brian T. Murray, "Court Removes Tough Limit on Manzie Parole," *Star-Ledger*, November 30, 2000. Copy supplied.

Eugene Kiely, "Ruling Could Let New Jersey Killers Out Early, An Appeals Panel Called 'Ambiguous' a Law that Delayed Parole Eligibility for Sam Manzie and Others," *Philadelphia Inquirer*, November 30, 2000. Copy supplied (reprinted in multiple outlets).

Ralph Siegel, "Manzie Sentence Shortened, No Early Release Act Questioned," *Associated Press*, November 29, 2000. Copy supplied (reprinted in multiple outlets).

Brian T. Murray, "Manzie Appeals in Effort to Pare 70-Year Sentence," *Star-Ledger*, October 13, 2000. Copy supplied.

Elizabeth Moore, "Grand Jury Indicts West Paterson Man on Charges of Kidnapping Ex-Girlfriend," *Star-Ledger*, August 30, 2000. Copy supplied.

Brian Murray, "Manzie's Parents Lose a Battle of Wills," *Star-Ledger*, March 21, 1999. Copy supplied.

"Lawyer Drops Motion for Manzie Appraisal," *Asbury Park Press*, March 19, 1999. Copy supplied.

Brian T. Murray, "Teen Murder Suspect's Lawyers End Demand for Psychiatric Exam," *Star-Ledger*, March 19, 1999. Copy supplied.

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

I have never served as a judge.

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

I have not presided over any cases as a judge.

- i. Of these, approximately what percent were:

jury trials:	_____ %
bench trials:	_____ % [total 100%]
civil proceedings:	_____ %
criminal proceedings:	_____ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was

affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

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

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

I have not held public office.

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

I have not held any memberships, offices, or been compensated by any political party or election committee. I have not held a position or played a role in a political campaign. I have been on the following host committees for three political fundraisers: Booker for Senate, September 27, 2013; Menendez for Senate, October 26, 2012; and Menendez for Senate, May 20, 2011.

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

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

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

I clerked for the Honorable Herman D. Michels, Presiding Judge for Administration on the New Jersey Superior Court, Appellate Division, from 1996 to 1997.

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

I have not practiced alone.

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

1997 – 2001
Law Offices of Michael Critchley and Associates
354 West Main Street
West Orange, New Jersey 07052
Associate

2001 – 2006
United States Attorney's Office for the District of New Jersey
970 Broad Street
Newark, New Jersey 07102
Assistant United States Attorney (2001 – 2006)
Health Care Fraud Coordinator (2004 – 2006)

2006 – 2008
 Office of the Attorney General
 Department of Law and Public Safety
 Richard J. Hughes Justice Complex
 25 West Market Street
 Trenton, New Jersey 08625
 Special Assistant to the Attorney General (2006 – 2007)
 First Assistant Attorney General (2007 – 2008)

2008 – present
 Critchley, Kinum & Vazquez, LLC
 75 Livingston Avenue
 Roseland, New Jersey 07068
 Partner

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

When I first began practicing law in 1997 as an associate with the Law Firm of Michael Critchley and Associates, my practice was focused on criminal defense, with an emphasis on white collar cases, as well as personal injury litigation. At that time, I second-chaired larger trials with Michael Critchley, Sr., who was the head of the firm. I also was lead counsel in a state civil trial, municipal trials, and a state and a federal criminal trial. My practice included some administrative matters (for example, before the New Jersey Board of Medical Examiners). In criminal cases, my duties included meeting with clients and preparing them for trial, interacting with the prosecutors, reviewing discovery, writing motions, negotiating plea agreements, handling sentencing, and taking appeals. In civil cases, my duties included meeting with clients, drafting pleadings, drafting discovery requests, reviewing discovery, making motions, and taking and defending depositions.

I joined the United States Attorney's Office for the District of New Jersey in 2001, where I handled a wide array of federal investigations and prosecutions. I served in the general crimes unit, the OCDETF (major narcotics) Unit, the Terrorism Unit, and the Securities and Health Care

Fraud Unit. My responsibilities included overseeing investigations and working closely with federal agents, drafting search warrants, reviewing subpoenaed information, interviewing witnesses, presenting matters to the grand jury, conducting Title III (wiretap) investigations, conducting proffer sessions, and negotiating plea agreements. I also represented the government in guilty plea hearings as well as sentencing. I was lead trial counsel in narcotics prosecutions and a securities fraud prosecution. I was also promoted to criminal health care fraud coordinator, which required oversight and coordination of all health care fraud cases in the district. In that role, I also worked closely with the civil division in connection with health care fraud investigations, primarily *qui tam* lawsuits.

When I joined the Office of the Attorney General for the State of New Jersey in 2006, I began as special assistant to the attorney general. In that capacity, my focus was on criminal matters, including public corruption, financial fraud, and Medicaid fraud. I also participated in review and analysis of potential legislation that could impact the Office of the Attorney General.

Upon becoming first assistant attorney general in 2007, my primary responsibility was the day-to-day operations for the Office of the Attorney General, Department of Law and Public Safety. The department was comprised of over 9,500 employees and the Divisions of Criminal Justice, Law, State Police, Consumer Affairs, Civil Rights, Elections, Alcoholic Beverage Control, Highway Traffic Safety, and Gaming Enforcement, as well as the Juvenile Justice Commission and the Racing Commission. As first assistant, I also worked closely with county prosecutors throughout New Jersey, as the attorney general has supervisory authority over each county prosecutor's office. In addition, I worked closely with the attorney general on developing law enforcement guidelines as well as analyzing potential legislation that could impact the department.

I joined my current firm as a partner in 2008. My current law practice can best be described as performing all aspects of criminal and civil litigation with an emphasis on white-collar criminal defense as well as complex commercial, securities, and health care civil litigation. Recently, my practice has included patent litigation. The majority of my cases (both criminal and civil) are in federal court. As to trials, I either serve as lead counsel or co-counsel, and I have tried three federal cases (two criminal and one civil) since returning to private practice. In addition, I have litigated cases with the Securities and Exchange Commission, the New Jersey Board of Medical Examiners, and the New Jersey Office of the State Comptroller.

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

Currently my clients are comprised of individuals and entities, including public companies and health care entities. When I first began practicing law, my clients were predominantly individuals. When I joined the United States Attorney's Office, my client was the United States of America. While working for the Office of the Attorney General, my client was the State of New Jersey. In addition, our office was bound by law to represent all executive branches and agencies in litigation.

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

With one exception, my entire career has been devoted to litigation, and I have appeared in court frequently. The one exception is that when I was with the Office of Attorney General, I did not appear in court. In addition, when I was first assistant attorney general, my practice involved policy and operations, as well as overseeing certain litigation.

My practice percentages, concerning federal versus state, have varied with my different jobs. When I first started practicing law, I estimate that 50% of my practice was in federal courts and 50% was in state courts. When I became an Assistant United States Attorney, my practice was 100% in federal courts. When I worked for the Office of the Attorney General, our cases were nearly 100% in state courts (although on occasion we would be involved in a federal court matter). As a special assistant to the attorney general, my practice was approximately 90% litigation related. When I became first assistant attorney general, my practice concerned operations, administrative, and policy, as well as reviewing certain litigation. Upon my return to private practice, I have worked approximately 70% in federal courts with the remainder being at the state or administrative level.

My percentage of work on criminal and civil matters has also varied with my different positions. When I first began practicing in 1997, my practice was approximately 80% to 85% criminal. While I was an Assistant United States Attorney, my practice was 100% criminal, although I did work with Assistant United States Attorneys in the civil division on health care fraud investigations. As a special assistant to the attorney general, approximately 85% to 90% of my time was spent on criminal matters. This percentage dropped when I became first assistant attorney general, at which point my practice also included a large percentage of civil, policy, and day-to-day operations. Upon my return to private practice, I estimate that my practice initially was 65% to 70% criminal. My practice has shifted towards the civil side in the last year, primarily federal civil cases. Civil cases now comprise approximately 50% to 60% of my caseload.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|---------------|
| 1. federal courts: | approx. 70% |
| 2. state courts of record: | approx. 25% |
| 3. other courts: | approx. 2.5 % |
| 4. administrative agencies: | approx. 2.5% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 20% |
| 2. criminal proceedings: | 80% |

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

I have tried approximately 15 cases to verdict (or with a dismissal in my client's favor after the State's case). I was sole counsel in five cases. I was lead counsel in three cases. I was co-counsel in four cases. I was associate counsel in three cases.

When I first began practicing in 1997, I was counsel in a federal criminal immigration trial, a state official misconduct trial against a police officer (my client was dismissed after the State's case-in-chief), a state civil personal injury case, and two municipal court trials. I was also second chair in a federal criminal bankruptcy fraud trial and another state official misconduct case against a police officer. In addition, I was lead counsel in a state criminal case in which our suppression motion was granted and the case was dismissed.

When I worked for the United States Attorney's Office, I was lead counsel in two large-scale narcotics trials. I was also lead counsel in an extensive securities case in which the defendant pled guilty approximately six weeks into trial.

When I was with the Office of the Attorney General, I did not try cases. However, I did review major cases on behalf of the attorney general and advised whether the cases should proceed to trial or settle as well as developing case strategy.

In my current position, I have been lead counsel in a civil bench trial in which I represented an attorney. I was also co-counsel in a federal public corruption trial in which our client was acquitted. I was also co-counsel in a federal breach of contract case in which the jury returned a verdict for over \$106 million. I was co-counsel in a federal bribery matter which resolved after the government's case-in-chief. I have also acted as lead counsel in representing clients before the New Jersey Board of Medical Examiners and am currently representing a client in an administrative Medicare debarment action. In addition, I am co-counsel in a pending New Jersey Department of Transportation debarment action. I am also

sole counsel in a pending state murder case.

- i. What percentage of these trials were:
 1. jury: approx. 80%
 2. non-jury: approx. 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) Mylan Inc., et al. v. Smithkline Beecham Corp., et al., Docket No. 10-4809 (D.N.J.) Honorable Joel A. Pisano, U.S.D.J.

I was co-counsel for plaintiffs, a pharmaceutical company and its affiliates, in a breach of contract action arising out of a prior settlement of a patent case between plaintiffs and defendants, another pharmaceutical company and its affiliates. The trial lasted approximately two weeks. The breach stemmed from the defendants supplying a third party company with a pharmaceutical drug. Originally, the district court granted summary judgment in favor of defendants, but the case was overturned by the U.S. Court of Appeals for the Third Circuit. The case proceeded to trial in March 2014. On March 25, 2014, the jury returned a verdict in favor of plaintiffs in an amount of \$106 million. On July 16, 2014, the court entered a permanent injunction in favor of plaintiffs prohibiting defendants from supplying the pharmaceutical drug to the third party generic pharmaceutical company. The case is currently on appeal to the Third Circuit Court of Appeals. Mylan Inc., et al. v. SmithKline Beecham Corp., et al., Docket No. 14-3646 (3d Cir.). I am also counsel in a related case, Mylan Inc., et al. v. Apotex Inc., et al., Docket No: 14-cv-4560

(D.N.J.), where the district court preliminarily enjoined the third party generic pharmaceutical company from further distribution of the drug and ordered a recall. This decision is also on appeal, Mylan, Inc., et al. v. Apotex Inc. et al., Docket No. 14-3436 (3d Cir.), while the underlying civil action continues to be litigated in the district court.

Co-Counsel:

Frank Smith III, Esq.
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, Georgia 30309
(404) 881-7000

Natalie Clayton, Esq.
Michael Johnson, Esq.
Alston & Bird LLP
90 Park Avenue, 15th Floor
New York, New York 10016
(212) 210-9400

Opposing Counsel:

Christopher Mizzo, Esq.
Gregg LoCascio, Esq.
Michael Pearson, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, Northwest
Washington, D.C. 20005
(202) 879-5000

Thomas A. Cunniff, Esq.
Fox Rothschild LLP
Princeton Pike Corporate Center
997 Lenox Drive, Building Three
Lawrenceville, New Jersey 08648
(609) 896-3600

- (2) United States v. Chrysanthopoulos, Docket No. 12-672 (D.N.J.) Honorable Joel A. Pisano, U.S.D.J.

I was co-counsel in a multi-count federal indictment against a private contractor. The indictment alleged three different schemes of kickbacks and bribes over distinct time periods involving two separate entities. The indictment sought forfeiture of approximately \$17 million. Such a loss resulted in a United States Guidelines Range of a minimum of 70 to 87

months. At the close of the government's case-in-chief in November 2013, the government offered a plea which dismissed the two largest schemes. This occurred after approximately two weeks of trial. In December 2014, our client was sentenced to a non-custodial term and no forfeiture was ordered as no loss had occurred.

Co-Counsel:

Michael Critchley, Esq.
Critchley, Kinum & Vazquez, LLC
75 Livingston Avenue
Roseland, New Jersey 07068
(973) 422-9200

Opposing Counsel:

Harvey Bartle IV
United States Attorney's Office
402 East State Street, Suite 430
Trenton, New Jersey 08608
(609) 989-2190

Vikas Khanna
United States Attorney's Office
970 Broad Street
Newark, New Jersey 07102
(973) 645-2700

- (3) United States ex rel. Depace v. The Cooper Health System, et al., Docket No. 08-5626 (D.N.J.) Honorable Joseph E. Irenas, U.S.D.J.

I was co-counsel for one of largest hospitals in New Jersey. I was involved in this matter for over two years. The case stemmed from a *qui tam* suit filed by a former doctor with the Cooper Heart Institute Advisory Board ("CHIAB"). CHIAB was organized as an educational and feedback forum. The case was originally filed in 2008. The suit alleged that CHIAB paid kickbacks to doctors in exchange for referrals. Due to the causes of action, our client faced potential treble damages, which could have resulted in over \$50 million in damages and threatened the financial stability of our client. The case involved voluminous discovery, complex financial records, and numerous witnesses. The civil division of the United States Attorney's Office for the District of New Jersey was the lead in the matter, but the case also involved the New Jersey Attorney General's Office, the United States Department of Justice, and the Department of Health and Human Services (Office of the Inspector General), in addition to relator's counsel. The case ultimately concluded in January 2013 with a monetary settlement that did not threaten the financial

stability of our client as well as a compliance agreement.

Co-Counsel:

Michael Critchley, Esq.
Critchley, Kinum & Vazquez, LLC
75 Livingston Avenue
Roseland, New Jersey 07068
(973) 422-9200

Opposing Counsel:

David E. Dauenheimer
United States Attorney's Office
970 Broad Street
Newark, New Jersey 07102
(973) 645-2700

- (4) United States v. Suarez, Docket No. 09-932 (D.N.J.) Honorable Jose L. Linares, U.S.D.J.

I was co-counsel in the criminal defense of this federal public corruption case. The trial lasted approximately three weeks. The case stemmed from a massive sting operation led by cooperating defendant Mr. Dwek. As a result of Mr. Dwek's undercover activities, over 40 people in the District of New Jersey were arrested in July 2009. Prior to our trial, Mr. Dwek had testified in two matters that resulted in convictions. We represented a municipal mayor, Mr. Suarez, who had been accused of accepting bribes in exchange for influence. The government had several audio and video taped meetings of Mr. Dwek, Mr. Suarez, and the co-defendant. The defense was that Mr. Suarez had never agreed to accept bribes and did not accept bribes. In addition to vigorous cross-examination of the government's witnesses, the defense called Mr. Suarez, who went through each taped conversation, explaining why the conversations were not consistent with the government's interpretation. On October 27, 2010, the jury returned a verdict of not guilty on all counts for Mr. Suarez. It was the first such verdict in favor of a public official in the District of New Jersey in over a decade.

Co-Counsel:

Michael Critchley, Esq.
Critchley, Kinum & Vazquez, LLC
75 Livingston Avenue
Roseland, New Jersey 07068
(973) 422-9200

Counsel for Co-Defendant:

Anthony Kress, Esq.
Solo Practitioner
39 Hudson Street
Hackensack, New Jersey 07601
(201) 343-5883

Opposing Counsel:

Maureen Nakly
Mark McCarren
United States Attorney's Office
970 Broad Street
Newark, New Jersey 07102
(973) 645-2700

(5) United States v. Teo, et al., Docket No. 4-00583 (D.N.J.) Honorable
Katharine S. Hayden

I was lead counsel for the United States in this multi-count securities fraud prosecution. The primary defendant was a large investor in a public company, who owned the then-popular music stores Sam Goody. There were two essential fraud schemes: insider trading and fraud to avoid what was commonly termed a poison pill. A poison pill is, in essence, a mechanism in which a company's shareholders have the right to buy additional shares at a discounted price if one shareholder purchases a certain percentage of the company's shares. Prior to trial, the court held an evidentiary hearing and found that the attorney-client privilege was not applicable due to the crime-fraud exception. The attorney in question had advised the primary defendant in relevant securities transactions. During the trial, we established that the attorney had disclosed documents to the defense, but not to the prosecution, which reflected the back-dating of critical documents by the primary defendant. We were approximately six weeks into trial when this information was discovered through our cross-examination of the attorney. As a result, the lead defendant pled guilty to insider trading counts in July 2006. I joined the New Jersey Office of the Attorney General before sentencing.

Co-Counsel:

Craig Carpenito, Esq.
Alston & Bird (formerly at United States Attorney's Office)
90 Park Avenue, 15th Floor
New York, New York 10016
(212) 210-9400

Opposing Counsel:

John J. Farmer, Jr.
Rutgers School of Law – Newark (formerly at K&L Gates)
123 Washington Street
Newark, New Jersey 07102
(973) 353-5561

John Azzarello, Esq.
Whipple Azzarello, LLC (formerly at K&L Gates)
161 Madison Avenue, #325
Morristown, New Jersey 07960
(973) 267-7300

Counsel for Co-Defendant:

John McDonald, Esq.
McDonald & Rogers, LLC
181 West High Street
Somerville, New Jersey 08876
(908) 722-4100

- (6) United States v. DeJesus Chica, et al., Docket No. 2-00021 (D.N.J.)
Honorable John L. Lifland, U.S.D.J.

I was lead counsel for the United States in a criminal trial resulting from a large scale, multi-district cocaine distribution scheme. The trial lasted approximately two weeks. The cocaine, over a hundred kilograms, was being shipped in a tractor trailer from Texas for ultimate distribution in the New Jersey area. The investigation prior to trial included a lengthy Title III (wiretap) investigation, which presented many challenges due to the defendants consistently changing pre-paid cell phones. Following the arrests, many defendants decided to plead guilty, except for the driver (Mr. Rodriguez), who received the cocaine in Pennsylvania for distribution in New Jersey. The driver's defense was that he did not know that he was transporting illicit drugs. In speaking on the cell phones, the defendants used coded language so that there was no explicit reference to cocaine or drugs. On September 30, 2003, the jury returned a verdict of guilty on all counts.

Co-Counsel:

Honorable Ronald D. Wigler
Superior Court of New Jersey (formerly at United States Attorney's Office)
Veterans Courthouse
50 West Market Street
Newark, New Jersey 07102

(973) 693-5991

Opposing Counsel:

Robert Stahl, Esq.
The Law Offices of Robert Stahl, LLC
220 Saint Paul Street
Westfield, New Jersey 07090
(908) 301-9001

- (7) United States v. Burgos, et al., Docket No. 2-00186 (D.N.J.) Honorable John L. Lifland, U.S.D.J.

I was lead counsel for the United States in a narcotics trafficking investigation and prosecution. The trial lasted approximately one week. The case concerned the importation of heroin for distribution in New Jersey. The defendants took many precautions to avoid detection, including hiding the heroin in a non-obvious form within a suitcase. Once the material was extracted from the suitcase, it had to undergo further processes before it was reduced to usable form. The defendant (Ms. Rodriguez) who went to trial argued that while she was aware that others were involved in heroin distribution, she never knowingly joined the scheme, and she took no steps in furtherance of the distribution scheme. A challenge we faced was that the primary cooperating witness admitted, just prior to trial, that he had omitted critical information in his past debriefings. As a result, the cooperating witness pled guilty to an additional offense, which impacted his credibility at trial. However, the jury returned a verdict of guilty on December 11, 2002.

Co-Counsel:

John Fietkiewicz
United States Attorney's Office
970 Broad Street
Newark, New Jersey 07102
(973) 645-2700

Opposing Counsel:

Patricia Rondon, Esq.
Rondon Law Group
61-63 Elmora Avenue
Elizabeth, New Jersey 07202
(908) 469-4750

- (8) State v. Manzie, 168 N.J. 113 (N.J. 2001) Chief Justice Deborah Poritz and Justices Virginia Long, Jaynee LaVecchia, Gary Stein, James Coleman, and

James Zazzali.

This case involved a matter of first impression before the Supreme Court of New Jersey. I represented Mr. Manzie, a juvenile who killed another juvenile when the latter was going house-to-house in a suburban residential neighborhood for a school fundraising drive. Mr. Manzie had also been previously sexually abused by an adult male and was working with the local police in an undercover capacity at the time of the murder. Mr. Manzie pled guilty to murder and was sentenced to prison. New Jersey had recently enacted the No Early Release Act, N.J.S.A. 2C:43-7.2, which provided for an 85% parole ineligibility period for violent crimes. At first blush, it would appear that murder would clearly meet the definition of a violent crime. However, in New Jersey, murder already had a separate sentencing scheme and the legislative sponsors of the No Early Release Act had indicated that the new law did not apply to murder. Nevertheless, the sentencing judge applied the No Early Release Act to the sentence. I appealed the matter to the New Jersey Superior Court's Appellate Division, arguing that the No Early Release Act was not applicable to murder offenses. The appellate division agreed and reversed the sentence. The State then appealed the matter to the New Jersey Supreme Court, which issued a split decision, 3-3 (one justice had recused himself). Due to the split decision, the appellate division's ruling was upheld.

Opposing Counsel:

Lisa Sarnoff Gochman, Esq.
 Helmer, Conley & Kasselman, P.A. (formerly at Office of the Attorney
 General)
 92 West Main Street
 Freehold, New Jersey 07728
 (848) 207-3500

- (9) United States v. Nathan, 188 F.3d 190 (3d Cir. 1999) Chief Judge Edward Becker and Judges Marjorie Rendell and Leonard Garth.

I was associate counsel in Mr. Nathan's defense at the district court level but I wrote the brief to the Third Circuit Court of Appeals. I then handled the resentencing. Mr. Nathan, along with his company and co-owner, pled guilty to a violation of 18 U.S.C. § 545, unlawfully importing goods into the United States by failing to mark the country of origin. The company was in defense contracting and had agreed not to use foreign components in producing electronic equipment for NASA and the United States Air Force. Despite this agreement, the company used foreign manufacturers for certain parts. As a result, Mr. Nathan was charged with violating the Arms Export Control Act and the International Traffic in Arms Regulation. The district court sentenced our client to 30 months. On appeal, we argued that the district court had misconstrued what information constitutes a stipulation for purposes of plea

agreement and also contended that the sentencing judge had made findings that were belied by the record. Specifically, the district court found that our client's actions had put American troops at risk. On appeal, I argued that the evidence reflected that no troops were put at any risk, and that the imported components actually resulted in the United States gaining better technology than it had previously used. The Third Circuit agreed and reversed the sentence. During the resentencing, our client received a non-custodial term.

Co-Counsel:

Michael Critchley, Esq.
 Critchley, Kinum & Vazquez, LLC
 75 Livingston Avenue
 Roseland, New Jersey 07068
 (973) 422-9200

Opposing Counsel:

Honorable George S. Leone
 Superior Court of New Jersey, Appellate Division (formerly at United States Attorney's Office)
 Sentry Office Plaza, Seventh Floor
 216 Haddon Avenue
 Westmont, New Jersey 08108
 (856) 854-8590

Honorable Noel L. Hillman, U.S.D.J.
 Cohen U.S. Courthouse, Room 6020 (formerly at United States Attorney's Office)
 One John F. Gerry Plaza
 Fourth and Cooper Streets
 Camden, New Jersey 08101
 (856) 757-5057

Counsel in Consolidated Appeal:

Lawrence S. Lustberg, Esq.
 Gibbons PC
 One Gateway Center
 Newark, New Jersey 07102
 (973) 596-4731

J. Barry Coccoziello, Esq.
 Podvey, Meanor, Catenacci, Hildner, Coccoziello & Chattman, P.C.
 The Legal Center, 1037
 Raymond Boulevard, Suite 800

Newark, New Jersey 07102
(973) 623-1000

- (10) United States v. Che, et al., Docket No. 98-403 (D.N.J.) Honorable Dickinson R. Debevoise, U.S.D.J.

I was sole counsel for one of three co-defendants. The case was a federal prosecution for illegal alien smuggling resulting in a trial that lasted approximately two weeks. My client was a crewman on a ship that initially departed from Venezuela. After the ship left port, another vessel approached the ship and unloaded a number of illegal immigrants onto the ship. When the ship arrived off the coast of New Jersey, a smaller boat took the illegal immigrants to shore. However, the smaller boat ran aground and the local authorities took all into custody. My client, along with two other crewman, were charged and went to trial. My client's defense was that he had never voluntarily agreed to engage in illegal smuggling. Instead, when he took the job as a crewman, he was told that it was a legitimate fishing vessel. However, once he was already out to sea, the illegal immigrants boarded and at that point, my client had no option but to stay on the ship. The jury acquitted my client on December 2, 1998. The other two crewmen were found guilty.

Opposing Counsel:

Carolyn Murray
Essex County Prosecutor's Office (formerly at United States Attorney's Office)
Veterans Courthouse
50 West Market Street
Newark, New Jersey 07102
(973) 621-4700

Vaughn McKoy, Esq.
Public Service Energy Group (formerly at United States Attorney's Office)
80 Park Plaza
Newark, New Jersey 07102
(973) 430-8325

Counsel for Co-Defendants:

E. Alexander Jardines, Esq.
6809 Bergenline Avenue
Suite Two
West New York, New Jersey 07093
(201) 868-1008

Andrew Samson, Esq.
 Barn Samson LLP
 27 Horseneck Road, Suite 210
 Fairfield, New Jersey 07004
 (973) 244-0030

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 to other additional significant cases that I have been involved in, I have represented a major insurance company before the New Jersey Office of the State Comptroller. I am currently co-counsel in two patent litigation cases. I have represented the CEO of a public company in a health care civil and criminal investigation into the company. I am, and have, represented a number of health care professionals, including physicians and chiropractors in criminal and administrative investigations.

When I was named Criminal Health Care Fraud Coordinator for the District of New Jersey, I worked to strengthen our office's relationships with the federal agencies responsible for such investigations, to fortify our office's relationships with the health care fraud units in other districts, and to enhance the relationship between the criminal and civil health care attorneys within the office. The improved relationships with the federal agencies opened the line of communications between the prosecution and investigation teams, resulting in a more timely review and disposition of cases. Enhancing the relationship with the civil attorneys resulted in a timely criminal review of cases that were initially filed through the civil division, normally by way of a *qui tam* suit. Strengthening the relationship with other United States Attorney's Offices resulted in a better understanding of national trends as well as the ability to share resources and knowledge in joint investigations.

As first assistant attorney general, I worked closely with the attorney general in implementing the Governor's Strategy for Safe Streets and Neighborhoods. The strategy encompassed all facets of addressing gang crime in New Jersey, including prevention, investigation and prosecution, and reentry. Pursuant to the attorney general's request, I worked closely on the investigation and prosecution aspect, which focused on the use of technology to analyze local, regional, and state criminal trends. With the use of actual data and analysis, investigations were able to focus on the areas in greatest need as well as provide a sound strategy to address any unique issues in a particular area.

Upon returning to private practice, I have been involved with three committees of the Supreme Court of New Jersey. The first committee reviewed the Rules of Evidence for New Jersey, which considered and then either rejected or recommended amendments to

specific rules. The next committee concerned implementation of the state supreme court's decision that changed New Jersey's view on the automobile exception to the warrant requirement. The final committee undertook a sweeping review of New Jersey's bail and speedy trial processes. The committee's report recommended changes that impacted a wide spectrum of New Jersey's laws, from New Jersey's Constitution to its Rules of Court. In the first committee, I was the representative of the Hispanic Bar Association of New Jersey. In the other two committees, I was chosen to provide the perspective of a defense attorney engaged in private practice, although my prior experience as a prosecutor was also relevant.

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.

My law firm typically provides bonuses to all attorneys on an annual or semi-annual basis, depending upon the performance of the firm. 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.

I do not have any current plans, commitments, or agreements to do so.

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.

There are no areas of particular concern. I would recuse myself from all matters as required by law. For example, I would recuse myself from any matter in which I had a prior role regardless of how small. To avoid any appearance of conflict, I would recuse myself for the appropriate period of time from all cases involving my current firm. I would similarly follow all recusal rules as to cases involving former clients in matters that I did not participate as a legal counsel. Finally, my family members have never been litigants or counsel in the United States District Court for the District of New Jersey. If this were to occur, 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.

I would consult with the Code of Conduct for United States Judges as well as relevant cases and statutes (including 28 U.S.C. § 455) on judicial recusal and follow their guidance. As noted, I am aware that certain cases mandate recusal, such as cases in which I participated while I was an attorney. I will follow the rules on recusal as to timing and also follow the rules and guidance as to prior clients. Finally, a litigant can also raise a claim of conflict of interest. If that situation arises, I would ask for the parties to submit their positions as to the potential conflict and the controlling law and then make a timely decision on the merits. There are no particular categories of cases that would pose an ethical concern.

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

In New Jersey, all attorneys are mandated to sign up for pro bono appointment. To date, I have only been assigned one case, a domestic violence matter emanating from Essex County when I first began practicing law (circa 1998). Both my client and his spouse were charged (it turns out that the local authorities were familiar with both due to similar instances in the past). I would estimate that I spent 20 to 30 hours in resolving this case.

On a personal level, I have represented, pro bono, a number of family members, their

friends, and personal friends because they could not afford representation. These matters include an employment-related investigation, several municipal court matters, and criminal matters. I would estimate that I have spent approximately 150 to 200 hours on these cases since I returned to private practice in October 2008.

Finally, I have also spoken to law students on several occasions at Rutgers School of Law in Newark and Seton Hall University School of Law about careers in the law. Similarly, for two years while I was at the United States Attorney's Office, I was co-chair of the summer intern program. I was not paid for this work, and it involved reviewing hundreds of resumes, conducting approximately 30 to 40 interviews each year, selecting the intern class for the upcoming summer, overseeing the interns and assigning projects during the summer, and organizing educational and social activities. I cannot give a firm estimate of time on these activities, but the summer intern program involved over 100 hours each year.

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 2014, I spoke to a District Judge for the District of New Jersey and learned that there likely would be upcoming vacancies in the district. I then wrote letters to Senator Robert Menendez and Senator Cory Booker indicating my interest in being considered. Thereafter, I completed Senator Menendez's judicial questionnaire and interviewed with Senator Menendez and his staff in Newark, New Jersey on August 20, 2014. I also interviewed with Senator Booker in Newark, New Jersey on August 18, 2014. In January 2015, Senator Menendez informed me that he would be submitting my name for consideration to the White House. Since January 15, 2015, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 10, 2015, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On March 26, 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 one has done so.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Wilhelmina Marie Wright
Mimi Wright

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

United States District Judge for the District of Minnesota

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.

Minnesota Supreme Court
Minnesota Judicial Center
25 Reverend Dr. Martin Luther King Jr. Boulevard
Saint Paul, Minnesota 55155

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

1964; Norfolk, Virginia

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

1986 – 1989, Harvard Law School; J.D., 1989
1982 – 1986, Yale College; B.A. (*cum laude*), 1986

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

2012 – present
Minnesota Supreme Court
Minnesota Judicial Center
25 Reverend Dr. Martin Luther King Jr. Boulevard

Saint Paul, Minnesota 55115
Associate Justice

2002 – 2012 (leave of absence July 2008 – July 2009)
Minnesota Court of Appeals
Minnesota Judicial Center
25 Reverend Dr. Martin Luther King Jr. Boulevard
Saint Paul, Minnesota 55115
Judge

2000 – 2002
Ramsey County District Court
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102
Judge

1995 – 2000
United States Attorney's Office
District of Minnesota
United States Courthouse
300 South Fourth Street
Suite 600
Minneapolis, Minnesota 55415
Assistant United States Attorney

1991 – 1995; Summer 1988
Hogan & Hartson LLP (now Hogan Lovells LLP)
Columbia Square
555 Thirteenth Street NW
Washington, District of Columbia 20004
Associate (1991 – 1995)
Summer Associate (Summer 1988)

1989 – 1991
Chambers of the Honorable Damon J. Keith
United States Courthouse
231 West Lafayette
Detroit, Michigan 48226
Law Clerk

Summer 1988
NAACP Legal Defense and Educational Fund
1444 I Street NW
Washington, District of Columbia 20005
Summer Intern

Summer 1987
Bell Boyd and Lloyd (now defunct)
Washington, District of Columbia 20004
Summer Associate

Summer 1986
Choate Rosemary Hall
333 Christian Street
Wallingford, Connecticut 06492
Summer English Literature and Writing Teaching Assistant

Other Affiliations (uncompensated):

2005 – 2011, 2014 – present
Saint Paul Academy and Summit School
1712 Randolph Avenue
Saint Paul, Minnesota 55105
Board of Trustees

2002 – 2008, 2010 – 2012
Mardag Foundation
101 Fifth Street East
Suite 2400
Saint Paul, Minnesota 55101
Board of Directors (2002 – 2008, 2010 – 2012)
Secretary (2004 – 2008)

2002 – 2010
William Mitchell College of Law
875 Summit Avenue
Saint Paul, Minnesota 55104
Board of Trustees (2002 – 2010)
Secretary (2004)

1996 – 2003
Girl Scout Council of Saint Croix Valley (now Girl Scout Council of River Valleys)
400 Robert Street South
Saint Paul, Minnesota 55107
Board of Directors (1996 – 2003)
Secretary (1998 – 1999)

1996 – 2003
Saint Paul Chamber Orchestra
Historic Hamm Building Administration Office
408 Saint Peter Street
Saint Paul, Minnesota 55102

Board of Directors

1999 – 2001

Federal Bar Association of Minnesota (no local address)
 1220 North Fillmore Street
 Suite 444
 Arlington, Virginia 22201
 Board of Directors

1990 – 1991

Yale Alumni Association of Michigan
 No known physical address
 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.

None.

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.

George Family Foundation, Exceptional Women Leaders Honoree (2014)
 College of Saint Benedict and Saint John's University Alumni, Fidelis Apparitor (Faithful Servant) Award (2013)
 Minnesota Association of Black Lawyers, President's Award (2012)
 Girl Scout Council of River Valleys, Women of Distinction Award (2011)
 Minnesota Women Lawyers, Myra Bradwell Award (2006)
 Minnesota Black Women Lawyers Network, Lena O. Smith Achievement Award (2004)
 Minnesota Association of Black Lawyers, Annual Gala Honoree (2003)
 Saint Paul Jaycees, B. Warren Hart Award for Public Service (2001)
 Minnesota Jaycees, Ten Outstanding Young Minnesotans Award (2000)
 United States Department of Justice, Director's Award for Public Service (2000)
 United States Department of Justice, Special Achievement Award (1997)
 Harvard Civil Rights-Civil Liberties Law Review, Editorial Board (1987 – 1988) and Executive Editor (1988 – 1989)
 Yale University, Anne Warner Award (1986)
 Aurelian Honor Society (1985 – 1986)

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

American Bar Association
 American Bar Foundation Fellow
 American Law Institute
 Model Penal Code: Sentencing Consultative Group (2011 – present)
 Federal Bar Association of Minnesota
 Board of Directors (1999 – 2001)
 Minnesota Appellate Courts' Day of Service, Co-Chair (2010 – present)
 Minnesota Association of Black Lawyers
 Minnesota Court of Appeals Committees
 Family Law Appellate Mediation Rules Committee (2010)
 Federal Magistrate Judge Merit Selection Panel, Member (2002); Chair (2012)
 Minnesota Judicial Council (2005 – 2008)
 Minnesota State Bar Association Task Force on the American Bar Association
 Model Rules of Professional Conduct (2002 – 2003)
 Minnesota Second Judicial District Court Committees
 Bail/Sentencing Committee (2000 – 2002)
 Community Court Committee, Chair (2000 – 2002)
 Racial Fairness Committee (dates unknown)
 Ramsey County Community Corrections Advisory Board (2000 – 2003)
 Minnesota State Bar Association
 Minnesota Supreme Court Committees (2012 – present unless otherwise noted)
 Board of Continuing Legal Education
 Committee for Equality and Justice (2011 – present)
 General Rules of Practice Committee
 Legal Services Advisory Committee (including Lawyers Trust Account Board)
 National Consortium on Racial and Ethnic Fairness in the Courts
 Public Trust and Confidence Working Group (2000 – 2005)
 State Canvassing Board (2012, 2013)
 Minnesota Women Lawyers
 Advisory Board (2002 – 2008, 2010 – 2013)
 Co-Chair, Program Committee (2000)
 Holiday Benefit Organizer (1996, 2000)
 Myra Bradwell Award Selection Committee (2015)
 Nominating Committee (2002, 2004 – 2006)
 President's Leadership Circle (2013 – 2014)
 National Association of Women Judges
 National Bar Association
 Ramsey 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.

Virginia, 1989
 District of Columbia, 1991

Minnesota, 1998

There have been no lapses in membership. Once I joined the bench, I changed my membership in the District of Columbia bar to "judicial member" and my Virginia bar membership to "inactive."

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

United States Court of Appeals for the Eighth Circuit, 1991
United States District Court for the District of Minnesota, 1995

My admission to the District of Minnesota was placed on inactive status in approximately 2001 after I became a judge and no longer practiced before the federal court.

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.

Clare House Volunteer (1996 – 1998)
Girl Scout Council of Saint Croix Valley (now Girl Scout Council of River Valleys)
Board of Directors (1996 – 2003)
Secretary of the Board (1998 – 1999)
Chairperson, CEO Selection Committee (1997)
CEO Performance Review Committee (1998 – 2000)
For All the Girls Campaign (1999 – 2000)
Nominating Committee (2001 – 2003)
Green Bag Almanac Board of Advisors (2008 – present)
Hamline University Women in Leadership Advisory Council (2002)
International Bridges to Justice
Expert Panel (2008 – 2009)
Justice Makers Competition Judge (2008, 2010)
Volunteer on eLearning and Accreditation Rule of Law Project (2008 – 2009)
International Women's Forum Minnesota (2012 – present)
Jack & Jill of America, Minneapolis Chapter (2000 – 2002)
Mardag Foundation

Board of Directors (2002 – 2008, 2010 – 2012)
 Nominating Committee (2009)
 Secretary (2004 – 2008)
 Minneapolis-Saint Paul Chapter of The Links, Inc. (2003 – 2014)
Minnesota Lawyer Advisory Board (2001 – 2010)
 Project Home Shelter Volunteer (2012 – present)
 Saint Paul Academy and Summit School
 Board of Trustees (2005 – 2011, 2014 – present)
 Chair, Committee on Trustees (2010 – 2011)
 Nominating Committee (2008)
 Saint Paul Chamber Orchestra
 Board of Directors (1996 – 2003)
 Governance Committee (1997 – 2003)
 Marketing Committee (1996 – 1997)
 Saint Paul Jaycees (approximately 1996 – 2003)
 Saint Paul Public Schools Graduate Standards Advisory Committee (1997 – 1999)
 Town and Country Club (2001 – present)
 Twin Cities United Way Tocqueville Society
 Tocqueville Society Cabinet (2013 – present)
 University of Minnesota Hubert H. Humphrey School of Public Affairs
 Advisory Council (2009 – 2013)
 University of Saint Thomas School of Law
 “Ethical Leadership in Social Justice” Curriculum Development and
 Literature Review (2008 – 2009)
 William Mitchell College of Law
 Board of Trustees (2002 – 2010)
 Secretary (2004)
 Dean Search Committee (2003)
 Yale Alumni Association of Michigan Board of Directors (1990 – 1991)
 Yale Alumni Schools Committee (1989 – 1991, 1996 – 2007)
 Yale University Council Advisory Board (2010 – present)

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

More than a decade before I joined the Saint Paul Jaycees, full membership was restricted to men. To the best of my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

Justice Wright is Elected!, <http://wrightforjustice.com>, November 2014. Copy supplied.

Pathways to the Bench: Paved with the Quest for Equality and Justice, Minnesota Women Lawyers Curated Lists, September or October 2014. Copy supplied.

Mentorship Gifts, Minnesota Women's Press (November 2013). Copy supplied.

Brown's Legacy: Looking Back, Moving Forward, 31 WM. MITCHELL L. REV. 375 (2004). Copy supplied.

Guest Notes, WLSA News, Women Law Students Association (February 1997). Copy supplied.

With Anne M. Dellinger and Patricia C. Kuszler, *Criminal Court Practice*, in AIDS BENCHMARK SUPPLEMENT, The National Judicial College (1994). Copy supplied.

In the Courts, American Association of School Administrators Leadership News (February 1991). I contributed to this newsletter as a member of Hogan & Hartson's education practice group. I do not recall the subject matter of the article and have been unable to obtain a copy.

Examining the Property of Rights in Whiteness, Questioning the Benefits of Desegregated Schools, and *Black Success Rates Color-Blind Status in Racial Reflections: Dialogues in the Direction of Liberation*, 37 UCLA L. REV. 1037 (1989 – 1990). Copy supplied.

Book Review, 12 HARV. WOMEN'S L.J. 297 (1989) (reviewing A.J. COOPER, A VOICE FROM THE SOUTH). Copy supplied.

With Steve Barber et al., *The Purging of Empowerment*, 23 HARV. C.R.-C.L. L. REV. 483 (1988). Copy supplied.

Book Review, 23 HARV. C.R.-C.L. L. REV. 281 (1988) (reviewing J.G. ROBINSON, *THE MONTGOMERY BUS BOYCOTT AND THE WOMEN WHO STARTED IT*). Copy supplied.

For my 2014 election to the Minnesota Supreme Court, I maintained a campaign website at <http://wrightforjustice.com>. Most of the content was created by a webmaster, but I personally contributed some of the web content, listed separately in 12a. My campaign also maintained a Facebook page at <https://www.facebook.com/WrightForJustice>. I did not personally contribute any material to this page. I also maintained a website for my 2010 and 2004 election campaigns but no social media presence. These websites are not archived anywhere to the best of my knowledge, but were substantially similar to the 2014 website.

I edited the following articles as a volunteer copy-editor for the Advocates for Human Rights:

A House with Two Rooms: Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project, Advocates for Human Rights (DRI Press 2009). Copy supplied.

Sex Trafficking Needs Assessment for the State of Minnesota, Advocates for Human Rights (2008). Copy supplied.

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

From 2008 to the present, I served on the Green Bag Almanac Board of Advisors. The board nominates and votes on articles, legal opinions, and writings for inclusion in an annual publication. The publications are voluminous and my role was limited to nominating and voting on readings to be included in the almanac; therefore, I have included the excerpts available online, which provide the introduction and table of contents of the articles for each year I was on the board. Copies of the 2008 to 2015 excerpts supplied.

In 2013 and 2014, the Supreme Court Advisory Committee on General Rules of Practice issued final reports and recommendations. I served as the Supreme Court liaison, attending meetings and consulting with the committee on its proposals and report and recommendations as a nonvoting member. Copies of the final reports are supplied.

From 2002 to 2008 and 2010 to 2012, I served on the board of directors of the

Mardag Foundation. The foundation issued annual reports or letters summarizing our grants. The letters did not include the names of board members, but the reports did. The board did not have any role in the preparation or approval of the annual reports or letters. Copies of the 2002 to 2009 annual reports supplied.

Model Penal Code: Sentencing, Tentative Draft No. 2, American Law Institute, March 25, 2011. Although my name appeared on the draft as a member of the Sentencing Consultative Group, I did not participate or consult in any way in its preparation, and did not vote on or approve its contents. Copy available at <http://tinyurl.com/n4sjh6d>.

To the best of my recollection, none of the other organizations on whose boards I served released any reports, memoranda or policy statements either with my participation or under my name.

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

The Minnesota Supreme Court Advisory Committee on General Rules of Practice met on September 24, 2014, August 28, 2014, and September 20, 2013. I served as the Supreme Court liaison, attending meetings and consulting with the committee on its proposals and report and recommendations as a nonvoting member. Minutes supplied.

I am also the Minnesota Supreme Court liaison for the Committee on Equality and Justice that meets quarterly. This is a nonvoting role. The committee issues annual reports and recommendations for approval of its work plan by the Minnesota Judicial Council. While the meetings of Minnesota Judicial Branch committees are open to the public, only committee members or invited presenters participate in the meetings. Minutes for these meetings are created by judicial branch staff. Minutes supplied.

After being appointed to the Minnesota Supreme Court, I ran for election in 2014. I have supplied questionnaires or press reports quoting my answers that I have been able to locate after a diligent search of my records and the Internet. My recollection is that with respect to my 2014 election, I filled out a questionnaire from each organization that sent one to me.

Academy of Certified Trial Lawyers of Minnesota. Copy supplied.

Minnesota Lawyer. Copy supplied.

Minnesota Newspaper Association. Copy supplied.

Minnesota State Bar Association. Copy supplied.

OutFront Minnesota. Copy supplied.

On June 1, 2011, Minnesota Supreme Court Chief Justice Lorie Gildea appointed five judges, including myself, to a special redistricting panel to hear challenges to the then-existing legislative and congressional districts and create redistricting maps if the governor and legislature failed to reach an agreement. In October 2011, the panel held hearings throughout the state in which citizens testified about their communities. Chief Justice Gildea appointed me to serve as the presiding judge of the special redistricting panel. At the beginning of each hearing, I gave opening remarks regarding the purpose and scope of the public hearings. I have no notes, transcript, or recording.

October 4, 2011: Bloomington, Minnesota
 October 5, 2011: Saint Paul, Minnesota
 October 6, 2011: Minneapolis, Minnesota
 October 10, 2011: Cloquet, Minnesota
 October 11, 2011: Bemidji, Minnesota
 October 12, 2011: Moorhead, Minnesota
 October 13, 2011: Saint Cloud, Minnesota
 October 14, 2011: Mankato, Minnesota

After being appointed to the Minnesota Court of Appeals, I ran for election in 2004 and 2010. During the course of these judicial campaigns, I filled out a number of candidate questionnaires. I have not retained copies of the questionnaires and, after a diligent search of my records and the Internet, I do not recall the groups for whom I filled out a questionnaire.

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

In connection with my 2014, 2010 and 2004 campaigns, I visited law firms, civic organizations and homes throughout Minnesota to discuss the role of the court. Although I often spoke extemporaneously, in some of my 2014 appearances, I spoke from a speech I prepared in March 2014. Copy supplied. A list of my 2014 campaign appearances is below. I have not maintained records of my appearances in 2010 and 2004. I spoke extemporaneously at all campaign events.

House Parties:

October 22, 2014: Minnetonka, Minnesota
 October 21, 2014: Rochester, Minnesota
 October 20, 2014: Saint Paul, Minnesota
 October 9, 2014: Saint Paul, Minnesota
 October 7, 2014: Minneapolis, Minnesota
 September 24, 2014: Saint Paul, Minnesota
 September 22, 2014: Minneapolis, Minnesota
 September 19, 2014: Saint Paul, Minnesota
 September 17, 2014: Edina, Minnesota
 September 10, 2014: Saint Paul, Minnesota
 September 6, 2014: Roseville, Minnesota
 September 4, 2014: Minneapolis, Minnesota
 August 28, 2014: Plymouth, Minnesota
 July 23, 2013: Saint Paul, Minnesota
 May 14, 2014: Saint Paul, Minnesota

Law Firm Appearances:

October 29, 2014: Hanft Fride Law Firm
 October 15, 2014: Stinson Leonard Street
 October 14, 2014: Lind, Jensen, Sullivan & Peterson
 October 10, 2014: Fredrikson & Byron
 October 2, 2014: Larson King
 September 26, 2014: Quinlivan & Hughes, Gray Plant Mooty
 September 25, 2014: Farrish Johnson
 August 26, 2014: Felhaber & Larson
 August 25, 2014: Dorsey & Whitney
 August 20, 2014: Briggs & Morgan
 August 12, 2014: Henson & Efron
 August 12, 2014: Winthrop & Weinstine
 July 23, 2014: Meagher & Geer
 July 22, 2014: Lockridge Grindal Nauen
 July 21, 2014: Gray Plant Mooty
 July 9, 2014: Oppenheimer Wolf & Donnolly, Greene Espel
 June 24, 2014: Maslon Edelman Borman & Brand
 May 29, 2014: Robins Kaplan

Other Appearances:

October 23, 2014: Meet & Greet, Town & Country Club, Saint Paul, Minnesota.
 October 14, 2014: Meet & Greet, The University Club, Saint Paul,

Minnesota.

September 11, 2014: Meet & Greet, Minnesota Asian Peace Officers Association, Saint Paul, Minnesota.

August 27, 2014: Meet & Greet, Minnesota Chapter of the National Black Police Association, Minneapolis, Minnesota.

August 22, 2014: Meet & Greet, Laurentin Chamber of Commerce, Virginia, Minnesota.

August 21, 2014: Meet & Greet, Soroptimist Club, Mountain Iron, Minnesota.

March 11, 2014: Wright For Justice Campaign Kickoff Reception, Minneapolis, Minnesota. Press coverage supplied.

The Minnesota Supreme Court regularly convenes for oral arguments at schools across the state. Oral arguments are followed by a question and answer session, classroom visits, and tours. I do not speak from prepared material at these events and have not maintained records of all appearances. Representative press reports are supplied.

April 14, 2015; October 17 and May 16, 2014; July 10 and June 6, 2013: Speaker, New Lawyer Admission Ceremony, Minnesota Supreme Court, Saint Paul, Minnesota. I used one set of remarks for all of the 2013 and 2014 events, and a second set of remarks for the April 2015 event. Remarks supplied.

February 14 – 15, 2015: Judge, Marshall-Wythe Moot Court Competition, William & Mary Law School, Williamsburg, Virginia. I served as a judge for a two-day moot court competition including the final round. I have no notes, transcript, or recording. The address of William & Mary Law School is 613 South Henry Street, Williamsburg, Virginia 23185.

January 19, 2015: Speaker, 2015 Statewide Martin Luther King Jr. Holiday Celebration, Macalester College, Saint Paul, Minnesota. Remarks supplied.

December 11, 2014: Speaker, Minnesota Supreme Court Update CLE, Ramsey County Bar Association, Saint Paul, Minnesota. PowerPoint supplied.

November 25, 2014: Panelist, 60th Anniversary of *Brown v. Board of Education* CLE, Southern Minnesota Regional Legal Services, Inc., Saint Paul, Minnesota. Notes supplied.

November 21, 2014: Speaker, Swearing-In Ceremony for Diane Bratvold, Minnesota Fourth Judicial District, Minneapolis, Minnesota. Remarks supplied.

November 18, 2014: Speaker, Sixth Annual Membership Reception: A Celebration of the Life and Legacy of Justice Rosalie E. Wahl, Minnesota Supreme Court Historical Society, Minneapolis, Minnesota. Remarks supplied.

October 31, 2014: Speaker, Semi-Annual Attorney Admission Ceremony, Minnesota Supreme Court, Saint Paul, Minnesota. Remarks supplied.

October 22, 2014: Keynote Speaker, Tubman Volunteer Attorney Celebration Luncheon, Tubman, Minneapolis, Minnesota. Remarks supplied.

October 21, 2014: Speaker, Collateral Consequences of Criminal Convictions; Lawyers as Public Servants: Facing Today's Challenges with Ingenuity Inspired by a Commitment to Service, Pro Bono Week CLE, Minnesota State Bar Association, Minneapolis, Minnesota. Remarks supplied.

October 18, 2014: Panelist, For God, for Country, and for Yale: Black Yalies in Public Service, Past and Present, 45th Anniversary Conference of the Afro-American Cultural Center, Yale University, New Haven, Connecticut. In this panel before Yale students, alumni, administrators, and community members, I discussed how my Yale education inspired and prepared me to develop the leadership skills that I have used in my profession and in my community service. I have no notes, transcript, or recording, but the outline provided by the moderator is supplied. The address of Yale University is Yale University, New Haven, Connecticut 06520.

September 17, 2014: Panelist, The Value of Mentoring Relationships, Executive Women's Council, Minneapolis Regional Chamber of Commerce, Minneapolis, Minnesota. We discussed personal experiences being mentored and mentoring, and strategies for identifying and effectively using mentors for professional advancement. I have no notes, transcript, or recording. The address of the Minneapolis Regional Chamber of Commerce is 81 South Ninth Street, Suite 200, Minneapolis, Minnesota 55402.

September 2014: Panelist, Fall Student Orientation, Minnesota Black Women Lawyers Network, William Mitchell College of Law, Saint Paul, Minnesota. We discussed study skills, networking opportunities, and other strategies for success in law school. I have no notes, transcript, or recording. The address of William Mitchell College of Law is 875 Summit Avenue, Saint Paul, Minnesota 55104.

August 18, 2014: Presenter, Investiture Oath, University of Saint Thomas School of Law, Minneapolis, Minnesota. Remarks supplied.

August 5, 2014: Panelist, Fireside Talk, Ecolab E3 Professional Development Day, Ecolab, Saint Paul, Minnesota. Remarks supplied.

July 15, 2014: Keynote Speaker, Professional Development Workshop, Diversity: Application vs. Theory, Black Employee Network, Thomson Reuters, Eagan, Minnesota. Video supplied.

June 24 & 26, 2014: Speaker, Nine Days in June, Minnesota Supreme Court Case Review, Minnesota State Bar Association, Willmar, Minnesota and Minneapolis, Minnesota. I spoke from a document prepared by my colleague, Justice Christopher Dietzen. PowerPoint supplied.

May 16, 2014: Panelist, Open Doors to Federal Courts Program, William Mitchell College of Law, United States District Court for the District of Minnesota, Saint Paul, Minnesota. In this panel before a group of high school students, I discussed the value of pursuing an education, excelling academically, and meeting challenges in education and professional life. I have no notes, transcript, or recording. The address of the United States District Court for the District of Minnesota is 300 South Fourth Street, Suite 202, Minneapolis, Minnesota 55415.

May 15, 2014: Keynote Speaker, Annual Police Memorial Day, Red Wing Police Department, Red Wing, Minnesota. Remarks supplied.

May 15, 2014: Keynote Speaker, Marjorie Gray Vogel Citizenship Award Night: Promoting Justice Through Civics Education, League of Women Voters Red Wing, Red Wing, Minnesota. Remarks supplied.

May 10, 2014: Speaker, Commencement Address, Concordia University, Saint Paul, Minnesota. Video available at <https://www.youtube.com/watch?v=qdfhKcXBWpM>.

April 25, 2014: Keynote Speaker, Effective Appellate Advocacy: A View From the Bench, Nuts and Bolts CLE, Hennepin County Bar Association New Lawyers Section, Minneapolis, Minnesota. PowerPoint supplied.

April 23, 2014: Speaker, Luncheon, Mankato Rotary, Mankato, Minnesota. Remarks supplied.

April 15, 2014: Keynote Speaker, Night of Distinction, University of Saint Thomas Black Lawyer Students Association, Minneapolis, Minnesota. Remarks supplied.

March 19, 2014: Presenter, The Minnesota Judicial Branch, Leadership Program, Greater Mankato Growth, Saint Paul, Minnesota. Notes supplied.

March 14, 2014: Speaker, Introduction of Marcy S. Wallace Award Recipient, Commissioner Rita Coyle DeMeules, Annual Law Review Banquet, William Mitchell College of Law, Minneapolis, Minnesota. Remarks supplied.

March 12, 2014: Presenter, Prominent Women in Minnesota's Legal Community, University of Saint Thomas Minnesota Supreme Court Historical Society Student Chapter and Women Law Student Association, University of Saint Thomas Law School, Minneapolis, Minnesota. I used the same notes that are provided for the presentation in Edina on February 25, 2014.

March 12, 2014: Speaker, Ramsey County Bar Association Claire's Court Reading Program, Ramsey County Bar Association, Saint Paul, Minnesota. At Hazel Park Preparatory Academy, I read a children's book on the operations of the United States Supreme Court and answered questions about my personal journey and career. I also encouraged the children to work hard and discussed how their studies are applicable to the work of the courts. I have no notes, transcript, or recording. The address of the Ramsey County Bar Association is E-1401 First National Bank Building, 332 Minnesota Street, Saint Paul, Minnesota 55101.

March 7, 2014: Panelist, Global Rule of Law: A Panel Discussion, Law and Business Day of Nobel Peace Prize Forum 2014, Humphrey School of Public Affairs, University of Minnesota, Minneapolis, Minnesota. Notes supplied.

March 2014: Presenter, Introduction to the Role of the Courts, Leadership Minnesota, Minnesota Chamber of Commerce, Saint Paul, Minnesota. I discussed the court's role in society, the court's operations, and the relevance of the court's work to the business community. I have no notes, transcript, or recording. The address of the Minnesota Chamber of Commerce is 400 Robert Street North, Suite 1500, Saint Paul, Minnesota 55101.

February 28, 2014: Keynote Speaker, The Importance of Diversity and Equality, Fredrikson and Byron Pro Bono/Diversity Celebration, Fredrikson and Byron, P.A., Minneapolis, Minnesota. Remarks supplied.

February 25, 2014: Panelist, Women in Leadership Event, Barnes and Thornburg, Edina, Minnesota. Notes supplied.

February 21, 2014: Remarks, Legal Services Advisory Committee Stakeholder Meeting, Minnesota Judicial Branch, Saint Paul, Minnesota. Remarks supplied.

February 19, 2014: Keynote Speaker, Hennepin County Attorney Minority Recruitment Reception, Hennepin County Attorney, Minneapolis, Minnesota. Remarks supplied.

February 13, 2014: Speaker, The Role of the Supreme Court, Leadership Saint Paul Program, Saint Paul Area Chamber of Commerce Foundation, Saint Paul, Minnesota. Notes supplied.

February 12, 2014: Keynote Speaker, North Star Museum of Boy Scouting and

Girl Scouting, Saint Paul, Minnesota. Remarks supplied.

January 31, 2014: Keynote Speaker, A Promise to Keep, Midwest Regional Black Law Students Association, Minneapolis, Minnesota. Remarks supplied.

January 24, 2014: Panelist, 2014 New Lawyer Experience, Minnesota Continuing Legal Education, Minneapolis, Minnesota. PowerPoint and notes supplied.

January 20, 2014: Keynote Speaker, Dr. Martin Luther King Jr. Commemorative Celebration and Party, The National Association for the Advancement of Colored People, Rochester Branch, Rochester, Minnesota. Remarks supplied.

December 17, 2013: Keynote Speaker, Rebuilding the Idea of One America, Ecolab Legal Team Year End Meeting and Reflection, The Science Museum of Minnesota, Saint Paul, Minnesota. Remarks supplied.

December 2013: Presenter, Supreme Court and Court of Appeals Update CLE, Ramsey County Bar Association, Saint Paul, Minnesota. I discussed recent cases of the Minnesota Supreme Court and rules committee work and an update on the appellate e-filing project. I have no notes, transcript, or recording. The address of the Ramsey County Bar Association is E-1401 First National Bank Building, 322 Minnesota Street, Saint Paul, Minnesota 55101.

November 21, 2013: Guest Lecturer, Criminal Justice, University of Minnesota, Minneapolis, Minnesota. Notes supplied.

November 16, 2013: Speaker, Fidelis Apparitor Acceptance Remarks, Red Mass, College of Saint Benedict and Saint John's University, Saint Joseph, Minnesota. Remarks supplied.

November 14, 2013: Keynote Speaker, Little Africa Free Library Project Launch Party, African Economic Development Solutions of Minnesota, Saint Paul, Minnesota. Remarks supplied.

October 17, 2013: Introducer, Panel Discussion on Ethics and Technology, Midwest Conference of Justices and Administrators, National Center for State Courts, Madison, Wisconsin. Remarks supplied.

September 27, 2013: Panelist, Celebration 60: Women in the Judiciary Panel, Harvard Law School, Cambridge, Massachusetts. Video is available at <http://law.harvard.edu/alumni/reunions/13fall/c60/c60-post-pages/celebration-60-videos.html>.

August 19, 2013: Presenter, Investiture Oath, University of Saint Thomas School of Law, Minneapolis, Minnesota. Remarks supplied.

August 10, 2013: Presenter, Civility in the Courtroom: Then (1933) and Now (2013), 2013 Annual Meeting, American Bar Association, San Francisco, California. I discussed Minnesota's attorney's oath, which includes references to the ideas of civility and collegiality, and the importance of civility of attorneys in court proceedings. I reviewed commentary provided on the movement to include civility in the attorney's oath and discussed the role incivility plays as an impediment to successfully advocating for a client. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

June 25, 2013: Speaker and Panelist, Diversity on the Bench: The Importance of the Call to Duty CLE, Minnesota Hispanic Bar Association, Minneapolis, Minnesota. Remarks supplied.

June 19, 2013: Speaker, Nine Days in June, Minnesota Supreme Court Case Review, Minnesota State Bar Convention, Bemidji, Minnesota. Notes supplied.

June 2013: Speaker, Inside the Judicial System, Citizen Blue Event, Blue Cross Blue Shield of Minnesota, Eagan, Minnesota. Notes supplied.

May 30, 2013: Panelist, Here for Good: Trends and Best Practices in Corporate Pro Bono, Chief Legal Officers Group, Target Corporation, Minneapolis, Minnesota. Remarks supplied.

May 28, 2013: Speaker, Event for Justice Anderson's Retirement, Minnesota Judicial Branch, Saint Paul, Minnesota. Notes supplied.

May 19, 2013: Speaker, Commencement Address, William Mitchell College of Law, Saint Paul, Minnesota. Remarks supplied.

May 8, 2013: Speaker, Juanita Jackson Mitchell, Crusader for Freedom Exhibit, Minnesota State Capitol, Saint Paul, Minnesota. Remarks supplied.

April 25, 2013: Panelist, Legacy of Courage and Freedom: Dred and Harriet Scott, Open Doors to Federal Courts Program, United States District Court for the District of Minnesota, Bloomington Jefferson High School, Minneapolis, Minnesota. Following a play on Dred Scott, I discussed my personal history and encouraged students to pursue their dreams. I have no notes, transcript, or recording, but press coverage is supplied. The address of the United States District Court for the District of Minnesota is 300 South Fourth Street, Suite 202, Minneapolis, Minnesota 55415.

April 18, 2013: Keynote Speaker, Leadership Institute, Power & Possibilities, Conference for Women of Color, Saint Catherine University, Saint Paul, Minnesota. Notes supplied.

April 10, 2013: Panelist, Celebrating Women Pioneers in Minnesota's Judiciary, Humphrey School of Public Affairs, University of Minnesota, Minneapolis, Minnesota. Audio is available at <http://www.theinfinityproject.org/events.htm>.

March 20, 2013: Panelist, Parting Words, First Impressions, Hennepin County Bar Association, Minneapolis, Minnesota. I discussed my first impressions as a Minnesota Supreme Court Justice after six months on the bench. I have no notes, transcript, or recording. The address of the Hennepin County Bar Association is 600 Nicollet Mall, #390, Minneapolis, Minnesota 55402.

March 15, 2013: Speaker, A Capitol Day Experience, Girl Scout Council of River Valleys, Saint Paul, Minnesota. I discussed my educational and professional journey and the role of the courts, and encouraged girl scouts to pursue their dreams. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Girl Scout Council of River Valleys is 400 Robert Street South, Saint Paul, Minnesota 55107.

March 8, 2013: Panelist, First Impressions from the New(est) Justice and Judges, Minnesota CLE, Appellate Practice Institute, Minneapolis, Minnesota. Notes supplied.

January 29, 2013: Panelist, Girl from Birch Creek, The Life and Legacy of Justice Rosalie Wahl, William Mitchell College of Law, Saint Paul, Minnesota. Notes supplied.

January 9, 2013: Speaker, Youth in Government 2013 Officer's Dinner, YMCA, Minneapolis, Minnesota. Remarks supplied.

December 20, 2012: Speaker, Gathering in Commemoration of the 150th Anniversary of the Emancipation Proclamation, Minnesota State Capitol, Saint Paul, Minnesota. Remarks supplied.

November 12, 2012: Speaker, Introduction of Professor Michelle Alexander, Gala and Scholarship Dinner, Minnesota Association of Black Lawyers, Minneapolis, Minnesota. Remarks supplied.

October 16, 2012: Speaker, Swearing-In Ceremony, Minnesota Supreme Court, Saint Paul, Minnesota. Remarks supplied.

October 12, 2012: Panelist, Perspectives on Litigation and Law from the Bench, Litigation and Trial Advocacy Group, University of Minnesota Law School, Minneapolis, Minnesota. I discussed my work as a state court judge and provided litigation tips from a judge's perspective. I have no notes, transcript, or recording. The address of the University of Minnesota Law School is 229 19th Avenue South, Minneapolis, Minnesota 55455.

June 11, 2012: Keynote Speaker, Understanding the Judicial Branch, Minnesota Girls State, Saint Paul, Minnesota. Notes supplied.

April 20, 2012: Panelist, A Legacy of Leadership: Blazing Your Own Trail, Lena O. Smith Luncheon, Minnesota Black Women Lawyers Network, Minneapolis, Minnesota. I discussed my experience as a woman lawyer and judge in the community and the importance of public service professionally or through volunteer opportunities. I have no notes, transcript, or recording. The address for the Minnesota Black Women Lawyers Network is c/o Minnesota State Bar Association, 600 Nicollet Mall, Suite 380, Minneapolis, Minnesota 55402.

March 2012: Panelist, Civil vs. Criminal Appeals: Decision Making and Practice Tips, Minnesota CLE, Appellate Practice Institute, Minneapolis, Minnesota. Notes supplied.

February 28, 2012: Speaker, Judicial Meet & Greet, *Brown's* Predecessor: Judge Waring's Dissent in *Briggs v. Elliott*, 98 F. Supp. 529 (1951), Ramsey County Bar Association, Saint Paul, Minnesota. Notes supplied.

October 18, 2011: Speaker, Racial Disparities: Crafting Solutions—The Courts, Data and Racial Disparities, 2011 Minnesota Justice Forum, Counsel on Crime and Justice, Minneapolis, Minnesota. Video is available at <https://www.youtube.com/watch?v=pBPFCEfeDM>.

July 27, 2011: Keynote Speaker, Annual Conference Profiles in Courage Luncheon, National Black Prosecutors Association, Minneapolis, Minnesota. Remarks supplied.

May 13, 2011: Panelist, Fomenting and Preventing Judicial Activism—The Role of the Appellate Lawyer in the Rule of Law, American Academy of Appellate Lawyers, Saint Paul, Minnesota. Remarks supplied.

May 6, 2011: Introducer, Professor Verna Williams, Minnesota Black Women Lawyers Network Event, Minneapolis, Minnesota. Remarks supplied.

April 14, 2011: Speaker, Women of Distinction Award Acceptance Remarks, Girl Scouts of America, Minneapolis, Minnesota. Video is available at <https://www.youtube.com/watch?v=gkqu2ssc-qQ>.

March 2 – 3, 2011: Speaker, Judge in Residence, Appellate Advocacy, University of Cincinnati College of Law, Cincinnati, Ohio. At the welcome breakfast, I offered thanks for the invitation and excitement about serving as a judge in residence. At an informal lunch discussion, I discussed my career and encouraged students to pursue areas of practice that inspire them, and discussed the importance of pro bono work on behalf of those in need. I addressed a first-year class on the art of trial advocacy. I also gave a CLE presentation titled "Lawyers

as Public Servants: Facing Today's Challenges with Ingenuity Inspired by a Commitment to Service." Press coverage and PowerPoint for the trial advocacy discussion supplied. I have no notes, transcript, or recording of the other events. The address of the University of Cincinnati College of Law is 2540 Clifton Avenue, Cincinnati, Ohio 45221.

February 28, 2011: Speaker, Judge in Residence, Lawyers as Public Servants, University of Cincinnati College of Law, Cincinnati, Ohio. Remarks supplied.

December 2010: Guest Lecturer, Criminal Procedure Class, University of Minnesota Law School, Minneapolis, Minnesota. I discussed my professional experience as a federal prosecutor and judge. I have no notes, transcript, or recording. The address of the University of Minnesota Law School is 229 19th Avenue South, Minneapolis, Minnesota 55455.

November 9, 2010: Guest Lecturer, Appellate Advocacy, University of Saint Thomas, Minneapolis, Minnesota. Notes supplied.

April 14, 2010: Keynote Speaker, Black Law Student Association Night of Distinction, University of Saint Thomas School of Law, Minneapolis, Minnesota. Remarks supplied.

April 13, 2010: Panelist, What Diversity Can Teach Us About the Changing Relationship Between Companies and Law Firms, University of Saint Thomas School of Law, Minneapolis, Minnesota. Notes supplied.

April 8, 2010: Speaker, Day at the Capitol, Alpha Kappa Alpha Sorority, Inc., Saint Paul, Minnesota. Remarks supplied.

April 2, 2010: Panelist, Gala, Black Motivated Women of the University of Minnesota, Minneapolis, Minnesota. I discussed my academic and professional experience with African-American undergraduate women. I have no notes, transcript, or recording. The address of Black Motivated Women of the University of Minnesota is 245 Walter Library, Minneapolis, Minnesota 55455.

March 4 – 6, 2010: Judge, 2010 William E. McGee National Civil Rights Moot Court Competition, University of Minnesota Law School, Minneapolis, Minnesota. I served as a judge in the final round of a three-day moot court competition. I have no notes, transcript, or recording. The address of the University of Minnesota Law School is 229 19th Avenue South, Minneapolis, Minnesota 55455.

February 22, 2010: Speaker, Confronting *Crawford*: Doctrine and Practice, Appellate Practice Lunch Series, Minnesota State Bar Association, Saint Paul, Minnesota. PowerPoint supplied.

February 2010: Panelist, Who Says You Can't Be Judgmental?, National Black Law Students Association, Minneapolis, Minnesota. I discussed how my background and experience were beneficial to pursuing a judicial career. I have no notes, transcript, or recording. The address of the National Black Law Students Association is 1225 11th Street NW, Washington, District of Columbia 20001.

January 2010: Panelist, Hearsay/Exclusions Where the Witness is Not Available: The Continuing Fall-Out from the *Crawford* Decision, CLE, Minnesota State Bar Association. This event was in either Minneapolis or Saint Paul, Minnesota. We discussed the *Crawford* decision and practice tips for making and addressing *Crawford* challenges. I have no notes, transcript, or recording. The address of the Minnesota State Bar Association is 600 Nicollet Mall, Suite 380, Minneapolis, Minnesota 55402.

November 14, 2009: Speaker, Introduction of B. Todd Jones, Gala, Minnesota Association of Black Lawyers, Minneapolis, Minnesota. Remarks supplied.

September 18, 2009: Speaker, Investiture of B. Todd Jones as United States Attorney, United States District Court for the District of Minnesota, Minneapolis, Minnesota. Remarks supplied.

July 2009, July 2010, July 2011: Panelist, Federal and State Judicial Panel, Minnesota Summer Legal Institute, Just the Beginning Foundation, Minneapolis, Minnesota. I discussed my academic and professional preparation to be a judge with high school students. I have no notes, transcript, or recordings. The address of the Just the Beginning Foundation is 233 South Wacker Drive, Suite 6600, Chicago, Illinois 60606.

June 2009: Guest Lecturer, MBA Program, Ethical Considerations in Judicial Selection in the United States, University of Geneva International Organizations, Geneva, Switzerland. I used the same Powerpoint that was provided for the lecture in March 2009 at the Vrije University of Brussels.

June 2009: Speaker, eLearning and Accreditation: Strengthening Defender Capacity and Bridging the CLE Divide in Asia and Africa, International Bridges to Justice, Geneva, Switzerland. I discussed using online continuing legal education curricula to increase practice efficiency with attorneys from countries in Asia and Africa. I have no notes, transcript, or recording. The address of International Bridges to Justice is 64, rue de Monthoux, 1201 Geneva, Switzerland.

March 2009: Guest Lecturer, Judicial Selection in the United States: In Pursuit of Judicial Independence and Accountability, Vrije University of Brussels LLM Program in International and European Law, Ixelles, Belgium. PowerPoint supplied.

September 20, 2008: Panelist, Harvard Law School Celebration 55: Leadership from the Bench, Harvard Law School, Cambridge, Massachusetts. I discussed my career path to the judiciary and how my Harvard education prepared me for judicial service. I have no notes, transcript, or recording. The address of Harvard Law School is Harvard Law School, Cambridge, Massachusetts 02138.

June 2008: Speaker, Effective Appellate Advocacy: A View from the Bench, Summer Associates Speakers Series, Hogan & Hartson, Washington, District of Columbia. I used the same remarks that are provided for the presentation at Hogan & Hartson in June 2007.

April 30, 2008: Speaker, Installation of Eric S. Janus as President and Dean, William Mitchell College of Law, Saint Paul, Minnesota. I gave the closing remarks, discussing the law school's promising future. I have no notes, transcript, or recording. The address of William Mitchell College of Law is 875 Summit Avenue, Saint Paul, Minnesota 55104.

March 2008: Judge, Frank Premack Public Affairs Journalism Award Program, University of Minnesota College of Liberal Arts, Minneapolis, Minnesota. I do not recall the award category that I judged. I have no notes, transcript, or recording. The address of the University of Minnesota College of Liberal Arts is 111 Murphy Hall, 206 Church Street South East, Minneapolis, Minnesota 55455.

February 7, 2008: Keynote Speaker, Color My World Event, Girl Scout Council of River Valleys, Saint Paul, Minnesota. Remarks supplied.

October 2007: Guest Lecturer, Ethical Leadership in Corporate Practice, University of Saint Thomas School of Law, Minneapolis, Minnesota. I discussed the view from the bench on ethical issues arising in cases related to corporate practice. I have no notes, transcript, or recording. The address of the University of Saint Thomas School of Law is 1000 Lasalle Avenue, Minneapolis, Minnesota 55403.

June 12, 2007: Speaker, Effective Appellate Advocacy: A View from the Bench, Minnesota State Bar Association Certified Civil Trial Specialists, Saint Paul, Minnesota. PowerPoint supplied.

June 2007: Speaker, Summer Associates Speakers Series, Hogan & Hartson, Washington, District of Columbia. Remarks supplied.

June 2007: Panelist, Federal Practice Seminar, Increasing Diversity in the Legal Profession—Opportunities to Strengthen the Pipeline, Federal Bar Association, Minnesota Chapter, Minneapolis, Minnesota. I discussed my practice experience, public service, and the judicial selection process. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore

Street, Suite 444 Arlington, Virginia 22201.

April 2007: Speaker, History of Law Class, Saint Paul Academy, Saint Paul, Minnesota. I spoke to students with a former opposing counsel who is a federal public defender. We discussed our educational and professional backgrounds and the role of prosecutors and defense attorneys in criminal cases. I have no notes, transcript, or recording. The address of the Saint Paul Academy is 1712 Randolph Avenue, Saint Paul, Minnesota 55105.

March 21, 2007: Speaker, Sentencing and Dispositional Alternatives in Minnesota State Courts, Yale Alumni Association of the Northwest, Minneapolis, Minnesota. Notes supplied.

March 14, 2007: Speaker, Effective Appellate Advocacy CLE, Minnesota Attorney General's Office, Saint Paul, Minnesota. PowerPoint supplied.

January 2007: Panelist, Women Making a Difference in Public Policy, Leaders of Today and Tomorrow. I do not recall where this event took place but it was probably in Saint Paul, Minnesota. I discussed my practice experience and public service. I have no notes, transcript, or recording. The address of Leaders of Today and Tomorrow is 550 Rice Street, Saint Paul, Minnesota 55103.

November 18, 2006: Speaker, Justice Rosalie Wahl: Remarks on the Occasion of Unveiling Her Portrait, William Mitchell College of Law, Saint Paul, Minnesota. Remarks supplied.

September 2006: Speaker, Administrative Governance of the Minnesota Judicial Branch, Moldova Delegation of Judges and Lawyers, Saint Paul, Minnesota. I discussed our judicial system and the role of judges and lawyers. I have no notes, transcript, or recording. This annual event is coordinated by Minnesota judges who host groups of international judges and lawyers seeking to learn about the American judicial process. I do not know the name or address of this organization.

September 2006: Speaker, Judicial Clerkships, Minnesota Minority Recruitment Conference, Twin Cities Diversity in Practice, Minneapolis, Minnesota. I discussed qualifications and opportunities for judicial clerkships. I have no notes, transcript, or recording. The address of Twin Cities Diversity in Practice is 80 South Eighth Street, Suite 500, Minneapolis, Minnesota 55402.

June 12, 2006: Speaker, Standing Up for Strong Courts, National Convention, League of Women Voters of the United States, Minneapolis, Minnesota. Remarks supplied.

June 11, 2006: Keynote Speaker, Minnesota Girls State Inauguration, Minnesota Girls State, Saint Paul, Minnesota. Remarks supplied.

June 7, 2006: Speaker, Myra Bradwell Award Acceptance Speech, Annual Meeting, Minnesota Women Lawyers, Minneapolis, Minnesota. Remarks supplied.

May 16, 2006: Speaker, The Minnesota Children's Justice Initiative: Serving the Needs of Our Children, Women's Association of the Boys & Girls Clubs of the Twin Cities, Saint Paul, Minnesota. Notes supplied.

May 13, 2006: Speaker, Commencement Address, University of Saint Thomas School of Law, Minneapolis, Minnesota. Remarks supplied.

April 25, 2006: Speaker, Take Charge of Your Career—Best Practices for Women Attorneys, Minnesota Women Lawyers, Minneapolis, Minnesota. I discussed effective practice tips for criminal and civil litigation. I have no notes, transcript, or recording, but press coverage is supplied. The address of Minnesota Women Lawyers is 600 Nicollet Mall, Suite 390B, Minneapolis, Minnesota 55402.

April 21, 2006: Speaker, Admitted Students Reception, William Mitchell College of Law, Saint Paul, Minnesota. Remarks supplied.

March 31, 2006: Speaker, Remarks for Katherian D. Roe at Ceremony to Administer Oath of Office as Federal Defender, United States District Court for the District of Minnesota, Minneapolis, Minnesota. Remarks supplied.

March 2006: Panelist, Clerkship Panel, William Mitchell College of Law, Saint Paul, Minnesota. We discussed credentials and suggested experience for law students seeking clerkships. I have no notes, transcript, or recording. The address of William Mitchell College of Law is 875 Summit Avenue, Saint Paul, Minnesota 55104.

January 15, 2006: Speaker, Dr. Martin Luther King Day Celebration Sermon, Responding to the Call, Congregational Church of Excelsior, Excelsior, Minnesota. Remarks supplied.

January 2006: Speaker, Minnesota Court of Appeals 2005 Year in Review CLE, Appellate Section, Minnesota State Bar Association, Minneapolis, Minnesota. We discussed decisions of the Minnesota Court of Appeals from 2004 to 2005. I have no notes, transcript, or recording. The address of the Minnesota State Bar Association is 600 Nicollet Mall, Suite 380, Minneapolis, Minnesota 55402.

December 2005: Speaker, Significant Cases of the Minnesota Court of Appeals: 2005 Year in Review CLE, Ramsey County Bar Association, Saint Paul, Minnesota. Notes supplied.

September 1, 2005: Keynote Speaker, Clinical Students Swearing-In Ceremony, University of Saint Thomas School of Law, Minneapolis, Minnesota. Remarks supplied.

June 27, 2005: Speaker, Presentation on Judicial Appointments, Minority Bar Association, Minneapolis, Minnesota. Notes supplied.

Summer 2005: Speaker, Court of Appeals Case Review, Hennepin County Bar Association, Minneapolis, Minnesota. PowerPoint supplied.

May 11, 2005: Speaker, Handling the Difficult Appeal, Eighth Circuit Bar Association Appellate Practice Institute, Minneapolis, Minnesota. Notes supplied.

April 14, 2005: Keynote Speaker, Leonard, Street and Deinard Minority Scholars Banquet, Leonard, Street and Deinard, Minneapolis, Minnesota. Remarks supplied.

March 2005: Speaker, Minnesota Court of Appeals Presentation for Visiting Ukrainian Judges, CONNECT/US-RUSSIA, Saint Paul, Minnesota. I discussed the Minnesota and American judicial systems and the role of judges and lawyers. I have no notes, transcript, or recording. The address of CONNECT/US-RUSSIA is 401 North Second Street Unit 302, Minneapolis, Minnesota 55401.

February 7, 2005: Speaker, Minnesota Court of Appeals 2004 Year in Review CLE, Appellate Section, Minnesota State Bar Association, Minneapolis, Minnesota. We discussed decisions of the Minnesota Court of Appeals in 2004. I have no notes, transcript, or recording. The address of the Minnesota State Bar Association is 600 Nicollet Mall, Suite 380, Minneapolis, Minnesota 55402.

January 23, 2005: Speaker, Commencement Address, William Mitchell College of Law, Saint Paul, Minnesota. Remarks supplied.

December 8, 2004: Speaker, Significant Cases of the Minnesota Court of Appeals: 2004 Year in Review CLE, Ramsey County Bar Association, Saint Paul, Minnesota. Notes and PowerPoint supplied.

June 17, 2004: Speaker, Mock Trial Awards Luncheon, Minnesota State Bar Association, Minneapolis, Minnesota. Remarks supplied.

June 2004: Keynote Speaker, Inauguration, Minnesota Girls State, Saint Paul, Minnesota. Remarks supplied.

June 2004: Panel Moderator, Annual Seminar, Council on Crime and Justice, Committee for Equality and Justice, and the Race and Poverty Institute of the University of Minnesota, Minneapolis, Minnesota. I moderated a discussion by

practitioners on the practical implications of recent criminal law decisions. I have no notes, transcript, or recording. The address of the Council on Crime and Justice is 822 South Third Street, Suite 100, Minneapolis, Minnesota 55415.

May/June 2004: Speaker, *Brown* Anniversary Remarks, Faegre Benson, Minneapolis, Minnesota. Remarks supplied.

May 18, 2004: Participant, Commemorating the 50th Anniversary of *Brown v. Board of Education*, A Re-enactment of the United States Supreme Court Oral Arguments, Minnesota Judicial Branch, Saint Paul, Minnesota. In a special session of the Minnesota Supreme Court, I presented the oral arguments of then attorney Thurgood Marshall in *Brown v. Board of Education*. I have no notes, transcript, or recording. The address of the Minnesota Judicial Branch is the Minnesota Judicial Center, 25 Reverend Dr. Martin Luther King Jr. Drive, Saint Paul, Minnesota 55155.

May 2004: Keynote Speaker, *Brown v. Board of Education: Looking Back, Moving Forward*, Minnesota Black Women Lawyers Network, Minneapolis, Minnesota. Remarks supplied.

March 24, 2004: Panelist, *Brown v. Board* at 50... The Jubilee Symposium, Periakto Productions, Saint Paul, Minnesota. I spoke as part of a panel discussion following a play on the *Brown* decision discussing that decision and its impact on the law and society. I have no notes, transcript, or recording. The address of Periakto Productions is 3213 West Main Street #272, Rapid City, South Dakota 57702.

March 2004: Speaker, National Women's Month Celebration, Webster Magnet School, Saint Paul, Minnesota. I discussed my background and experience with elementary school students at an assembly and encouraged them to set high goals and pursue them with tenacity. I have no notes, transcript, or recording. The address of Barack and Michelle Obama Elementary (formerly Webster Magnet School) is 707 Holly Avenue, Saint Paul, Minnesota 55104.

February 2004: Speaker, Day at the Capitol, Alpha Kappa Alpha Sorority, Inc., Saint Paul, Minnesota. I discussed recent developments in the law and the operations of the court. I have no notes, transcript, or recording. The address of Alpha Kappa Alpha Sorority, Inc. is 5656 South Stony Island Avenue, Chicago, Illinois 60637.

February 2004: Panelist, Black History Month Celebration of the 50th Anniversary of *Brown v. Board of Education*, William Mitchell College of Law, Saint Paul, Minnesota. I spoke in a discussion of the *Brown* decision and its impact on the law and society. I have no notes, transcript, or recording. The address of William Mitchell College of Law is 875 Summit Avenue, Saint Paul, Minnesota 55104.

January 26, 2004: Speaker, Education Award Ceremony, Minnesota Correctional Facility-Shakopee, Shakopee, Minnesota. Remarks supplied.

January 26, 2004: Speaker, Diversity Celebration Welcome Remarks, William Mitchell College of Law, Saint Paul, Minnesota. I used the same remarks that were provided for the Diversity Celebration in Saint Paul on September 18, 2003.

January 2004: Participant, Swearing-In Ceremony for Youth in Government Model Assembly, Minnesota YMCA Youth in Government, Saint Paul, Minnesota. I swore in a group of students participating in the Model Assembly. I have no notes, transcript, or recording. The address of Minnesota YMCA Youth in Government is 1801 University Avenue South East, Minneapolis, Minnesota 55414.

January 2004: Speaker, Minnesota Court of Appeals 2003 Year in Review CLE, Appellate Section, Minnesota State Bar Association, Minneapolis, Minnesota. We discussed decisions of the Minnesota Court of Appeals in 2003. I have no notes, transcript, or recording. The address of the Minnesota State Bar Association is 600 Nicollet Mall, Suite 380, Minneapolis, Minnesota 55402.

January 2004: Panelist, Ag and Our Judicial System, Minnesota Ag Expo 2004, Minnesota Corn Growers Association. I do not recall the location of this panel but it was most likely in Mankato, Minnesota. We discussed the judicial branch and recent decisions of the Minnesota Court of Appeals. I have no notes, transcript, or recording. The address of the Minnesota Corn Growers Association is 738 First Avenue, Shakopee, Minnesota 55379.

December 17, 2003: Speaker, Significant Cases of the Minnesota Court of Appeals: 2003 Year in Review, Ramsey County Bar Association, Saint Paul, Minnesota. Notes supplied.

October 13, 2003: Speaker, Student Council Induction Ceremony, Ames Elementary School, Saint Paul, Minnesota. Notes supplied.

September 18, 2003: Speaker, Diversity Celebration Welcome Remarks, William Mitchell College of Law, Saint Paul, Minnesota. Remarks supplied.

July 25, 2003: Speaker, Fifth District Public Defenders Annual Meeting, State of Minnesota Board of Public Defense, Fifth Judicial District, North Mankato, Minnesota. Remarks supplied.

May 21, 2003: Speaker, Handling the Successful Appeal CLE, Minnesota State Bar Association Minnesota Appellate Practice Seminar, Minneapolis, Minnesota. Notes supplied.

February 23, 2003: Speaker, African American Family Day of Service, Saint John's Missionary Baptist Church, Minneapolis, Minnesota. Remarks supplied.

January 31, 2003: Speaker, Quick Draw Litigation: Injunctions on Interlocutory Appeal CLE, Minnesota State Bar Association, Minneapolis, Minnesota. Notes supplied.

September 3, 2002: Speaker, Court of Appeals Swearing-In Ceremony, Minnesota Court of Appeals, Saint Paul, Minnesota. Remarks supplied.

August 27, 2002: Panelist, Politics and the Rule of Law, Yale Alumni Association of the Northwest, Wayzata, Minnesota. I discussed the role of trial judges in our state judicial system. I have no notes, transcript, or recording. The address of the Yale Alumni Association of the Northwest is 730 Second Avenue South, Minneapolis, Minnesota 55402.

April 6, 2002: Panelist, Young Women's Issues Forum—The Competitive College Race, Minneapolis-Saint Paul Chapter of the Links, Inc., Minneapolis, Minnesota. Notes supplied.

March 13, 2002, February 2003, February 2004: Panelist, You Be the Judge: Race Bias, Search and Seizure and Your Rights, Hennepin County Bar Association and Ramsey County Bar Association, Brooklyn Center, Minnesota. I participated in a discussion and role-play of Fourth Amendment law with high school students. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Hennepin County Bar Association is 600 Nicollet Mall, #390, Minneapolis, Minnesota 55402.

March 2002: Panelist, The Judicial System and the Asian American Community, Policy Roundtable Monthly Forum, Minnesota Judicial Branch, Saint Paul, Minnesota. I was a panelist in a discussion of judicial branch operations and the judicial process. I have no notes, transcript, or recording. The address of the Minnesota Judicial Branch is the Minnesota Judicial Center, 25 Reverend Dr. Martin Luther King Jr. Drive, Saint Paul, Minnesota 55155.

February 6, 2002: Speaker, Ramsey County Black History Celebration, Ramsey County District Court, Saint Paul, Minnesota. I read the official Proclamations for Ramsey County. I have no notes, transcript, or recording. The address of the Ramsey County District Court is 15 West Kellogg Boulevard, Saint Paul, Minnesota 55102.

February 6, 2002: Panelist, Perspectives on Race Bias in the Judicial System and Race Data Collection CLE, Black Law Students Association, William Mitchell College of Law, Saint Paul, Minnesota. I participated in a discussion of the work of the Minnesota Supreme Court Race Bias taskforce and the implementation of policies to strengthen access to justice. I have no notes, transcript, or recording.

The address of William Mitchell College of Law is 875 Summit Avenue, Saint Paul, Minnesota 55104.

February 2002: Panelist, The Glass Ceiling: Exploring Issues Women Face in the Workplace, Women Law Students Association Seminar, William Mitchell College of Law, Saint Paul, Minnesota. I participated in a discussion of overcoming challenges for successful legal practice. I have no notes, transcript, or recording. The address of William Mitchell College of Law is 875 Summit Avenue, Saint Paul, Minnesota 55104.

November 25, 2001: Speaker, Homecoming Day, Saint Philip's Episcopal Church, Saint Paul, Minnesota. Remarks supplied.

October 2001: Speaker, Dean's Roundtable, William Mitchell College of Law, Saint Paul, Minnesota. I discussed my background and experience with law students. I have no notes, transcript, or recording. The address of William Mitchell College of Law is 875 Summit Avenue, Saint Paul, Minnesota 55104.

September 21, 2001: Speaker, Sentencing Options: Diversity Issues and the Use of Discretion, Minnesota Institute of Legal Education, Minneapolis, Minnesota. Notes supplied.

June 2001: State Judiciary Panelist, Minnesota Girls State, Minnesota American Legion Auxiliary, Saint Paul, Minnesota. I spoke on my background and experience as a judge. I have no notes, transcript, or recording. The address of the Minnesota American Legion Auxiliary is 20 West 12th Street, Room 314, Saint Paul, Minnesota 55155.

May 17, 2001: Keynote Speaker, Girl Scout Gold Award, Girl Scout Council of Saint Croix Valley, Saint Paul, Minnesota. Remarks supplied.

May 6, 2001: Keynote Speaker, Limited Thirty Mother's Day Luncheon, Limited Thirty, Saint Paul, Minnesota. Remarks supplied.

April 2001: Speaker, Alpha Kappa Alpha Youth Law Day Program, Alpha Kappa Alpha Sorority, Inc., Saint Paul, Minnesota. I discussed my background and experience as a judge, as well as recent developments in the law and the operations of the court. I have no notes, transcript, or recording. The address of Alpha Kappa Alpha Sorority, Inc. is 5656 South Stony Island Avenue, Chicago, Illinois 60637.

April 2001: Panel Facilitator, Preparing for College, Minneapolis-Saint Paul Chapter of The Links, Inc., Minneapolis, Minnesota. I facilitated a panel discussion of undergraduate women for high school students interested in going to college. I have no notes, transcript, or recording. The address of the Minneapolis-Saint Paul Chapter of The Links, Inc. is P.O. Box 582814,

Minneapolis, Minnesota 55458.

February 16, 2001: Speaker, Black History Month, Frost Lake Elementary School, Saint Paul, Minnesota. Remarks supplied.

June 1999, June 2000, June 2001: Speaker, Legal Ethics and Elimination of Bias, co-sponsored by the Hennepin County Bar Association and the National Practice Institute, Minneapolis, Minnesota. I spoke in a presentation and discussion using scenarios to explore the application of ethical rules in a practice setting. I have no notes, transcript, or recording. The address of the Hennepin County Bar Association is 600 Nicollet Mall, #390, Minneapolis, Minnesota 55402.

November 2000: Speaker, Swearing-In Ceremony, Ramsey County District Court, Saint Paul, Minnesota. I discussed my background experience and gratitude for being selected. I have no notes, transcript, or recording. The address of the Ramsey County District Court is 15 West Kellogg Boulevard, Saint Paul, Minnesota 55102.

August 1998: Speaker, The Violence Against Women Act: Implementation and Practice, Minnesota Criminal Justice Institute, Minnesota CLE, Saint Paul, Minnesota. I discussed the prosecution of federal offenses under the Violence Against Women Act. I have no notes, transcript, or recording. The address of Minnesota CLE is 2550 University Avenue West, Suite 160-S Saint Paul, Minnesota 55114.

April 1997: Speaker, The Violence Against Women Act: Implementing Full Faith and Credit Provisions, Minnesota Judicial Branch, Saint Paul, Minnesota. I discussed the prosecution of federal offenses under the Violence Against Women Act. I have no notes, transcript, or recording. The address for the Minnesota Judicial Branch is the Minnesota Judicial Center, 25 Reverend Dr. Martin Luther King Jr. Drive, Saint Paul, Minnesota 55155.

June 1997: Speaker, Women in the Courtroom, co-sponsored by the Minnesota Association of Black Lawyers and Minnesota Law & Politics, Minneapolis, Minnesota. I discussed practice tips for criminal prosecution and civil litigation. I have no notes, transcript, or recording. The address of the Minnesota Association of Black Lawyers is P.O. Box 582892, Minneapolis, Minnesota 55458.

January 1995: Speaker, Unitary Status and School Reform, National Magnet Schools/Desegregation Conference, Council of Great City Schools, Miami, Florida. I discussed successful desegregation efforts implemented by school districts throughout the United States. I have no notes, transcript, or recording. The address of the Council of Great City Schools is 1301 Pennsylvania Avenue Northwest, Suite 702, Washington, District of Columbia 20004.

March 1994: Speaker, Federal Desegregation Assistance: Past, Present and Proposed, Magnet Schools of America, Greensboro, North Carolina. I discussed successful desegregation efforts implemented by school districts throughout the United States. I have no notes, transcript, or recording. The address of the Magnet Schools of America is 1909 K Street Northwest, Washington, District of Columbia 20006.

July 1993: Speaker, Three Desegregation Models, Education Leadership Institute, Cooperative Educational Services, Fairfield, Connecticut. I discussed three types of student-assignment plans utilized in school desegregation plans: controlled choice, district-wide magnet programs, and school pairings for desegregation purposes. I have no notes, transcript, or recording. The address of Cooperative Educational Services is 25 Oakview Drive, Trumbull, Connecticut 06611.

- 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.

LawProse with Bryan A. Garner, December 25, 2014. Video is available at https://www.youtube.com/watch?v=dv5mU_6xmLU.

Editorial Board, *For Minnesota Supreme Court, Wright and Lillehaug*, Pioneer Press, October 31, 2014. Copy supplied.

Editorial Board, *Lillehaug, Wright for Supreme Court*, Star Tribune, October 22, 2014. Copy supplied.

Anne Millerbernd, *Minnesota Supreme Court: Wilhelmina Wright vs. John Hancock*, October 14, 2014. Copy supplied.

Steele Talkin' with Jearlyn Steele, WCCO Radio, October 5, 2014. In this interview, I discussed my background and experience as well as the qualities voters should look for in a judicial candidate and how to obtain information about the judicial branch. I have been unable to obtain a recording or transcript.

Access to Democracy, Eagan TV, October 2014. Video is available at <https://www.youtube.com/watch?v=PyG6EdAiACY>.

Suzy Frisch, *Justice, Justice She Shall Pursue*. This article was commissioned by my judicial campaign and appeared on my website in October 2014. To the best of my knowledge, it was not published elsewhere. Copy supplied.

KBJR 6/Range 11 News, October 2014. In 2014, I gave an interview discussing my background and experience as well as the qualities voters should look for in a judicial candidate and how to obtain information about the judicial branch. I

requested a copy of the interview from KBJR, but the station was only able to provide a brief clip from the interview. Partial video supplied.

Ryan Gustafson, *Supreme Court Justice Touring State for Re-Election*, KEYC News 12, September 25, 2014. Copy supplied.

Talk of the Town with Pete Steiner, KTOE Radio, September 25, 2014. I discussed my background and experience as well as the qualities voters should look for in a judicial candidate and how to obtain information about the Minnesota judicial branch. I have been unable to obtain a recording or transcript.

KAXE Northern Community Radio with Scott Hall, August 21, 2014. I discussed my background and experience as well as the qualities voters should look for in a judicial candidate and how to obtain information about the Minnesota judicial branch. I have been unable to obtain a recording or transcript.

Community Focus with Roseanne Grosso, KWNG Radio, May 2014. In this interview, I discussed my background and experience, the role of the judicial branch, how to obtain information about judges, and the upcoming League of Women Voters event that I would be participating in that evening. I have been unable to obtain a recording or transcript.

Justice Wright Signs the Minnesota State Bar Association Affirmation Regarding Responsible Judicial Campaigning, spring/summer 2014. Copy supplied.

Justice Wright Registers for the November 4, 2014 Election, May 20, 2014. Copy supplied.

Disability Justice, Twin Cities Public Television. The website was first published on April 24, 2014, but I recorded the videos on June 26, 2013. Videos are available at <http://disabilityjustice.tpt.org/ensuring-adequate-legal-representation/> and <http://disabilityjustice.tpt.org/courtroom-access-and-accommodations/>.

Your Legislators, Pioneer Public Television, April 17, 2014. Video supplied.

Staff, *Commentary: It's Got a Good Beat; You Could Line Dance to It*, Minnesota Lawyer Bar Buzz, October 17, 2013. Copy supplied.

Satchel B. Jester, *Lady Liberty*, Upscale Magazine, May 2013. Copy supplied.

Access to Democracy, Eagan TV, April 26, 2013. Video is available at <https://www.youtube.com/watch?v=FJQm86C-AHA>.

Staff, *Pleasure Reading at the Courthouse*, Minnesota Lawyer Bar Buzz, April 12, 2013. Copy supplied.

Lousene Hoppe, *Judicial Profile: Chief Judge Davis*, Bar Talk, March 27, 2013. Copy supplied.

Justice Wilhelmina Wright on Leadership, The Mary Hanson Show, Twin Cities Public Television, February 25, 2013. Video supplied.

Urmila Ramakrishnan, *Minnesota Supreme Court: Wilhelmina Wright Becomes First Female African-American Justice*, Saint Paul Pioneer Press, October 17, 2012. Copy supplied.

Second Judicial District Newsletter, October 2012. I have been unable to locate a copy of the newsletter which was circulated internally to the court, but I did retain a copy of the answers I provided. Copy supplied.

Steven G. Vegh, *Norfolk Native Blazes Trails to Minnesota Supreme Court*, Virginian-Pilot, September 2, 2012. Copy supplied.

Barbara L. Jones, *Wright: Recognition of this Moment Is Important*, Minnesota Lawyer, August 24, 2012. Copy supplied.

Press Release, *Governor Dayton Names Judge Wilhelmina Wright to the Supreme Court*, Office of the Governor, August 20, 2012. Copy supplied.

Staff, *More 'Age-Related' Views from Minnesota Judges*, Minnesota Lawyer, October 13, 2008. Copy supplied.

Michelle Lore, *Appellate Court Judges, Women Inmates Share a Reading Group in Shakopee*, Legal Ledger, December 12, 2005. Copy supplied.

Barbara L. Jones, *Interview with Minnesota's Newest Supreme Court Justice, G. Barry Anderson*, Minnesota Lawyer, September 6, 2004. Copy supplied.

Hannah Allam, *In the People's Court*, Saint Paul Pioneer Press, June 8, 2003. Copy supplied.

Ember Reichgott Junge, *Assistant U.S. Attorney Works to Prosecute Gangs, Leaders*, Minnesota Lawyer, January 27, 2003. Copy supplied.

Hannah Allam, *New Kids on the Bench: Novice Judges Gather to Share Job Frustrations, Opinions*, Saint Paul Pioneer Press, March 10, 2002. Copy supplied.

Issues in Education, WNPS-TV, April 2001. Video is available at <https://www.youtube.com/watch?v=5RnBYV5fHrk>.

Barbara Jones, *Judge Wilhelmina Wright Becomes First Black Woman to Sit on Ramsey County District Court Bench*, Minnesota Lawyer, March 26, 2001. Copy supplied.

Daisy Nguyen, *Model Judge: As She Breaks New Ground in Ramsey County, Judge Wilhelmina 'Mimi' Wright Brings Lessons She Learned from Her Parents and Other Mentors*, Pioneer Press, November 20, 2000. Copy supplied.

Bethsheba A. Rem, *Minnesota Governor Ventura Names Norfolk Woman to Serve as District Court Judge*, Virginian-Pilot and Ledger-Star, November 16, 2000. Copy supplied.

Joe Kimball, *Inspired by Pioneers, New Judge to Become One*, Star Tribune, October 23, 2000. Copy supplied.

Michael Jacobson, *Federal Jury Convicts Local Farm Couple, But Acquits Their Son*, Paynesville Area News, May 17, 2000. Copy supplied.

Anne Lindberg, *Busing Plan Proposed for Pinellas*, St. Petersburg Times, September 21, 1994. Copy supplied.

Jonathan S. Cohn, *A Student Sit-In*, Harvard Crimson, June 9, 1988. Copy supplied.

Susan Zinno, *Harvard Law Students Demand Minority Hiring*, Boston Globe, May 11, 1998. Copy supplied.

Allan R. Gold, *Blacks Hold Sit-In on Harvard Hiring*, New York Times, May 11, 1988. Copy supplied.

Press Conferences

August 20, 2012: Press conference announcing my appointment to the Minnesota Supreme Court. Representative press coverage is supplied and videos are available at <http://www.startribune.com/politics/blogs/166805536.html> and https://www.youtube.com/watch?v=M_MsaUu0Wew.

June 6, 2002: Press conference announcing my appointment to the Minnesota Court of Appeals. I have no notes, transcript, or recording, but representative press coverage is supplied.

September 11, 2000: Press conference announcing my appointment to the Second Judicial District. 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.

In September 2000, Governor Jesse Ventura appointed me to the Second Judicial District Court. I served as a trial judge from September 2000 to September 2002, and presided over a general jurisdiction docket of criminal and civil matters, including extensive pre-trial motions practice, settlement conferences, trials, sentencing proceedings, post-trial and post-conviction proceedings. Judges appointed by the governor must stand for election in the first general election occurring more than one year after their appointment and every six years thereafter. I was appointed to the Minnesota Court of Appeals before the November 2002 election.

In September 2002, Governor Ventura appointed me to the Minnesota Court of Appeals. The Minnesota Court of Appeals has mandatory jurisdiction over most appeals from the Minnesota district courts (except election contests and first-degree murder cases) and many decisions of state agencies and local governments. I served on the court of appeals from September 2002 until September 2012. Judges appointed by the governor must stand for election in the first general election occurring more than one year after their appointment and every six years thereafter. I won election in 2004 and 2010.

In September 2012, Governor Mark Dayton appointed me to the Minnesota Supreme Court. The Minnesota Supreme Court has discretionary review over all cases from the Minnesota Court of Appeals and mandatory review of statewide election contests, first-degree murder cases, and appeals from the Minnesota Tax Court and Minnesota Workers' Compensation Court of Appeals. Justices appointed by the governor must stand for election in the first general election occurring more than one year after their appointment and every six years thereafter. I won election in 2014. Minnesota Supreme Court Justices do not have term limits, but have a mandatory retirement age of 70.

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

I presided over at least 22 criminal trials at the Second Judicial District that went to verdict or judgment. My records are incomplete because the Second Judicial District destroys records of misdemeanors after five to fifteen years. I have also been unable to obtain records of civil implied consent (license revocation) trials because the district court destroys these records after ten years. These civil trials made up approximately 25% of my docket and account for most of my bench trials.

At the Minnesota Court of Appeals, I sat on panels that decided approximately 2,010 cases. I was the presiding judge in approximately one-third of these cases based on a rotating assignment.

At the Minnesota Supreme Court, the chief justice presides over oral arguments or

the senior member of the court presides if the chief is not present. I have not presided over any cases to date. I have heard approximately 280 cases that have been decided. Of these, approximately one-third are attorney discipline cases, where the court typically issues a per curium order.

The percentages listed below are for cases that went to verdict or judgment following a trial at the Second Judicial District.

i. Of these, approximately what percent were:

jury trials:	75 %
bench trials:	25 %
civil proceedings:	25 %
criminal proceedings:	75 %

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

Please see the attached list for Minnesota Supreme Court and Court of Appeals cases. I have tried to obtain records of my opinions from the Second Judicial District Court, but the clerk's office has been unable to provide them because most civil files are destroyed after ten years and my criminal cases were largely jury trials without written opinions.

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

1. *Staab v. Diocese of Saint Cloud*, 853 N.W.2d 713 (Minn. 2014).

A jury awarded compensatory damages to respondent Ms. Staab after she was injured at a facility owned and operated by appellant Diocese of Saint Cloud. The jury attributed 50% of the negligence to the diocese and 50% to respondent's husband. The district court concluded that the statute limiting liability for a severally liable person does not apply when only one defendant is named in a lawsuit, and entered judgment for the entire damages award against the diocese. In a 2012 appeal prior to my joining the court, the Minnesota Supreme Court concluded that the statute applies when a jury apportions fault between a sole defendant and a nonparty tortfeasor, and limits the amount collectible from the defendant to its percentage share of the fault assigned to it by the jury. *See Staab v. Diocese of Saint Cloud*, 813 N.W.2d 68 (Minn. 2012).

On remand, Ms. Staab sought reallocation of her husband's equitable share of the damages award. The district court concluded that an uncollectible share of

damages attributable to a nonparty tortfeasor can be reallocated and entered judgment against the diocese for the entire damages award. After the court of appeals affirmed the award, the Minnesota Supreme Court granted review and concluded that a party who is severally liable cannot be required to contribute more than that party's equitable share of the total damages award.

For Appellant Diocese:

Dyan J. Ebert
 Laura A. Moehrle
 Quinlivan & Hughes, P.A.
 1740 West Saint Germain Street
 Saint Cloud, Minnesota 56301
 (320) 251-1414

For Respondent Staab:

Kevin S. Carpenter
 Kevin S. Carpenter, P.A. (solo practitioner)
 2919 Veterans Drive
 Saint Cloud, Minnesota 56303-3121
 (320) 251-3434

H. Morrison Kershner
 Pemberton, Sorlie, Rufer & Kershner, P.A.
 110 North Mill Street
 Fergus Falls, Minnesota 56537
 (218) 736-5493

2. *State et al., v. 3M*, 845 N.W.2d 808 (Minn. 2014).

In this case regarding disqualification of legal counsel because of a violation of Minnesota Rule of Professional Conduct 1.9(a) arising from a conflict of interest with a former client, the Minnesota Supreme Court (1) concluded that an attorney has standing to appeal independent of the attorney's client, (2) outlined the test to determine whether matters are substantially related, and (3) concluded that the right to seek disqualification of opposing counsel for a violation of Rule 1.9(a) is subject to waiver.

For Appellants State of Minnesota, et al.:

Lori Swanson
 Alan I. Gilbert
 Alethea M. Huyser
 Beverly M. Conerton
 Office of the Minnesota Attorney General
 1400 Bremer Tower
 445 Minnesota Street
 Saint Paul, Minnesota 55101

(651) 296-3353

For Appellant Covington & Burling, LLP:

John W. Lundquist
Kevin C. Riach
Fredrikson & Byron, P.A.
200 South Sixth Street
Suite 4000
Minneapolis, Minnesota 55402
(612) 492-7000

John K. Villa
Michael S. Sundermeyer
Joseph M. Terry
Williams & Connolly LLP
725 Twelfth Street NW
Washington, District of Columbia 20005
(202) 434-5000

For Respondent 3M:

Michael T. Nilan
Amanda M. Cialkowski
Peter Gray
Nilan Johnson Lewis P.A.
Canadian Pacific Plaza
120 South Sixth Street, Suite 400
Minneapolis, Minnesota 55402
(612) 305-7500

Michael C. McCarthy
Maslon Edelman Borman & Brand, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
(612) 672-8347

Delmar R. Ehrich
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
(612) 766-8726

William A. Brewer III
Shain A. Khoshbin
Bickel & Brewer

1717 Main Street
Suite 4800
Dallas, Texas 75201
(214) 653-4000

3. *Citizens State Bank v. Brown*, 849 N.W.2d 55 (Minn. 2014).

In this case interpreting Minnesota's Uniform Fraudulent Transfer Act, the Minnesota Supreme Court concluded that the act applies to transfers made pursuant to an uncontested marital dissolution decree. The court also concluded that the record supported the district court's findings that appellant Mr. Brown made certain transfers with the intent to defraud his creditors, and affirmed the district court's judgment setting aside the transfers.

For Appellant Brown:

Amie E. Penny Saylor
Messerli & Kramer P.A.
1400 Fifth Street Towers
100 South Fifth Street
Minneapolis, Minnesota 55402
(612) 672-3697

Robert M. McClay
McClay and Alton, PLLP
951 Grand Avenue
Saint Paul, Minnesota 55105
(651) 290-0301

For Respondent Citizens State Bank:

Alan M. Albrecht
Anderson, Skubitz & Coryell, PLLC
108 South Main
Le Sueur, Minnesota 56058
(952) 873-3343

John A. Halpern
Halpern Law Firm, PLLC
400 Lumber Exchange Building
Ten South Fifth Street
Minneapolis, Minnesota 55402
(612) 375-1980

4. *White et al. v. City of Elk River*, 840 N.W.2d 43 (Minn. 2013).

In this case concerning a zoning dispute, the Minnesota Supreme Court interpreted a municipality's authority to terminate a nonconforming use of land by

revoking a conditional-use permit, and a municipality's authority to require an interim-use permit before approving replacement of a destroyed accessory building and resumption of the regulated use. The court concluded that (1) the municipality did not have the authority to require a property owner to obtain a conditional-use permit to continue the use and then revoke the conditional-use permit and (2) the municipality had the authority to require appellants to obtain an interim-use permit before replacing the destroyed accessory building and resuming its regulated use.

For Appellants White et al.:

Katherine L. MacKinnon
Sarah J. Demers
Law Office of Katherine L. MacKinnon, PLLC
3744 Huntington Avenue
Saint Louis Park, Minnesota 55416
(952) 915-9215

James G. Robin (solo practitioner)
Wayzata Law Group, LLC
1907 East Wayzata Boulevard Suite 170
Wayzata, Minnesota 55391
(952) 475-1025

For Respondent City of Elk River:

George C. Hoff
Shelley M. Ryan
Hoff, Barry & Kozar, P.A.
775 Prairie Center Drive
Suite 160
Eden Prairie, Minnesota 55344
(952) 941-9220

5. *Hippert v. Ritchie*, 813 N.W.2d 374 & 813 N.W.2d 391 (Minn. 2012) (Special Redistricting Panel).

After each decennial United States census, the Minnesota legislature must create new congressional and state legislative districts. Two groups of taxpayers, the Hippert and Britton plaintiffs, filed lawsuits in state and federal court challenging the redistricting process in the wake of the 2010 census. On June 1, 2011, Minnesota Supreme Court Chief Justice Lorie Gildea appointed five judges, including myself, to a special redistricting panel to hear these challenges and create redistricting maps if the governor and legislature failed to reach an agreement. In October 2011, the panel held hearings throughout the state in which citizens testified about their communities. In January 2012, the panel held a hearing on the substantive legal issues related to the parties' proposed redistricting plans. After the governor and legislature failed to reach a

redistricting agreement, the special redistricting panel issued an order with the state's new congressional and state legislative districts on February 21, 2012.

For Hippert Plaintiffs:

Tony Trimble
Trimble & Associates Ltd.
10201 Wayzata Boulevard
Minnetonka, Minnesota 55305
(952) 797-7477

Eric Magnuson (formerly of Briggs & Morgan)
Robins Kaplan LLP
800 LaSalle Avenue
2800 LaSalle Plaza
Minneapolis, Minnesota 55402
(612) 349-8548

For Martin Plaintiffs-Intervenors:

Justice David L. Lillehaug (formerly of Fredrikson & Byron P.A.)
Minnesota Judicial Center
25 Reverend Dr. Martin Luther King Jr. Boulevard
Saint Paul, Minnesota 55155
(651) 297-7650

Christopher A. Stafford
Fredrikson & Byron P.A.
200 South Sixth Street
Suite 4000
Minneapolis, Minnesota 55402
(612) 492-7426

Mark Elias
Perkins Coie
700 Thirteenth Street NW
Suite 600
Washington, District of Columbia 20005
(202) 654-6200

William Stafford
Perkins Coie
1201 Third Avenue
Suite 4900
Seattle, Washington 98101
(206) 359-8000

For Britton Plaintiffs-Intervenors:

Alan Weinblatt
 Jay Benanav
 Weinblatt & Gaylord PLC
 5874 Blackshire Path
 Inver Grove Heights, Minnesota 55076
 (651) 292-8770

For Defendants:

Lori Swanson
 Office of the Minnesota Attorney General
 1400 Bremer Tower
 445 Minnesota Street
 Saint Paul, Minnesota 55101
 (651) 296-3353

6. *Barajas v. State*, 817 N.W.2d 204 (Minn. App. 2012), *review denied* (Minn. Oct. 16, 2012).

Appellant Mr. Barajas challenged his conviction of first-degree possession of methamphetamine with intent to sell, arguing that the district court erred in admitting evidence obtained from a warrantless search of his cellular telephone. The Minnesota Court of Appeals concluded that a person has a reasonable expectation of privacy in the concealed contents of a cellular telephone, and therefore a search of the contents by the police is constitutionally unreasonable unless the police obtain a warrant or demonstrate the existence of a recognized exception to the warrant requirement. Although the court determined that the district court erred by admitting the evidence obtained from Mr. Barajas' cellular telephone, the court affirmed the district court's judgment because the error was harmless beyond a reasonable doubt. The Minnesota Supreme Court declined Mr. Barajas' petition for further review.

For Appellant Barajas:

David W. Merchant
 Lydia Villalva Lijó
 Office of the Minnesota Appellate Public Defender
 540 Fairview Avenue North
 Saint Paul, Minnesota 55104
 (651) 201-6700

For Respondent State:

Lori Swanson
 James B. Early
 Office of the Minnesota Attorney General
 1400 Bremer Tower
 445 Minnesota Street
 Saint Paul, Minnesota 55101

(651) 296-3353

The Honorable Michelle Lawson (formerly Acting Clay County Attorney)
Clay County Courthouse
807 North 11th Street
Moorhead, Minnesota 56560
(218) 299-5065

7. *Munro Holding, LLC v. Cook*, 695 N.W.2d 379 (Minn. App. 2005).

In this appeal from the decision by the Minnesota Department of Employment and Economic Development that respondent-employee was entitled to receive unemployment benefits, the Minnesota Court of Appeals concluded that the employee quit her employment with good reason attributable to the employer and was entitled to benefits. The court found that (1) the employer had engaged in sexual harassment and (2) when an employer-owner sexually harasses an employee in a patently offensive manner, the employee need not complain to the employer or wait for the employer to take action to stop the conduct in order to establish that the employee quit because of a good reason caused by the employer. The decision was not appealed.

For Relator Munro Holding:

Brian E. Cote (solo practitioner)
Cote Law Firm, Ltd.
550A Butler Square
100 North Sixth Street #550A
Minneapolis, Minnesota 55403
(612) 752-2874

Pro Se Respondent:

Jacki L. Cook

8. *State v. Mason*, Case No. 62-KX-02-000706 (Ramsey County Dist. Ct. June 20, 2002), *aff'd*, 2003 WL 22016869 (Minn. App. August 26, 2003), *review denied* (Minn. Nov. 18, 2003).

Mr. Mason was identified as one of two individuals who robbed and assaulted a man after meeting the victim at a bar. Testifying on his own behalf, Mr. Mason admitted that he was present during the robbery but denied participating in it. The jury found him guilty of first-degree aggravated robbery. The conviction was affirmed on appeal.

For Prosecution:

Richard Dusterhoft
Ramsey County Attorney's Office
345 Wabasha Street North

Suite 120
Saint Paul, Minnesota 55102
(651) 266-3222

For Defense:

Ellen Seesel
Ramsey County Public Defender
101 Fifth Street East
Suite 1808
Saint Paul, Minnesota 55101
(651) 757-1600

9. *State v. Vang*, Case No. 62-K1-01-003953 (Ramsey County Dist. Ct. April 22, 2002), *aff'd* 2003 WL 21385146 (Minn. App. June 17, 2003), *vacated and remanded* (Minn. April 28, 2004), *aff'd* 2004 WL 2521714 (Minn. App. Nov. 9 2004), *review denied* (Minn. Jan. 26, 2005).

In August 2001, an individual was fatally shot and his brother was injured. Witnesses stated that the shooter got out of the passenger seat of a car registered to defendant. Mr. Vang was arrested and confessed to driving the car. Following a jury trial, he was convicted of two counts of second-degree murder and one count of second-degree attempted murder. I imposed a sentence of 27 years and two months in prison. The conviction was affirmed by the Minnesota Court of Appeals, but the Minnesota Supreme Court vacated and remanded the appellate court's opinion for reconsideration of the admissibility of a post-Miranda-warning statement in light of its decision in *State v. Bailey*, 677 N.W.2d 280 (Minn. 2004). On remand, the Minnesota Court of Appeals again affirmed the conviction and the Minnesota Supreme Court declined further review.

For Prosecution:

David Miller
Ramsey County Attorney's Office
345 Wabasha Street North
Suite 120
Saint Paul, Minnesota 55102
(651) 266-3222

For Defense:

The Honorable Joy Bartscher (formerly Rogosheske, Sieben & Atkins, P.L.L.C.)
Ramsey County District Court
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102
(651) 226-8266

10. *State v. Smith*, Case No. 62-K8-01-002797 (Ramsey County Dist. Ct. Oct. 8, 2001), *aff'd*, 2003 WL 1491508 (Minn. App. March 25, 2003).

In August 2001, police searched the home of Mr. Smith's girlfriend and found a pistol under the carpet in one of the bedrooms. Mr. Smith stipulated that he was ineligible to possess a firearm but denied possessing the gun. Following a jury trial, he was convicted of possession of a pistol by an ineligible person. I imposed a sentence of 84 months in prison, which was an upward departure from the guideline sentence. The conviction and sentence were affirmed on appeal.

For Prosecution:

Margaret Galvin
 Ramsey County Attorney's Office
 345 Wabasha Street North
 Suite 120
 Saint Paul, Minnesota 55102
 (651) 266-3222

For Defense:

Robert Hoene
 Hoene & Worrell
 105 Hardman Court
 Suite 110
 South Saint Paul, Minnesota 55075
 (651) 222-2838

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

1. *State v. McMurray*, __ N.W.2d __, 2015 WL 1085000 (Minn. 2015).

For Appellant McMurray:

Catheryn Middlebrook
 Benjamin J. Butler
 Office of the Minnesota Appellate Public Defender
 540 Fairview Avenue North
 Saint Paul, Minnesota 55104
 (651) 201-6700

For Respondent State of Minnesota:

Lori Swanson
 Office of the Minnesota Attorney General
 1400 Bremer Tower
 445 Minnesota Street
 Saint Paul, Minnesota 55101
 (651) 296-3353

Michael K. Junge
Elizabeth Smith
McLeod County
830 East 11th Street
Glencoe, Minnesota 55336
(320) 864-5551

2. *Staab v. Diocese of Saint Cloud*, 853 N.W.2d 713 (Minn. 2014).

For Appellant Diocese:

Dyan J. Ebert
Laura A. Moehrle
Quinlivan & Hughes, P.A.
1740 West Saint Germain Street
Saint Cloud, Minnesota 56301
(320) 251-1414

For Respondent Staab:

Kevin S. Carpenter
Kevin S. Carpenter, P.A. (solo practitioner)
2919 Veterans Drive
Saint Cloud, Minnesota 56301
(320) 251-3434

H. Morrison Kershner
Pemberton, Sorlie, Rufer & Kershner, P.A.
110 North Mill Street
Fergus Falls, Minnesota 56537
(218) 736-5493

3. *State et al., v. 3M*, 845 N.W.2d 808 (Minn. 2014).

For Appellants State of Minnesota, et. al.:

Lori Swanson
Alan I. Gilbert
Alethea M. Huyser
Beverly M. Conerton
Office of the Minnesota Attorney General
1400 Bremer Tower
445 Minnesota Street
Saint Paul, Minnesota 55101
(651) 296-3353

For Appellant Covington & Burling, LLP:

John W. Lundquist

Kevin C. Riach
 Fredrikson & Byron, P.A.
 200 South Sixth Street
 Suite 4000
 Minneapolis, Minnesota 55402
 (612) 492-7000

John K. Villa
 Michael S. Sundermeyer
 Joseph M. Terry
 Williams & Connolly LLP
 725 Twelfth Street NW
 Washington, District of Columbia 20005
 (202) 434-5000

For Respondent 3M:

Michael T. Nilan
 Amanda M. Cialkowski
 Peter Gray
 Nilan Johnson Lewis P.A.
 Canadian Pacific Plaza
 120 South Sixth Street, Suite 400
 Minneapolis, Minnesota 55402
 (612) 305-7500

Michael C. McCarthy
 Maslon Edelman Borman & Brand, LLP
 3300 Wells Fargo Center
 90 South Seventh Street
 Minneapolis, Minnesota 55402
 (612) 672-8347

Delmar R. Ehrich
 Faegre Baker Daniels LLP
 2200 Wells Fargo Center
 90 South Seventh Street
 Minneapolis, Minnesota 55402
 (612) 766-8726

William A. Brewer III
 Shain A. Khoshbin
 Bickel & Brewer
 1717 Main Street
 Suite 4800
 Dallas, Texas 75201
 (214) 653-4000

4. *Citizens State Bank v. Brown*, 849 N.W.2d 55 (Minn. 2014).

For Appellant Brown:

Amie E. Penny Sayler
Messerli & Kramer P.A.
1400 Fifth Street Towers
100 South Fifth Street
Minneapolis, Minnesota 55402
(612) 672-3697

Robert M. McClay
McClay and Alton, PLLP
951 Grand Avenue
Saint Paul, Minnesota 55105
(651) 290-0301

For Respondent Citizens State Bank:

Alan M. Albrecht
Anderson, Skubitz & Coryell, PLLC
108 South Main
Le Sueur, Minnesota 56058
(952) 873-3343

John A. Halpern
Halpern Law Firm, PLLC
400 Lumber Exchange Building
10 South Fifth Street
Minneapolis, Minnesota 55402
(612) 375-1980

5. *White v. City of Elk River*, 840 N.W.2d 43 (Minn. 2013).

For Appellants White et al.:

Katherine L. MacKinnon
Sarah J. Demers
Law Office of Katherine L. MacKinnon, PLLC
3744 Huntington Avenue
Saint Louis Park, Minnesota 55416
(952) 915-9215

James G. Robin (solo practitioner)
Wayzata Law Group, LLC
1907 East Wayzata Boulevard Suite 170
Wayzata, Minnesota 55391
(952) 475-1025

For Respondent City of Elk River:

George C. Hoff
Shelley M. Ryan
Hoff, Barry & Kozar, P.A.
775 Prairie Center Drive
Suite 160
Eden Prairie, Minnesota 55344
(952) 941-9220

6. *Larson v. Northwestern Mut.*, 855 N.W.2d 293 (Minn. 2013).

For Appellant Larson:

Katherine L. MacKinnon
Sarah J. Demers
Law Office of Katherine L. MacKinnon, PLLC
3744 Huntington Avenue
Saint Louis Park, Minnesota 55416
(952) 915-9215

For Respondent The Northwestern Mutual Life Insurance Company:

Erik T. Salvesson
Benjamin C. Johnson
Nilan Johnson Lewis, P.A.
Canadian Pacific Plaza
120 South Sixth Street, Suite 400
Minneapolis, Minnesota 55402
(612) 305-7500

For Respondent CMInformation Specialists, Inc.:

Mark R. Bradford
Bassford Remele, P.A.
33 South Sixth Street, Suite 3800
Minneapolis, Minnesota 55402
(612) 376-1667

7. *Hippert v. Ritchie*, 813 N.W.2d 374 & 813 N.W.2d 391 (Minn. 2012) (Special Redistricting Panel).

For Hippert Plaintiffs:

Tony Trimble
Trimble & Associates Ltd.
10201 Wayzata Boulevard
Minnetonka, Minnesota 55305
(952) 797-7477

Eric Magnuson (formerly of Briggs & Morgan)
Robins Kaplan LLP
800 LaSalle Avenue
2800 LaSalle Plaza
Minneapolis, Minnesota 55402
(612) 349-8548

For Martin Plaintiffs-Intervenors:

Justice David L. Lillehaug (formerly of Fredrikson & Byron P.A.)
Minnesota Judicial Center
25 Reverend Dr. Martin Luther King Jr. Boulevard
Saint Paul, Minnesota 55155
(651) 297-7650

Christopher A. Stafford
Fredrikson & Byron P.A.
200 South Sixth Street
Suite 4000
Minneapolis, Minnesota 55402
(612) 492-7426

Mark Elias
Perkins Coie
700 Thirteenth Street NW
Suite 600
Washington, District of Columbia 20005
(202) 654-6200

William Stafford
Perkins Coie
1201 Third Avenue
Suite 4900
Seattle, Washington 98101
(206) 359-8000

For Britton Plaintiffs-Intervenors:

Alan Weinblatt
Jay Benanav
Weinblatt & Gaylord PLC
5874 Blackshire Path
Inver Grove Heights, Minnesota 55076
(651) 292-8770

For Defendants:

Lori Swanson
Office of the Minnesota Attorney General

1400 Bremer Tower
445 Minnesota Street
Saint Paul, Minnesota 55101
(651) 296-3353

8. *Mitchell v. Smith*, 817 N.W.2d 742 (Minn. App. 2012).

For Appellant Mitchell:

Bradford Colbert
Legal Assistance to Minnesota Prisoners
875 Summit Avenue, Room 254
Saint Paul, Minnesota 55105
(651) 290-8651

Paul Ziezulewicz (as certified student attorney)
Southern Minnesota Regional Legal Services
55 East Fifth Street
Suite 400
Saint Paul, Minnesota 55101
(651) 228-9823

For Respondent Smith:

Lori Swanson
Gina D. Jensen
Office of the Minnesota Attorney General
1400 Bremer Tower
445 Minnesota Street
Saint Paul, Minnesota 55101
(651) 296-3353

9. *Barajas v. State*, 817 N.W.2d 204 (Minn. App. 2012).

For Appellant:

David W. Merchant
Lydia Villalva Lijó
Office of the Minnesota Appellate Public Defender
540 Fairview Avenue North
Saint Paul, Minnesota 55104
(651) 201-6700

For Respondent:

Lori Swanson
James B. Early
Office of the Minnesota Attorney General
1400 Bremer Tower
445 Minnesota Street

Saint Paul, Minnesota 55101
(651) 296-3353

The Honorable Michelle Lawson (formerly Acting Clay County Attorney)
Clay County Courthouse
807 North 11th Street
Moorhead, Minnesota 56560
(218) 299-5065

10. *Munro Holding, LLC v. Cook*, 695 N.W.2d 379 (Minn. App. 2005).

For Relator:

Brian E. Cote (solo practitioner)
Cote Law Firm, Ltd.
550A Butler Square
100 North Sixth Street #550A
Minneapolis, Minnesota 55403
(612) 752-2874

Pro Se Respondent:

Jacki L. Cook

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

I am unaware of any cases in which certiorari has been requested for any of my authored opinions at the Minnesota Supreme Court.

Court of Appeals Cases:

State v. Brooks, 2012 WL 1570064 (Minn. App. May 7, 2012), *cert. granted* (July 16, 2013), *judgment vacated*, 133 S. Ct. 1996 (Apr. 22, 2013).

State v. Wiseman, 816 N.W.2d 689, 693 (Minn. App. 2012), *cert. denied*, 133 S. Ct. 1585, *abrogated by Missouri v. McNeely*, 133 S. Ct. 1552 (2013).

Hammann v. Falls/Pinnacle, LLC, 2010 WL 155253 (Minn. App. Jan. 19, 2010), *cert. denied* (March 7, 2011).

State v. Roble, 2010 WL 3463511 (Minn. App. Sept. 7, 2010), *cert. denied* (May 23, 2011).

Jackson v. State, 2006 WL 3772212 (Minn. App. Dec. 6, 2006), *cert. denied* (Feb. 20, 2007).

Prinzing v. Schwab, 2006 WL 538926 (Minn. App. Mar. 7, 2006), *cert. denied* (January 8, 2007)

Hajrusi v. State, 2004 WL 2940620 (Minn. App. Dec. 21, 2004), *cert. denied* (October 3, 2005).

State v. Begordis, 2004 WL 1326083 (June 15, 2004), *cert. denied* (Jan. 24, 2005).

Bator v. Hallock Elec., 2003 WL 22233518 (Minn. App. Sept. 30, 2003), *cert. denied* (May 24, 2004).

State v. Fraction, 2002 WL 31748928 (Minn. App. Dec. 10, 2002), *cert. denied* (June 27, 2003).

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

I am unaware of any cases in which my opinions at the Minnesota Supreme Court or the Second Judicial District have been reversed or affirmed with significant criticism.

Minnesota Court of Appeals authored cases:

In re Skyline Materials, Ltd., 819 N.W.2d 183 (Minn. App. 2012), *rev'd*, 835 N.W.2d 472 (Minn. 2013). In this appeal of a variance decision by a county board of adjustment, the Minnesota Supreme Court concluded that respondent's service of process was ineffective to commence an action in district court, reversing the decision by the Minnesota Court of Appeals concluding that the appeal was an ongoing action.

State v. Brooks, 2012 WL 1570064 (Minn. App. May 7, 2012), *review denied* (Minn. July 17, 2012), *cert. granted* (July 16, 2013), *judgment vacated by Brooks v. Minnesota*, 133 S. Ct. 1996 (Apr 22, 2013). The United States Supreme Court remanded with instructions to reconsider in light of *Missouri v. McNeely*, 133 S. Ct. 1552 (2013)). On remand, the Minnesota Supreme Court affirmed on the ground that Mr. Brooks consented to the search. *State v. Brooks*, 838 N.W.2d 563 (Minn. 2013).

Hamann v. Park Nicollet Clinic, 792 N.W.2d 468 (Minn. App. 2010), *rev'd*, 808 N.W.2d 828 (Minn. 2011). The district court dismissed Dr. Hamann's employment complaint, concluding that the statute of limitations barred his claims. The Minnesota Court of Appeals reversed, but the Minnesota Supreme Court concluded that the claims accrued in 2005 and that the statute of limitations barred the claims.

State v. Netland, 742 N.W.2d 207 (Minn. App. 2007), *aff'd in part, rev'd in part*, 762 N.W.2d 202 (Minn. 2009), *abrogated by Missouri v. McNeely*, 133 S. Ct. 1552 (2013). The United State Supreme Court concluded that metabolization of alcohol in the bloodstream does not present a per se exigency justifying an exception to the Fourth Amendment's search warrant requirement, abrogating established Minnesota case law.

State v. Franks, 742 N.W.2d 7 (Minn. App. 2007), *aff'd in part, rev'd in part*, 765 N.W.2d 68 (Minn. 2009). The Minnesota Court of Appeals affirmed the district court's conviction of Mr. Franks for four counts of violating an order for protection and one count of engaging in a pattern of harassing conduct, sentencing him to consecutive sentences for each order for protection violation but not for the pattern of harassing conduct. The Minnesota Supreme Court reversed in part, concluding that the district court erred when it did not impose a sentence on the more serious offense of engaging in a pattern of harassing conduct.

State v. Jackson, 2007 WL 2245594 (Minn. App. Aug. 7, 2007), *rev'd*, 749 N.W.2d 353 (Minn. 2008). The Minnesota Supreme Court concluded that the Minnesota Court of Appeals erred when it affirmed Mr. Jackson's conviction and sentence of 210 months' imprisonment for first-degree aggravated robbery with a dangerous weapon because the sentencing departure was based on uncharged criminal conduct.

Baker v. Baker, 733 N.W.2d 815 (Minn. App. 2007), *aff'd in part, rev'd in part*, 753 N.W.2d 644 (Minn. 2008). In this appeal from a dissolution action, the Minnesota Supreme Court clarified the test for whether appreciation of nonmarital property is marital or nonmarital, partially reversing the decision by the Minnesota Court of Appeals.

State v. Cottew, 728 N.W.2d 268 (Minn. App. 2007), *aff'd in part, rev'd in part*, 746 N.W.2d 632 (Minn. 2008). In an issue of first impression, the Minnesota Court of Appeals concluded that the *Austin/Modtland* factors did not apply when imposing intermediate sanctions for a probation violation. The Minnesota Supreme Court agreed, but reversed the court of appeal's conclusion that the district court was required to place defendant on probation when it imposed intermediate sanctions.

State v. Farrah, 2006 WL 2473655 (Minn. App. Aug. 29, 2006), *rev'd*, 735 N.W.2d 336 (Minn. 2007). The Minnesota Court of Appeals affirmed Mr. Farrah's conviction of fourth-degree criminal sexual conduct. The Minnesota Supreme Court reversed, concluding that the state failed to meet its burden to prove that Mr. Farrah knowingly and intelligently waived his *Miranda* rights.

Wilson v. State, 2006 WL 997738 (Minn. App. Apr. 18, 2006), *rev'd*, 726 N.W.2d 103 (Minn. 2007). The Minnesota Supreme Court concluded that Mr. Wilson's

petition for relief raised genuine issues of material fact and that the postconviction court abused its discretion by failing to hold an evidentiary hearing, reversing the decision by the Minnesota Court of Appeals affirming the district court.

In re Cities of Anandale & Maple Lake NPDES/SDS Permit Issuance for Discharge of Treated Wastewater, 702 N.W.2d 768 (Minn. App. 2005), *rev'd*, 731 N.W.2d 502 (Minn. 2007). In this appeal from the issuance of a permit for a wastewater treatment plant, the Minnesota Supreme Court concluded that a state agency's interpretation of a federal regulation was entitled to deference, reversing the decision by the Minnesota Court of Appeals concluding that no deference is given because the interpretation of a federal regulation is a question of law reviewed de novo.

State v. Bennett, 2005 WL 626782 (Minn. App. Mar. 15, 2005), *review granted in part, decision rev'd in part*, 696 N.W.2d 788 (Minn. 2005). The Minnesota Court of Appeals affirmed the district court's revocation of Mr. Bennett's probation. The Minnesota Supreme Court reversed and remanded on the issue of the adequacy of the district court's findings for revocation of probation in light of *State v. Modtland*, 695 N.W.2d 602 (Minn. 2005).

Heine v. Simon, 674 N.W.2d 411 (Minn. App. 2004), *aff'd in part, rev'd in part*, 702 N.W.2d 752 (Minn. 2005). In this tort action, Mr. Heine sought damages from Ms. Simon and from Mr. Heine's former employer's insurer arising from a 1994 automobile accident. The district court denied Ms. Simon's motion for partial summary judgment, which argued collateral estoppel stemming from a prior decision by the Worker's Compensation Court of Appeals regarding Mr. Heine's lost wages. A jury found Ms. Simon 80% at fault and awarded damages. The district court denied Mr. Heine's motion for a new trial on damages and Ms. Simon's motion disputing the amount of damages. Both parties appealed and the Minnesota Court of Appeals affirmed. The Minnesota Supreme Court agreed that the district court did not err when it denied Ms. Simon's motion for summary judgment, but reversed the damages amount.

State v. Serena, 673 N.W.2d 182 (Minn. App. 2003), *review granted* (Minn. Feb. 17, 2004), *stay vacated and remanded* (Minn. Aug. 17, 2004). The Minnesota Court of Appeals affirmed the district court's denial of jail credit for time spent in a juvenile correctional facility prior to execution of Mr. Serena's adult sentence of imprisonment. On February 17, 2004, the Minnesota Supreme Court granted review. On August 17, 2004, the stay was vacated and remanded. No opinion was issued in connection with this order.

Roehrdanz v. Brill, 668 N.W.2d 217 (Minn. App. 2003), *rev'd*, 682 N.W.2d 626 (Minn. 2004). In this appeal following the district court's denial of Mr. Brill's motion to vacate a default judgment, the Minnesota Court of Appeals reversed, concluding that service was ineffective under the Minnesota Rules of Civil

Procedure. The Minnesota Supreme Court reversed, holding that service was effective.

Peterson v. Henderson, 2002 WL 31689541 (Minn. App. Dec. 3, 2002), *rev'd sub nom.*, *Peterson v. Wilson Twp.*, 672 N.W.2d 556 (Minn. 2003). The Minnesota Court of Appeals held that subsequent garnishment actions against a garnishee are impermissible after the garnishee has been discharged. The Minnesota Supreme Court reversed, concluding that discharge relieves the garnishee of the duty to retain the debtor's property with respect to the specific garnishment summons, but does not release the garnishee from subsequent garnishment actions.

Minnesota Court of Appeals joined decisions:

Sipe v. STS Mfg., Inc., 822 N.W.2d 2 (Minn. App. 2012), *rev'd*, 834 N.W.2d 683 (Minn. 2013). In this tort action, the Minnesota Supreme Court held that a wrongful discharge action was governed by the six-year statute of limitations for actions upon a liability created by statute, reversing the decision by the Minnesota Court of Appeals that a two-year statute of limitations applied.

State v. Melchert-Dinkel, 816 N.W.2d 703 (Minn. App. 2012), *rev'd*, 844 N.W.2d 13 (Minn. 2014). The Minnesota Court of Appeals concluded that a statute proscribing advising, encouraging, or assisting another to commit suicide did not violate the First Amendment. The Minnesota Supreme Court reversed, concluding that the portion of the statute prohibiting a person from advising or encouraging another to commit suicide was an unconstitutionally overbroad content-based restriction on speech and severing that portion of the statute.

RAM Mut. Ins. Co. v. Rohde, 805 N.W.2d 554 (Minn. App. 2011), *rev'd*, 820 N.W.2d 1 (Minn. 2012). In this subrogation action, the Minnesota Supreme Court held that whether an insurer could pursue an action against a tenant must be determined on a case-by-case approach, based on the reasonable expectations of the landlord and tenant under the facts of the case, reversing the decision by the Minnesota Court of Appeals requiring an express agreement.

In re Stisser Grantor Trust, 2011 WL 2119394 (Minn. App. May 31, 2011), *aff'd in part, rev'd in part sub nom.*, 818 N.W.2d 495 (Minn. 2012). In this action interpreting an inter vivos trust agreement, the Minnesota Supreme Court reversed the Minnesota Court of Appeals's determination that the trust agreement failed to demonstrate decedent's unambiguous intent not to exonerate her secured debts. But the court agreed with the Minnesota Court of Appeals that the trust was not required to pay personal representative compensation and attorney fees because the claims were not supported with sufficient evidence.

MacRae v. Grp. Health Plan, Inc., 2007 WL 2417167 (Minn. App. Aug. 28, 2007), *rev'd*, 753 N.W.2d 711 (Minn. 2008). In an opinion clarifying decisions relied upon by the parties and the Minnesota Court of Appeals, the Minnesota

Supreme Court held that a cause of action does not accrue as a matter of law immediately upon a negligent misdiagnosis of cancer, but that the inquiry should be based on the record in each particular case.

In re Welfare of N.J.S., 2007 WL 2417265 (Minn. App. Aug. 28, 2007), *aff'd in part, rev'd in part*, 753 N.W.2d 704 (Minn. 2008). In this appeal from N.J.S.'s certification as an adult for trial on a charge of second-degree intentional murder, the Minnesota Supreme Court affirmed the certification, but reversed the determination by the Minnesota Court of Appeals that school records can be part of a prior record of delinquency.

In re Welfare of Children of N.F., 735 N.W.2d 735 (Minn. App. 2007), *aff'd in part, rev'd in part*, 749 N.W.2d 802 (Minn. 2008). The Minnesota Court of Appeals reversed the district court's adjudication of N.F.'s children to be in need of protection or services (CHIPS). The Minnesota Supreme Court affirmed the reversal of the CHIPS adjudication, but adopted a different definition of physical abuse from that used by the court of appeals.

VoiceStream Minneapolis, Inc. v. RPC Properties, Inc., 2007 WL 509621 (Minn. App. Feb. 20, 2007), *rev'd*, 743 N.W.2d 267 (Minn. 2008). In this appeal from the district court's order granting a motion to enforce a settlement agreement, the Minnesota Court of Appeals treated the district court's silence on the issue of damages as equivalent to a denial of the request. The Minnesota Supreme Court reversed and remanded, holding that the district court must explicitly grant or deny each claim.

McIntosh Cnty. Bank v. Dorsey & Whitney, LLP, 726 N.W.2d 108 (Minn. App. 2007), *rev'd*, 745 N.W.2d 538 (Minn. 2008). In this legal malpractice case, the Minnesota Court of Appeals reversed the district court's grant of summary judgment, holding that the district court failed to apply the appropriate test to determine whether the law firm owed a duty to the respondents as third-party beneficiaries. The Minnesota Supreme Court reversed, clarifying the language relied upon by the court of appeals.

State v. Al-Naseer, 721 N.W.2d 623 (Minn. App. 2006), *aff'd in part, rev'd in part*, 734 N.W.2d 679 (Minn. 2007). Following Mr. Al-Naseer's second trial and conviction of criminal vehicular homicide for leaving the scene of an accident that caused the death of a human being, the Minnesota Court of Appeals reversed, concluding that the mens rea standard requires that the driver knew or had reason to know that the accident caused bodily injury to or death of a person. The Minnesota Supreme Court affirmed the reversal of his conviction, but remanded for reconsideration of the verdict, holding that conviction requires the state to prove that defendant had knowledge that he had been involved in an accident with a person or another vehicle.

In re Estate of Kinney, 2006 WL 1806386 (Minn. App. July 3, 2006), *rev'd*, 733 N.W.2d 118 (Minn. 2007). The Minnesota Court of Appeals affirmed the district court's summary judgment order that an antenuptial agreement between decedent and his second wife was invalid. The Minnesota Supreme Court reversed and remanded, concluding that genuine issues of material fact precluded summary judgment.

State v. Flowers, 2006 WL 1228997 (Minn. App. May 9, 2006), *rev'd*, 734 N.W.2d 239 (Minn. 2007). The Minnesota Court of Appeals affirmed Mr. Flowers' conviction of being a felon in possession of a firearm. The Minnesota Supreme Court reversed, concluding that the police exceeded the permissible scope of a *Terry* search and therefore the district court erred when it failed to suppress evidence found during the search, that the district court erred when it failed to specifically consider the *Jones* factors before allowing the defendant to be impeached with a prior conviction, and that the district court erred when it gave an improper instruction after the jury began its deliberations.

State v. Jackson, 2006 WL 463576 (Minn. App. Feb. 28, 2006), *rev'd*, 742 N.W.2d 163 (Minn. 2007). The Minnesota Court of Appeals affirmed appellant's convictions of second-degree controlled substance crime and child endangerment. The Minnesota Supreme Court reversed, concluding that a nighttime search of Ms. Jackson's residence violated her Fourth Amendment rights and that evidence seized during the search must be suppressed.

Weston v. McWilliams & Associates, Inc., 694 N.W.2d 558 (Minn. App. 2005), *rev'd*, 716 N.W.2d 634 (Minn. 2006). In an issue of first impression, the Minnesota Court of Appeals concluded that a claim for contribution and indemnity would be deemed to have accrued at the end of the tenth year following completion of the construction of a home. The Minnesota Supreme Court disagreed, concluding that the statute of repose barred actions that did not accrue and were not brought within the ten-year period.

State v. Saue, 688 N.W.2d 337 (Minn. App. 2004), *rev'd in part* (Minn. Dec. 13, 2005). The Minnesota Court of Appeals affirmed in part and reversed in part Mr. Saue's sentence based on a durational and dispositional departure. Without discussion, the Minnesota Supreme Court reversed in part and remanded for resentencing.

State v. Moore, 2004 WL 2159024 (Minn. App. Sept. 28, 2004), *rev'd*, 699 N.W.2d 733 (Minn. 2005). The Minnesota Court of Appeals affirmed Mr. Moore's conviction of first-degree assault. In an issue of first impression, the Minnesota Supreme Court reversed, concluding that instructions on the definition of "great bodily harm" must provide adequate context for the "serious bodily harm" alternative.

Yang v. Voyagaire Houseboats, Inc., 2004 WL 2049843 (Minn. App. Sept. 14, 2004), *rev'd*, 701 N.W.2d 783 (Minn. 2005). In this appeal arising from a personal injury action, the district court and Minnesota Court of Appeals concluded that the exculpatory and indemnification clauses in a houseboat rental agreement were enforceable. The Minnesota Supreme Court disagreed, concluding that the clauses violated public policy and were unenforceable.

State v. Krautkremer, 2004 WL 1488574 (Minn. App. July 6, 2004), *review granted, decision vacated in part* (Minn. Sept. 21, 2004). The Minnesota Court of Appeals affirmed Mr. Krautkremer's conviction of and sentence for felony driving while impaired. The Minnesota Supreme Court remanded for reconsideration in light of *Blakely v. Washington*, 124 S. Ct. 2531 (2004).

State v. Cotton, 2004 WL 1444955 (Minn. App. June 29, 2004), *review granted, decision vacated* (Minn. Sept. 21, 2004). The Minnesota Court of Appeals affirmed Mr. Cotton's sentence for second-degree aggravated robbery. The Minnesota Supreme Court remanded for reconsideration in light of *Blakely v. Washington*, 124 S. Ct. 2531 (2004).

Schafer v. JLC Food Sys., Inc., 2004 WL 78022 (Minn. App. Jan. 20, 2004), *rev'd*, 695 N.W.2d 570 (Minn. 2005). In this negligence action arising from an alleged food defect, the Minnesota Court of Appeals affirmed the district court's grant of summary in favor of defendants. The Minnesota Supreme Court reversed and remanded, concluding that circumstantial evidence can establish a prima facie case that food was defective, even if the injury-causing object cannot be identified.

Wiegand v. Walser Auto. Groups, Inc., 670 N.W.2d 449 (Minn. App. 2003), *rev'd*, 683 N.W.2d 807 (Minn. 2004). In this appeal from an action under the private attorney general statute, the Minnesota Supreme Court held that a plaintiff's reliance on an oral misrepresentation that is directly contradicted by provisions of a written contract did not negate any possibility that the consumer could prove a causal nexus between misrepresentations and consumer injury, reversing the Minnesota Court of Appeals.

State v. Garcia, 670 N.W.2d 297 (Minn. App. 2003), *rev'd*, 683 N.W.2d 294 (Minn. 2004). In this challenge to the constitutionality of a state statute precluding a trial court from granting a defendant jail credit for time served in a juvenile facility custody, the Minnesota Supreme Court held that the statute denied the defendant equal protection, reversing the Minnesota Court of Appeals and the district court.

State v. McCoy, 668 N.W.2d 425 (Minn. App. 2003), *rev'd*, 682 N.W.2d 153 (Minn. 2004). In this issue of first impression, the Minnesota Supreme Court concluded that evidence of similar conduct by the accused against an alleged

victim of domestic abuse may be admitted without first being established by clear and convincing evidence, reversing the Minnesota Court of Appeals.

Brekke v. THM Biomedical, Inc., 667 N.W.2d 452 (Minn. App. 2003), *rev'd*, 683 N.W.2d 771 (Minn. 2004). The Minnesota Court of Appeals affirmed the district court's ruling that appellant THM Biomedical violated a statute prohibiting an employer from making any deduction, directly or indirectly, from the wages due or earned by any employee and, thus, was liable for twice the amount of the deduction taken from employee's accrued salary. The Minnesota Supreme Court concluded that the statute did not supersede or abrogate the common law affirmative defenses of waiver and estoppel, and remanded with instructions to address those defenses.

Kipp v. Sweno, 2003 WL 21791190 (Minn. App. Aug. 5, 2003), *rev'd*, 683 N.W.2d 259 (Minn. 2004). In a matter of first impression, the Minnesota Supreme Court held that a debtor's homestead property, held in joint tenancy with his nondebtor spouse, could not be unilaterally severed through an execution sale to satisfy a judgment, reversing the Minnesota Court of Appeals and the district court.

State v. Ornelas, 2003 WL 1818011 (Minn. App. Apr. 8, 2003), *rev'd*, 675 N.W.2d 74 (Minn. 2004). The Minnesota Court of Appeals affirmed the district court's revocation of appellant's probation. The Minnesota Supreme Court reversed, holding that appellant's probation could not be revoked for a condition of probation that was not imposed by district court.

State v. Askerooth, 2003 WL 230673 (Minn. App. Feb. 4, 2003), *rev'd*, 681 N.W.2d 353 (Minn. 2004). In a decision expanding the protections of the Minnesota Constitution beyond those of the Fourth Amendment, the Minnesota Supreme Court held that the Minnesota Constitution requires a search or seizure during a traffic stop to be reasonable even when a minor law has been violated, reversing the decision by the Minnesota Court of Appeals affirming appellant's conviction of a controlled substance crime in the fifth degree.

Anderson v. Anoka Hennepin Indep. Sch. Dist. 11, 655 N.W.2d 847 (Minn. App. 2003), *rev'd*, 678 N.W.2d 651 (Minn. 2004). In this appeal concerning the scope of official immunity, the Minnesota Supreme Court reversed on the ground that the Minnesota Court of Appeals erred by concluding that a high school teacher's decision to instruct students in his high-school woodworking class not to use a table saw's blade guard for cuts under four inches—resulting in an injury to a student—was not protected under statutory or official immunity.

State v. Smith, 655 N.W.2d 347 (Minn. App. 2003), *rev'd*, 674 N.W.2d 398 (Minn. 2004). The Minnesota Court of Appeals granted Mr. Smith a new trial because it concluded that the trial court's jury instructions diluted the reasonable doubt standard in violation of due process. The Minnesota Supreme Court

disagreed, holding that a jury instruction defining the concept of reasonable doubt to exclude “speculation” did not confuse, mislead, or misstate the law and therefore did not constitute plain error.

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

All decisions released by the Minnesota Supreme Court are published. Of the 697 Minnesota Court of Appeals cases I authored, 585 (including 12 designated “order” opinions) are unpublished. Order opinions—issued when the questions raised in the case have been settled by a decision in a previous case and a full opinion is deemed unnecessary—are available at the Office of the Clerk of Appellate Courts and collected in binders by the Minnesota State Law Library. All other unpublished opinions are available on Lexis and Westlaw. Unpublished decisions make up approximately 84% of my authored decisions at the Minnesota Court of Appeals.

District court judgments and orders are distributed to the litigants and their attorneys, and are kept on file at the Ramsey County District Court. Some files are destroyed after a retention period based on the type of case involved.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

State v. McMurray, __ N.W.2d __, 2015 WL 1085000 (Minn. 2015).

Nielsen v. 2003 Honda Accord, 845 N.W.2d 754 (Minn. 2013).

Mitchell v. Smith, 817 N.W.2d 742 (Minn. App. 2012).

State v. Wiseman, 816 N.W.2d 689 (Minn. App. 2012), *cert. denied*, 133 S. Ct. 1585, *abrogated on other grounds by Missouri v. McNeely*, 133 S. Ct. 1552 (2013).

State v. Brooks, 2012 WL 1570064 (Minn. App. May 7, 2012), *review denied* (Minn. July 17, 2012), *cert. granted* (July 16, 2013), *judgment vacated by Brooks v. Minnesota*, 133 S. Ct. 1996 (Apr 22, 2013).

American Bank of St. Paul v. City of Minneapolis, 802 N.W.2d 781 (Minn. App. 2011).

In re Welfare of M.L.M., 781 N.W.2d 381 (Minn. App. 2010).

State v. Johnson, 777 N.W.2d 767 (Minn. App. 2010).

State v. Burkland, 775 N.W.2d 372 (Minn. App. 2009).

State v. Netland, 742 N.W.2d 207 (Minn. App. 2007), *aff'd in part, rev'd in part* by *State v. Netland*, 762 N.W.2d 202 (Minn. Feb 12, 2009).

State v. Boehl, 726 N.W.2d 831 (Minn. App. 2007).

Concept Properties, LLP v. City of Minnetrista, 694 N.W.2d 804 (Minn. App. 2005).

Haase v. Commissioner of Public Safety, 679 N.W.2d 743 (Minn. App. 2004).

In re Expulsion of I.A.L., 674 N.W.2d 741 (Minn. App. 2004).

State v. Serena, 673 N.W.2d 182 (Minn. App. 2003), *vacated and remanded* (Minn. Aug 17, 2004).

Granville v. Minneapolis Public Schools, Special School Dist. No. 1, 668 N.W.2d 227 (Minn. App. 2003).

State ex rel. Engel v. Fletcher, 659 N.W.2d 799 (Minn. App. 2003).

State v. Bergerson, 659 N.W.2d 791 (Minn. App. 2003).

Miller v. One 2001 Pontiac Aztek, No. GHS-186 VIN: 3G7DA03E41S500032, 655 N.W.2d 12 (Minn. App. 2002).

- 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.

A request for my recusal has been made in only one case, *State v. Murphy*, Case Nos. A13-2332 & A13-2413 (Minn. App. Aug. 25, 2014), *review denied* (Minn. Oct. 28, 2014). The cases involved a petition for review at the Minnesota Supreme Court's special term. The party seeking my recusal has been convicted of violent crimes against a judge of the Second Judicial District with whom I served as a trial judge. He requested that I recuse myself because I had served as a Second Judicial District judge. Although the party was convicted before I served as a Second Judicial District judge, I complied with the recusal request because the entire Second Judicial District is recused from cases involving this litigant.

Minnesota Supreme Court sua sponte recusals:

State v. Expose, __N.W.2d__, Case No. A13-1285 (release pending, Minn. 2015)
I recused because an attorney working on the direct appeal served on my campaign committee.

Lussier v. State, 853 N.W.2d 149 (Minn. 2014)
I recused because an attorney working on the direct appeal served on my campaign committee.

State v. Yang, 847 N.W.2d 248 (Minn. 2014)
I recused because the appellant was a witness in a related murder trial over which I presided.

In re Disciplinary Action against Griffith, 825 N.W.2d 716 (Minn. 2013)
I recused because I served on a committee of the board of directors at William Mitchell College of Law where the misconduct occurred.

State v. Wenthe, 839 N.W.2d 83 (Minn. 2013)
I recused because my priest was a witness at trial.

State v. Burrell, 837 N.W.2d 459 (Minn. 2013)
I recused because I served as a judge on a related matter at the court of appeals.

State v. Morrow, 834 N.W.2d 715 (Minn. 2013)
I am unable to recall the reason for recusal on this case.

Cummings v. Kelly Services and Indem. Co., 835 N.W.2d 472 (Minn. 2013)
I recused because one of the attorneys is a close family friend.

State v. Irby, 848 N.W.2d 515 (Minn. 2014)
State v. Melchert-Dinkel, 844 N.W.2d 13 (Minn. 2014)
State v. Brooks, 838 N.W.2d 563 (Minn. 2013)

In re: Application of Skyline Mats., Ltd., 835 N.W.2d 472 (Minn. 2013)

State v. Smith, 835 N.W.2d 1 (Minn. 2013)

Sipe v. STS Mfg., Inc., 834 N.W.2d 683 (Minn. 2013)

Dickhoff ex rel. Dickhoff v. Green, 836 N.W.2d 321 (Minn. 2013)

I recused on these cases because I served as a judge on each case at the Minnesota Court of Appeals. I similarly am not involved in consideration of petitions for review if I sat on the court of appeals panel.

I do not have any record of recusals in court of appeals or district court cases. In court of appeals cases, I sought a substitution whenever I determined that because of my relationship with a party or lawyer a person could reasonably question my ability to be fair and impartial. I do not recall recusing on any district court matters.

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

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

I have not held any public office other than judicial offices. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

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

I have not held any office or membership or played any role in any political party or election 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 1989 to 1991, I clerked for the Honorable Damon J. Keith on the United States Court of Appeals for the Sixth Circuit.

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

I have not practiced law alone.

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

1991 – 1995
Hogan & Hartson LLP (now Hogan Lovells LLP)
Columbia Square
555 Thirteenth Street NW
Washington, District of Columbia 20004
Associate Attorney

1995 – 2000
United States Attorney's Office
District of Minnesota
United States Courthouse
300 South Fourth Street
Suite 600
Minneapolis, Minnesota 55415
Assistant United States Attorney

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

I have never served as a mediator or arbitrator 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 1991 to 1995 my practice was entirely civil. From 1995 to 2000 my practice consisted entirely of representing the United States in criminal matters.

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

At Hogan & Hartson, I was an associate in the education and litigation practice groups, where I primarily represented school districts across the nation seeking to enhance educational opportunities for public school

students. As an Assistant United States Attorney, I represented the United States in complex economic fraud cases and violent crime cases in the United States district court and the United States Court of Appeals for the Eighth Circuit.

- 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 consisted entirely of litigation and required me to appear in court frequently. At Hogan & Hartson my practice was 100% civil. At the United States Attorney's Office my practice was 100% criminal.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|------|
| 1. federal courts: | 100% |
| 2. state courts of record: | 0% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 50% |
| 2. criminal proceedings: | 50% |

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

To the best of my recollection, I tried seven jury trials and three bench trials. Several of my criminal trials involved multiple defendants engaging in complex frauds committed against the United States Department of Agriculture, the United States Department of Housing and Urban Development, and the United States Bankruptcy Court. The trials involving complex frauds generally lasted between two to four weeks and involved scores of prosecution and defense witnesses. I served as the sole counsel or as co-counsel on a two-lawyer team representing the United States in these complex cases. I also have been the sole counsel in several less complex jury trials ranging in length from three days to one and one-half weeks. These cases involved a bank robbery, possession with intent to distribute crack cocaine and unlawful possession of firearms by a felon. I also prosecuted an unlawful firearms possession case that resulted in a bench trial.

In private practice, I successfully co-tried two multi-week civil damages bench trials awarding desegregation remedies in a Kansas City, Missouri desegregation case. These cases involved direct and cross-examination of numerous lay and expert witnesses.

- i. What percentage of these trials were:
 - 1. jury: 70%
 - 2. non-jury: 30%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

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

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Starks*, 193 F.R.D. 624 (D. Minn. 2000).

In 2000, I represented the United States at a suppression hearing in the prosecution of Mr. Starks for unlawful possession of a firearm by a convicted felon before the Honorable Richard Kyle. The defendant moved to suppress the seized weapon and certain statements that he made to law enforcement officers. The district court denied the motion, concluding that the defendant failed to meet his burden of demonstrating that his constitutional rights were violated. To the best of my knowledge, the defendant pled guilty following the denial of the suppression motion. I have found no record of and have been unable to recall the defendant's sentence. A records search reveals that the case has no subsequent history.

Co-Counsel:

Paul Murphy

Current business contact information unavailable.

Opposing Counsel:

Andrew H. Mohring

Scott Tilsen

Federal Public Defender's Office

300 South Fourth Street #107
Minneapolis, Minnesota 55415
(612) 664-5858

2. *United States v. Mages*, Case No. 99-308 (D. Minn. 2000).

From 1999 to 2000, I represented the United States in grand jury proceedings, discovery and a multi-week jury trial before the Honorable David Doty. Defendants Mr. and Mrs. Mages were convicted of mail fraud, wire fraud, bankruptcy fraud, fraud against the United States Department of Agriculture and wetlands violations. Defendant J. Mages was acquitted. This prosecution was particularly complex because of the need for expert testimony to address physical evidence of crop cultivation history and the death of a key witness shortly before trial. A records search reveals no subsequent history.

Opposing Counsel:

Peter Wold
Wold Morrison Law
247 Third Avenue South
Minneapolis, Minnesota 55415
(612) 341-2525

John Brink
Brink & Gerds Law Office
331 Second Avenue South #110
Minneapolis, Minnesota 55401
(612) 371-0722

Paul Engh (solo practitioner)
Paul Engh Law Office
200 South Sixth Street
Minneapolis, Minnesota 55402
(612) 252-1100

William J. Mauzy
Law Offices of William J. Mauzy
510 North First Avenue
Suite 610
Minneapolis, Minnesota 55403
(612) 340-9108

3. *United States v. Taylor*, Case No. 97-CR-0000104 (D. Minn. 1997).

In 1997, I represented the United States in grand jury proceedings, trial preparation and settlement before the Honorable Michael Davis. Defendant Mr. Taylor pled guilty to sex abuse against a minor occurring in several states during an over-the-road trucking trip. This case involved complex discovery issues and the gathering and development of

evidence in a multi-state investigation.

Opposing Counsel:

Katherian D. Roe
Federal Public Defender's Office
107 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415
612-664-5864

4. *United States v. Horsman*, 114 F.3d 822 (8th Cir. 1997) (Hons. MacGill, Beam, Loken).

From approximately 1996 to 1997, I represented the United States in grand jury proceedings, discovery, and a jury trial before the Honorable John Tunheim, and in appellate proceedings. The defendant, a felon, was found in possession of a firearm and a cache of ammunition. The case resulted in a guilty verdict and the imposition of a 15-year mandatory minimum sentence. On appeal, I argued that a subsequent change in the law, requiring the court to allow the defendant to stipulate to the prior-conviction element of an offense, did not require reversal in this case. The Eighth Circuit agreed and affirmed the conviction and sentence.

Opposing Counsel:

Robert D. Richman (solo practitioner)
Robert D. Richman Law (formerly Federal Public Defender's Office)
P.O. Box 16643
Minneapolis, Minnesota 55416
(651) 278-4987

5. *United States v. Ulmer*, Case No. 96-CR-00164 (D. Minn. 1996).

In 1996, I represented the United States in grand jury proceedings, discovery and a jury trial before the Honorable James Rosenbaum. The defendant was charged with possession with intent to distribute more than one kilogram of cocaine. I directed an extensive investigation and pretrial discovery that produced visual recordings of the defendant conducting prior sales. This case also involved the cross-examination of several witnesses to disprove Ms. Ulmer's theory of defense, which centered on her physical incapacitation due to childbirth. The defendant was convicted and did not pursue an appeal.

Opposing Counsel:

Joseph S. Friedberg (solo practitioner)
Joseph S. Friedberg Chartered
701 Fourth Avenue South, Suite 300
Minneapolis, Minnesota 55415
(651) 447-6719

6. *United States v. Brekke*, Case Nos. 96-1089 & 96-1117, 97 F.3d 1043 (8th Cir. 1996) (reversing dismissal of indictment), 152 F.3d 1042 (8th Cir. 1998) (affirming sentence).

From 1995 to 1996, I represented the United States with co-counsel in extensive discovery and a multi-week jury trial before the Honorable David Doty. This case presented the challenge of translating a complex fraudulent scheme for lay-jurors. The district court dismissed the indictment after it ruled that an earlier settlement in a civil action in another federal court precluded criminal prosecution, but the Eighth Circuit reversed and remanded for reinstatement of the indictment and trial. Once the indictment was reinstated, the defendants were convicted of mail fraud, wire fraud and bank fraud relating to loans made for fraudulent business transactions and sentenced to 27 months' imprisonment. On appeal, defendants challenged the application of the sentencing guidelines and alleged that the joint representation agreement violated the Sixth Amendment. The sentence was upheld on appeal. I did not participate in the appeal.

Co-Counsel:

Lizabeth McKibben (retired)

Opposing Counsel:

Jonathan T. Garaas (solo practitioner)

Garaas Law Firm

DeMores Office Park

1314 23rd Street South

Fargo, North Dakota 58103

(701) 293-7211

7. *United States v. Field*, Case Nos. 96-1588 & 96-1589, 110 F.3d 592 (8th Cir. 1997) (C. Field), 110 F.3d 587 (8th Cir. 1997) (R. Field).

From 1995 to 1996, I represented the United States with co-counsel in extensive discovery, investigation before the grand jury, and a multi-week jury trial before the Honorable David Doty. Defendants R. and C. Field were convicted of mail fraud and conspiracy relating to a fraudulent scheme to obtain federal small business administration funds. The defendants then pled guilty to a second count of conspiracy and waived their right to appeal the guilty verdicts arising from the trial. The district court denied defendants' requests for a sentencing reduction based on their acceptance of responsibility and a downward departure based on economic hardship. R. Field was sentenced to 21 months of imprisonment and restitution. C. Field was sentenced to 23 months of imprisonment and restitution.

On appeal, R. Field argued that the district court erred in finding that he did not play a mitigating role or accept responsibility, and he challenged the denial of his request for a downward departure. C. Field argued that the district court erred in denying his request for sentence reduction. The Eighth Circuit affirmed both sentences. I did not participate in either appeal.

Co-Counsel:

Lizabeth McKibben (retired)

Opposing Counsel:

For Defendant C. Field:

Daniel Scott (formerly at the Federal Public Defender's Office)
Kelley, Wolter & Scott, P.A.
Centre Village Offices
431 South Seventh Street
Suite 2530
Minneapolis, Minnesota 55415
(612) 200-2866

For Defendant R. Field:

Paul Christopher Engh (solo practitioner)
Engh Law Office
220 South Sixth Street
Suite 215
Minneapolis, Minnesota 55402
(612) 252-1100

8. *United States v. Abrams*, 108 F.3d 953 (8th Cir. 1997) (Hons. Fagg, Heaney, Hansen).

From 1995 to 1996, I represented the United States in grand jury proceedings, discovery, and a jury trial before the Honorable Michael Davis in the United States District Court for the District of Minnesota, and in appellate proceedings. The case involved a bank robbery and numerous alibi witnesses. Mr. Abrams was convicted of one count of bank robbery and sentenced to 121 months' imprisonment. On appeal, Mr. Abrams argued that the district court erred in allowing testimony concerning prior acts of domestic abuse that had been preliminarily excluded. The United States Court of Appeals for the Eighth Circuit concluded that the district court did not commit plain error by failing to issue a sua sponte limiting instruction or sua sponte granting a mistrial, and affirmed the conviction.

Opposing Counsel:

Andrea George
Federal Defenders of Eastern Washington and Idaho
Ten North Post Street
Suite 700
Spokane, Washington 99201
(509) 624-7606

The Honorable Mark Wernick (formerly at Wernick Law Office)

Hennepin County Courthouse
300 South Sixth Street
Minneapolis, Minnesota 55487
(612) 348-2040

9. *Blalock v. School Board of Lee County*, Case No. 64-168-CIV-FtM-23 (M.D. Fla. July 12, 1999).

As an associate at Hogan & Hartson, I represented the School Board of Lee County, Florida from 1992 to 1995 in student assignment and educational components of the court-ordered desegregation remedy in efforts to obtain unitary status. I worked on all aspects of discovery, including taking and defending depositions; settlement negotiations; and drafting a proposed court order for joint submission by the parties. The case was subsequently resolved in a successful settlement of issues relating to the desegregation remedy. The Honorable Steven Merryday oversaw this proceeding.

Co-Counsel:

Maree Sneed
Hogan Lovells
Columbia Square
555 Thirteenth Street NW
Washington, District of Columbia 20004
(202) 637-5600

Opposing Counsel:

Sandy Bieber
Current business contact information unavailable.

Norman Chachkin
NAACP Legal Defense and Educational Fund
40 Rector Street, Fifth Floor
New York, New York 10006
(212) 965-2200

10. *Jenkins v. Missouri*, 949 F.2d 1052 (8th Cir. 1991) & 965 F.2d 654 (8th Cir. 1992) (Hons. McMillian, Heaney, Gibson).

As an associate at Hogan & Hartson, I represented the Kansas City, Missouri School District from 1991 to 1995 in the remedies phase of a desegregation case before the Honorable Russell Clark and before the United States Court of Appeals for the Eighth Circuit, addressing teacher compensation, quality educational programming, and student assignment. I worked on all aspects of discovery, including taking and defending depositions; engaging in direct- and cross-examination in contested hearings; participating in settlement negotiations; and drafting a proposed court order for joint submission by the parties. We successfully defended components of the court-ordered desegregation plan including salary and quality education components of the remedy.

After I left Hogan & Hartson, the United States Supreme Court decided *Missouri v. Jenkins*, 515 U.S. 70 (1995), where it held that the district court had exceeded its remedial authority with respect to certain remedies.

Co-Counsel:

Allen Snyder (retired)

Patricia Brannan
Hogan Lovells
Columbia Square
555 Thirteenth Street NW
Washington, District of Columbia 20004
(202) 637-5600

Kevin Lannigan
Current business contact information unavailable.

William Dittmeier (former Kansas City Missouri School District Counsel)
Current business contact information unavailable.

Co-Counsel (for defendant State):

Jay Nixon (former Missouri Attorney General)
Office of Governor Jay Nixon
P.O. Box 720
Jefferson City, Missouri 65102
(573) 751-3222

Michael Fields (former Assistant Attorney General State of Missouri)
Current business contact information unavailable.

Bart Matanic (former Assistant Attorney General, State of Missouri)
Department of Labor and Industrial Relations – Division of Employment Security
421 East Dunklin Street
P.O. Box 59
Jefferson City, Missouri 65104
(573) 522-9972

Opposing Counsel:

Arthur Benson
Benson and Associates
4006 Central Street
Kansas City, Missouri 64111
(816) 531-6565

18. **Legal Activities:** Describe the most significant legal activities you have pursued,

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

I was a member of the Education Practice Group and the Litigation Practice Group at Hogan & Hartson. There I chiefly represented school districts throughout the United States that were implementing court-ordered or voluntary school desegregation and quality education plans to ensure equal educational opportunities for all of the students of the school district. In addition to the cases presented in Question 17, I counseled the Dayton Public School District, the Indianapolis Public School District, and the Pinellas County (Florida) School District regarding compliance issues relating to their respective court-ordered desegregation and student assignment obligations.

I have never performed lobbying activities for any client or organization.

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

In Spring 2008, I taught Ethical Leadership in Litigation at the University of Saint Thomas School of Law. This course helped students to explore their role as ethical advocates, counselors, and servant leaders both in litigation and as members of the legal profession. The course examined the lawyer's role as a servant leader and counselor within the attorney-client relationship in the context of litigation, and servant leadership in the context of the litigation department or group in a law firm or law department. The course also looked at servant leadership and the skills of counseling, negotiation, trial advocacy, and alternative dispute resolution in the concrete context of different areas of the civil and criminal litigation process. Finally, the course examined the call to be servant leaders within our chosen profession. Syllabus supplied.

In Spring 2011, I taught Ethical Leadership in Social Justice at the University of Saint Thomas School of Law. This course helped students to explore their role as ethical advocates, counselors, and servant leaders both in pursuing social justice and as members of the legal profession. The course looked at servant leadership and the skills of counseling, negotiation, trial advocacy, and alternative dispute resolution in the concrete context of different social justice topics or areas. Finally, the class examined the call to be servant leaders within our chosen profession. Syllabus supplied.

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

customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Statement of Net Worth.

24. **Potential Conflicts of Interest:**

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

I recuse on cases in which I was involved as a judge in the Second Judicial District or on the Minnesota Court of Appeals. My husband, Daniel Schmechel, is Chief Financial Officer at Ecolab. I would recuse in any matter involving Ecolab. My family priest was the vicar general of the Archdiocese of Saint Paul and Minneapolis from 1991 to 2008. I would recuse in any matter involving the archdiocese during the time he served in this capacity. I would also recuse from any matters involving the nonprofit boards on which either my husband or I sit. These boards are the Saint Paul Academy and Summit School, Saint Paul Chamber Orchestra, and Twin Cities United Way.

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

In order to avoid any potential conflict of interest, I would consult the Code of Conduct for United States Judges, any relevant statutes and guidance including 28

U.S.C. § 455, other judges, and any person designated by the court or judicial organizations to determine whether a given situation constituted a conflict of interest. Based on such sources, I would compile a comprehensive list of matters, clients or other persons so that I could readily identify potential conflicts of interest, and I would rely on my experience as a justice and judge with the Minnesota judicial branch to ensure that I would recuse in matters 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.

I have devoted approximately 50 hours annually to pro bono legal activities. Because of the limitations on law practice, my pro bono work has consisted mainly of public speaking and judicial outreach.

I routinely meet with elementary, middle school and high school classes to discuss the role of courts in a constitutional democracy. I am an informal mentor to a high school senior from greater Minnesota whom I met at a judicial outreach program. She will be the first in her family to attend college. I have accompanied her on college visits and advised her on seeking scholarships to help defray the cost of attending college. I also encourage and help celebrate pro bono activities throughout the legal community. For example, I recently spoke at the Target Corporation's "Here for Good: Trends and Best Practices in Corporate Pro Bono" panel, the Minnesota State Bar Association's Pro Bono Week CLE event, and the Tubman Volunteer Attorney Celebration Luncheon to celebrate the pro bono activities of Minnesota lawyers and highlight the significant responsibility that each lawyer plays in ensuring access to justice.

I also serve as the Minnesota Supreme Court liaison to the Legal Services Advisory Committee and provide guidance in the development and expansion of access to justice programs statewide. I speak to civic organizations and community groups about the role of the judiciary and the importance of the rule of law in our democracy. I also speak with law students and attorneys about the importance of every lawyer's participation in community service and pro bono work. In addition, I serve as the co-chair of the Minnesota Appellate Courts Day of Service at the Dorothy Day Center, a local shelter for homeless Minnesotans.

Prior to entering government service, I represented pro bono clients in an employment discrimination lawsuit and a political asylum immigration matter.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and

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

Senator Klobuchar and Senator Franken established a judicial selection committee to assist them in making a recommendation for nomination. I submitted a letter of interest and my judicial resume, the names of three references who were available to discuss my qualifications, and three letters of recommendation. On February 4, 2015, I interviewed with the judicial selection committee in Minneapolis, Minnesota. I learned from the Senators that I was recommended by the judicial selection committee and that the Senators would be recommending me for nomination. Since February 7, 2015, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice.

On April 9, 2015, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On April 15, 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.

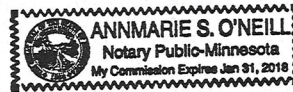
AFFIDAVIT

I, Wilhelmina M. Wright, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

April 19, 2015
(DATE)

Wilhelmina M. Wright
(NAME)

Annmarie S. O'Neill
(NOTARY)



UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Paula Xinis
Paula Xinis-Fishman
Panagiota Xinis

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

United States District Judge for the District of Maryland

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

Office: Murphy, Falcon & Murphy
One South Street, Suite 2300
Baltimore, Maryland 21202

Residence: University Park, Maryland

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

1968; Mineola, 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.

1994 – 1997, Yale Law School; J.D., 1997

Fall Semester 1992, Yale University; Ph.D in American History, no degree

1989 – 1991, University of Virginia; B.A. (highest distinction), 1991

1987 – 1989, Vassar College; no degree

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation

from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2011 – Present
Murphy, Falcon & Murphy
One South Street, Suite 2300
Baltimore, Maryland 21202
Partner (June 2013 – Present)
Senior Trial Attorney (2011 – 2013)

2005 – 2011
Office of Police Complaints for the District of Columbia
1400 I Street, NW
Suite 700
Washington, D.C. 20005
Complaint Examiner

1998 – 2011
Office of the Federal Public Defender for the District of Maryland
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770
Assistant Federal Public Defender (1998 – 2011)
Director of Training (2006 – 2011)
Research and Writing Staff-Attorney Supervisor (2008 – 2011)

Spring Semester 2000
University of Maryland School of Law
500 West Baltimore Street
Baltimore, Maryland 21201
Adjunct Professor

1997 – 1998
Honorable Diana Gribbon Motz
United States Court of Appeals for the Fourth Circuit
101 West Lombard Street
Baltimore, Maryland 21201
Judicial Law Clerk

Summer 1996
Covington & Burling, LLP
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004
Summer Associate

Fall 1995
The Honorable José Cabranes
United States Court of Appeals for the Second Circuit

141 Church Street
New Haven, Connecticut 06519
Law Clerk-Intern

Summer 1995
The Honorable Alan Nevas (retired)
United States District Court for the District of Connecticut
915 Lafayette Boulevard
Bridgeport, Connecticut 06604
Law Clerk-Intern

1993 – 1994
The Long Ridge School
478 Erskine Road
Stamford, Connecticut 06903
Director of Development

October 1992 – February 1993
Roberts, Guillard, Kambas, Cousins & Sweigart
1055 Washington Boulevard
Stamford, Connecticut 06901
Legal Secretary

1991 – 1992
Ash Lawn-Highland, House Museum of President James Monroe
2050 James Monroe Parkway
Charlottesville, Virginia 22902
Researcher/Assistant to Executive Director

Other Affiliations (uncompensated)

2005 – Present
Federal Bar Association
Maryland Chapter
No physical address
Baltimore, Maryland 21201
Treasurer (2011 – Present)
Board of Governors (2005 – Present)

1994 – 1995
The Long Ridge School
478 Erskine Road
Stamford, Connecticut 06903
Board of Directors

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including

dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for Selective Service.

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

New Jersey Law Journal, Personal Injury Hall of Fame, Public Liability section finalist, for *Black v. Lindenwold Township*, No. 11-CV-02283-JEI (D.N.J. 2014)

Maryland State Bar Association Leadership Academy (2001 – 2002)

Phi Beta Kappa (1991)

University of Virginia Washington Debate Society Leadership Award (1991)

Winner, University of Virginia Women's Studies Undergraduate Essay Contest awarded for graduating thesis (1991)

Edward and Barbara Younger Award in History awarded to the most distinguished graduating History Major (1991)

Recipient of Academic Scholarship to University of Virginia (1989 – 1991)

Member of Honors History Program at the University of Virginia (1989 – 1991)

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

American Society of Legal Advocates (2013 – Present)

Federal Bar Association Maryland Chapter Board of Governors (2005 – Present)

Treasurer (2011 – Present)

Appellate Practice Seminar Committee (January 2015 – Present)

Judicial Ethics Committee (January 2014 – Present)

Ad Hoc Committee on Tax Exempt Status (August 2013 – Present)

Open Doors Program Participant (three events, 2008 – Present)

Program Committee, Production of "The Full Truth: the Life of Supreme Court Justice, Thurgood Marshall" (August 2013 – Present)

Program Committee, Federal Bureau of Prisons Seminar (January – March 2012)

Committee on Charity Golf Tournament (2010 – 2012)

Program Committee, "Persuasive Appellate Advocacy: What Works and What

Doesn't" (January – April 2011)
 Program Committee, "Federal Criminal Law 101: Bail to Jail" Seminar
 (January – April 2010)
 Chair, Margaret Garner Production Committee, "Garner vs. ... The Trial of a
 Fugitive Slave Mother" (August 2007 – February 2008)
 Chair, Program Committee for Ceremonies Honoring CJA and Pro-Bono
 Attorneys (June – September 2005)

Maryland Association of Justice (2012 – Present)

Maryland Bar Foundation (2007 – Present)

Maryland State Bar Association
 Lawyers' Assistance Program Committee (2003 – 2007)
 Leadership Academy Fellows Program (2001 – 2002)

Merit Selection Committee for United States Magistrate Judges, United States District
 Court for the District of Maryland (2003 – 2007)
 Panel for Reappointing Susan K. Gauvey (October 2003 – February 2004)
 Panel for Selecting Full-Time Magistrate Judge (December 2003 – February
 2004)
 Panel for Reappointing Paul W. Grimm (October 2004 – January 2005)
 Panel for Reappointing Charles B. Day (October 2004 – January 2005)
 Panel for Reappointing James K. Bredar (May 2005 – July 2005)
 Panel for Reappointing Beth P. Gesner (November 2006 – February 2007)

National Association of Criminal Defense Lawyers (2012 – Present)

United States Court of Appeals for the Fourth Circuit Judicial Conference, Permanent
 Member (2009 – Present)

Wednesday Law Club, Baltimore, Maryland (December 2013 – Present)

10. **Bar and Court Admission:**

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

State of Maryland, 1998

There has been no lapse in membership.

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

Maryland Court of Appeals, 1998
 United States Court of Appeals for the Fourth Circuit, 1998
 United States District Court for the District of Maryland, 1998

There have been no lapses in membership.

11. Memberships:

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

The Long Ridge School Board of Directors (1994 – 1995)

The Dance Competition Interest Group, Steering Committee (Fall 2006)

House of Ruth Mentorship Program (2005 – 2007)

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

To the best of my knowledge, none of the organizations listed above 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.

Contributing Editor, *Monroe USA*, Ash-Lawn Highland, College of William and Mary, 1992. Copy supplied.

Chief Editor & Researcher, *Monroe On...*, Ash-Lawn Highland, 1992. Copy supplied.

"Democracy: Tyranny of the Mind?," Thoughtlines, Vol. 16, no. 1 (Spring 1990). Copy supplied.

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

None.

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

None.

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

Regarding the presentations described below, I have searched my personal files, the Internet and contacted the organizations sponsoring the events. There may, however, be some events that I have inadvertently omitted.

August 8 – 10, 2013: Plenary Speaker, "Electronic Surveillance and the Fourth Amendment: An Overview of Electronic Surveillance Techniques, Statutes, Possible Areas for Litigation, and Issues to Raise in Your Case," Administrative Office of the United States Courts, Defender Services Training Branch, National Multi-Track Seminars, Buffalo, New York. PowerPoint supplied.

November 8, 2012: Panelist, Federal Judicial Clerkships, Class on Government Service, University of Maryland School of Law, Baltimore, Maryland. Along with my co-panelists, I addressed the benefits of clerking for a judge and answered questions about public service. I have no notes, transcript or recording from this

panel. The address for the University of Maryland School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

June 18, 2012: Speaker, "Effective Sentencing Mitigation, Winning Strategies," Office of the Federal Public Defender and Criminal Justice Act Panel Training, Office of the Federal Public Defender for the Southern District of New York, New York, New York. PowerPoint and handout supplied.

March 30, 2012: Master of Ceremonies and Presenter, "Tips for the Practitioner Whose Client is Facing Prison in the Federal Bureau of Prisons System," Federal Bar Association, Baltimore, Maryland. PowerPoint supplied.

April 14, 2011: Master of Ceremonies and Moderator, "Persuasive Appellate Advocacy: What Works and What Doesn't," Federal Bar Association Maryland Chapter, Greenbelt, Maryland. I introduced the speakers for this seminar and moderated the panel of sitting judges from the United States Court of Appeals for the Fourth Circuit. I have no notes, transcript or recording for this presentation. The Federal Bar Association Maryland Chapter has no physical address.

February 11, 2011: Plenary Speaker, "Fundamentals of Federal Criminal Defense Training: Mitigation Experts/Tools/Tricks/Fireworks," Administrative Office of the United States Courts, Defender Services Training Branch, San Antonio, Texas. I presented on using a mitigation expert to assist with sentencing hearings in federal court. I have no notes, transcript or recording for this presentation. The address of the Administrative Office of the United States Courts, Defender Services Training Branch is One Columbus Circle, NE, Washington, D.C. 20544.

January 29, 2011: Speaker, "Sentencing Mitigation – Tools, Experts & Strategies," Criminal Justice Act Panel Training Program, Office of the Federal Public Defender for the District of New Jersey, Camden Division, Iselin, New Jersey. I presented on federal criminal sentencing strategies in the wake of *Booker v. United States*, 543 U.S. 220 (2005). I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Public Defender for the District of New Jersey, Camden Division, is 800-840 Cooper Street, Suite 350, Camden, New Jersey 08102.

November 17 – 18, 2010: Plenary Speaker and Break-out Instructor, "Sentencing Advocacy Workshop: Breaking Out of the Guideline Box," National Sentencing Advocacy Workshops, Administrative Office of the United States Courts, Defender Services Training Branch, San Juan, Puerto Rico. I presented at plenary and breakout sessions on creative approaches to writing and oral presentation of sentencing mitigation. I have no notes, transcript or recording for this presentation. The address of the Administrative Office of the United States Courts, Defender Services Training Branch is One Columbus Circle, NE, Washington, D.C. 20544.

June 17 – 19, 2010: Speaker, “Mitigation Experts/Tools/Tricks/Fireworks,” National Winning Strategies Seminars, Administrative Office of the United States Courts, Defender Services Training Branch, Chicago, Illinois. PowerPoint supplied.

April 23, 2010: Presenter, “Federal Criminal Law 101: Bail to Jail,” Federal Bar Association Maryland Chapter, Baltimore, Maryland. PowerPoint supplied.

April 7, 2010: Speaker, “Effective Use of Your Investigator at Sentencing,” National Defense Investigator Association, Las Vegas, Nevada. The presentation was on using investigative resources wisely and efficiently in sentencing. I have no notes, transcript or recording for this presentation. The address for the National Defense Investigator Association is 460 Smith Street, Suite K, Middletown, Connecticut 06457.

February 4 – 6, 2010: Plenary Speaker, “Fundamentals of Federal Criminal Defense: Practical Tips if Your Client Faces Incarceration in a Federal Prison,” Administrative Office of the United States Courts, Defender Services Training Branch, San Francisco, California. The presentation was on practical information about the Bureau of Prisons system to aid lawyers who are new to federal criminal defense. I have no notes, transcript or recording for this presentation. The address of the Administrative Office of the United States Courts, Defender Services Training Branch is One Columbus Circle, NE, Washington, D.C. 20544.

August 20 – 22, 2009: Speaker, “Fundamentals of Federal Criminal Defense Training: Practical Tips if Your Client Faces Incarceration in a Federal Prison,” Administrative Office of the United States Courts, Defender Services Training Branch, Chicago, Illinois. The presentation was on practical information about the Bureau of Prisons system to aid lawyers who are new to federal criminal defense. I have no notes, transcript or recording for this presentation. The address of the Administrative Office of the United States Courts, Defender Services Training Branch is One Columbus Circle, NE, Washington, D.C. 20544.

October 9 – 10, 2008: Speaker, “Federal Criminal Practice Seminar: Sentencing Mitigation,” Office of the Federal Public Defender for the Eastern District of North Carolina, Wrightsville Beach, North Carolina. I presented on federal criminal sentencing strategies in the wake of *Booker v. United States*, 543 U.S. 220 (2005). I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Defender, Eastern District of North Carolina is 150 Fayetteville Street, Suite 450, Raleigh, North Carolina 27601.

August 6 – 8, 2008: Speaker, “Deconstructing Pornography and Strategizing Sex Cases,” Administrative Office of the United States Courts National Seminar, Federal Judicial Center, Atlanta, Georgia. I presented on recent statutory and sentencing guideline amendments pertaining to federal sex offenses. I have no

notes, transcript or recording for this presentation. The address for the Federal Judicial Center is One Columbus Circle, NE, Washington, D.C. 20544.

May 2, 2008: Speaker, "Using a Forensic Evaluation in Child Pornography Cases," Office of the Federal Public Defender for the District of Maryland, Baltimore, Maryland. I presented on using a forensic psychologist to assess clients charged with federal child pornography offenses. I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Public Defender for the District of Maryland is 100 South Charles Street, Ninth Floor, Baltimore, Maryland 21201.

April 11 – 12, 2008: Plenary Speaker, "Effective Sentencing Mitigation," Office of the Federal Public Defender for the Eastern District of Virginia, Charlottesville, Virginia. I presented on federal criminal sentencing strategies in the wake of *Booker v. United States*, 543 U.S. 220 (2005). I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Public Defender for the Eastern District of Virginia is 1650 King Street, Suite 500, Alexandria, Virginia 22314.

April 9, 2008: Speaker, "Sentencing Mitigation and Investigation," National Defense Investigator Association, Las Vegas, Nevada. I presented on effectively using investigative resources to prepare for federal sentencing hearings. I have no notes, transcript or recording for this presentation. The address for the National Defense Investigator Association is 460 Smith Street, Suite K, Middletown, Connecticut 06457.

February 14 – 16, 2008: Speaker, "Using a Mitigation Specialist and Presenting a Comprehensive Case for Mitigation at Sentencing: A Discussion of the Development of Mitigation Evidence," Administrative Office of the United States Courts, Defender Services Training Branch, New Orleans, Louisiana. I presented on using a mitigation specialist to prepare for effective federal sentencing hearings. I have no notes, transcript or recording for this presentation. The address of the Administrative Office of the United States Courts, Defender Services Training Branch is One Columbus Circle, NE, Washington, D.C. 20544.

February 1, 2008: Speaker, Production of "Garner vs. ... The Trial of a Fugitive Slave Mother," Federal Bar Association, Baltimore, Maryland. Video supplied.

July 12 – 14, 2007: Speaker, "Using a Mitigation Specialist and Presenting a Comprehensive Case for Mitigation at Sentencing: a Discussion of the Development of Mitigation Evidence," Administrative Office of the United States Courts, Defender Services Training Branch, St. Croix, United States Virgin Islands. PowerPoint supplied.

June 14 – 16, 2007: Speaker, "The Use of Prior Convictions in Federal Court," Annual Training, Office of the Maryland State Public Defender, Potomac,

Maryland. PowerPoint supplied.

April 19 – 20, 2007: Speaker, Annual Training, National Defense Investigator Association, Myrtle Beach, South Carolina. The presentation was on the effective use on an investigator in gathering mitigation evidence to be used in federal sentencing hearings. I have no notes, transcript or recording for this presentation. The address for the National Defense Investigator Association is 460 Smith Street, Suite K, Middletown, Connecticut 06457.

March 23, 2007: Speaker, “Introduction and Welcome – Challenges to Criminal History Training Session,” Office of the Federal Public Defender for the District of Maryland. I presented on challenges to the United States Sentencing Guidelines’ criminal history calculations. I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Public Defender for the District of Maryland is 100 South Charles Street, Ninth Floor, Baltimore, Maryland 21201.

February 16, 2007: Speaker, “Win-Win: How to Get into Court and Give Back,” Federal Bar Association Maryland Chapter, Baltimore, Maryland. I presented on serving as a Criminal Justice Act Panel Attorney and introduced speakers. I have no notes, transcript or recording for this presentation. The Federal Bar Association Maryland Chapter has no physical address.

February 8 – 10, 2007: Plenary Speaker, “Using a Mitigation Specialist and Presenting a Comprehensive Case for Mitigation at Sentencing: A Discussion of the Development of Mitigation Evidence,” Administrative Office of the United States Courts, Office of Defender Services Training Branch, Albuquerque, New Mexico. PowerPoint supplied.

August 11, 2006: Speaker, “The Mitigation Case,” Administrative Office of the United States Courts, Defender Services Training Branch, Savannah, Georgia. I presented on sentencing mitigation in the wake of *Booker v. United States*, 543 U.S. 220 (2005). I have no notes, transcript or recording for this presentation. The address for the Administrative Office of the United States Courts, Defender Services Training Branch is One Columbus Circle, NE, Washington, D.C. 20544.

June 8 – 10, 2006: Speaker, “Using a Mitigation Specialist and Presenting a Comprehensive Case for Mitigation at Sentencing: A Discussion of the Development of Mitigation Evidence,” Administrative Office of the United States Courts, Office of Defender Services Training Branch, San Diego, California. PowerPoint supplied.

March 2 – 4, 2006: Speaker, “Sentencing Advocacy Workshop: Thinking Outside the Guideline Box,” Administrative Office of the United States Courts, Office of Defender Services Training Branch, Miami Beach, Florida. I presented in a plenary session on sentencing advocacy and facilitated small group breakout

sessions on writing and presenting effective sentencing mitigation. I have no notes, transcript or recording for this presentation. The address for the Administrative Office of the United States Courts, Defender Services Training Branch is One Columbus Circle, NE, Washington, D.C. 20544.

2006: Speaker, "Sentencing Mitigation," National Defense Investigator Association, Washington, D.C. PowerPoint supplied.

October 21 – 22, 2005: Speaker, "Sentencing Mitigation," Administrative Office of the United States Courts, Defender Services Training Branch, Philadelphia, Pennsylvania. PowerPoint supplied.

February 11, 2005: Speaker, "Preparing & Arguing a § 3553(a) Sentencing," Office of the Federal Public Defender for the District of Maryland, Baltimore, Maryland. I presented on the factors that federal courts must consider pursuant to the federal sentencing statutes. I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Public Defender for the District of Maryland is 100 South Charles Street, Ninth Floor, Baltimore, Maryland 21201.

2005: Speaker, Ceremony Honoring Criminal Justice Act Panel Attorneys and Pro-Bono Attorneys, Federal Bar Association Maryland Chapter, Baltimore, Maryland. I gave an extemporaneous introduction for the keynote speaker, Steven Ellis. I have no notes, transcript or recording for this presentation. The Federal Bar Association Maryland Chapter has no physical address.

November 19, 2004: Speaker, "Sentencing Mitigation," Office of the Federal Public Defender for the District of Maryland, Greenbelt, Maryland. I presented on using effective mitigation evidence at sentencing. I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Public Defender for the District of Maryland is 100 South Charles Street, Ninth Floor, Baltimore, Maryland 21201.

August 6, 2004: Speaker, "Practical Application: Indictment Issues/Criminal History," Office of the Federal Public Defender for the District of Maryland, Baltimore, Maryland. I presented on the indictment requirements necessary to trigger federal mandatory minimum sentences and challenges to criminal history calculations under the United States Sentencing Guidelines. I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Public Defender for the District of Maryland is 100 South Charles Street, Ninth Floor, Baltimore, Maryland 21201.

November 14, 2003: Speaker, "Using Technology in Your Practice," Office of the Federal Public Defender for the District of Maryland, Greenbelt, Maryland. I presented on using document database software for large document discovery cases. I have no notes, transcript or recording for this presentation. The address

for the Office of the Federal Public Defender for the District of Maryland is 100 South Charles Street, Ninth Floor, Baltimore, Maryland 21201.

November 8, 2002: Panel attendee, "Disparity in Sentencing – Race and Gender," Federal Sentencing Guidelines Symposium, Yale Law School, New Haven, Connecticut. I was not a panelist, but provided a brief comment on the Bail Reform Act as an attendee of this panel. I have no notes, transcript or recording, but press coverage is supplied. The address for Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

November 1, 2002: Speaker, "Hot Topics in Case Law and Sentencing for the Federal Criminal Practitioners: Amendments to Fraud Guidelines," and "Investigating the Investigator," Office of the Federal Public Defender for the District of Maryland, Greenbelt, Maryland. I presented on substantive amendments to the United States Sentencing Guideline manual related to fraud offenses and novel techniques for investigating police officers. I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Public Defender for the District of Maryland is 100 South Charles Street, Ninth Floor, Baltimore, Maryland 21201.

May 2002: Speaker, "Litigating Detention Hearings," Office of the Federal Public Defender for the District of Maryland, Baltimore, Maryland. The presentation was on effective trial and technology techniques applied to detention hearings. I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Public Defender for the District of Maryland is 100 South Charles Street, Ninth Floor, Baltimore, Maryland 21201.

March 5 – 6, 2002: Speaker, "Selected 2001 Amendments to the Sentencing Guidelines," Office of the Federal Public Defender for the Western District of Pennsylvania, Williamsport and Harrisburg, Pennsylvania. I presented on the recent, most relevant amendments to the United States Sentencing Guidelines. I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Public Defender for the Western District of Pennsylvania is 100 Chestnut Street, Suite 306, Harrisburg, Pennsylvania 17101.

May 11, 2001: Speaker, "Hot Topics in Case Law and Sentencing for the Federal Criminal Practitioners," Office of the Federal Public Defender for the District of Maryland, Baltimore, Maryland. This presentation surveyed recent major federal criminal cases decided in the United States Court of Appeals for the Fourth Circuit and the United States Supreme Court. I have no notes, transcript or recording for this presentation. The address for the Office of the Federal Public Defender for the District of Maryland is 100 South Charles Street, Ninth Floor, Baltimore, Maryland 21201.

- 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.

Dan Morse, *Montgomery County Murder Trial Uses Rare Defense: My Girlfriend Did It*, The Washington Post, March 8, 2015. Copy supplied.

Charges Dropped Against One Office in Animal Cruelty Case, WBAL T.V., January 15, 2015. Copy supplied.

Justin Fenton, *Charges Dropped Against One Officer in Dog Killing*, The Baltimore Sun, January 14, 2015. Copy supplied.

Barbara Haddock Taylory, *Glimpsed at Work*, The Baltimore Sun, December 21, 2011. Copy supplied.

Artworks this Week, Maryland Public Television, January 30, 2008. Video supplied.

Robert F. Patrick, *Supreme Court Ruling Has Not Been the Savior Drug Defendants Hoped For*, Capital News Service, April 20, 2001. Copy supplied.

Dan Mangan, *Not Just Playing Around: Parents Get Together to Help School Build a New Place for Kids*, The Stamford Advocate, September 13, 1993. Copy supplied.

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

In 2005, I was appointed by the Director of the Office of Police Complaints for the District of Columbia to serve as a Complaint Examiner responsible for determining whether Metropolitan Police Department officers had violated police orders and/or rules of conduct. Most cases did not involve complainants who were represented, and most cases were decided on the papers without the need for an evidentiary hearing. For each case I was assigned, I authored a written opinion, which was forwarded to the Metropolitan Police Department for appropriate disciplinary action, if warranted. To protect the identities of the complainants and officers, none of the available opinions contain names of the litigants or the counsel representing the litigants.

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

I have presided over six cases that have gone to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	100%
criminal proceedings:	0%

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

March 18, 2011, OPC Merits Determination in case No. 09 – 0533

May 20, 2010, OPC Merits Determination in case No. 06 – 0359

October 16, 2009, OPC Merits Determination in case No. 08 – 0123

June 17, 2007, OPC Merits Determination in case No. 05 – 0274

March 2, 2007, OPC Merits Determination in case No. 03 – 0202

February 23, 2006, OPC Merits Determination in case No. 05 – 0228

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

Because of the sensitive nature of these proceedings, the names of the litigants and their counsel are confidential.

1. OPC Merits Determination Case No. 09 – 0533 (March 18, 2011).
Opinion supplied.

The complainant alleged that the subject officer harassed him when the officer unlawfully arrested him for disorderly conduct because the complainant would not move along when directed to do so by the officer. Because the weight of the evidence provided from all parties demonstrated that the officer's arrest of the complainant was illegal, I found without a hearing that the officer's illegal arrest of the complainant constituted harassment in violation of the Metropolitan Police Department General Orders.

2. OPC Merits Determination Case No. 06 – 0359 (May 20, 2010).
Opinion supplied.

In this case, the complainant alleged that he and his friend had been

harassed and subjected to excessive force when the subject officer tried to physically prevent the complainant and friend from videotaping a police-citizen encounter. Neither the complainant nor his friend had violated any laws or had interfered in any way with the officer's duties. Nonetheless, the officer repeatedly slapped the video camera down and insisted that the taping cease. The officer also demanded the complainant and friend's identification without cause. Because the material events were captured on video, I ruled without a hearing that the officer had used excessive force when he physically slapped the camera away from his focus. Due to the officer's belligerent and hostile demeanor evident in the video recording, I found that his actions also constituted harassment.

3. QPC Merits Determination Case No. 08 – 0123 (October 16, 2009).
Opinion supplied.

The complainant, who had been in a car accident involving an off-duty Metropolitan Police Department officer, alleged that the officer engaged in language or conduct that was insulting, demeaning or humiliating to him and to a delivery truck driver, as well as harassed the complainant when the officer threatened to physically harm him and arrest him without probable cause. Because the officer, according to numerous disinterested witnesses, shouted and cursed profusely, I found that the officer had violated the Metropolitan Police Department General Orders prohibiting the use of insulting, demeaning or humiliating language. Further, because the same witnesses corroborated the complaint's allegations that the officer threatened to arrest him for no reason and to physically harm him, I found that the officer had harassed the complainant.

4. QPC Merits Determination Case No. 05 – 0274 (June 17, 2007).
Opinion supplied.

The complainant alleged that the subject officer harassed her and her two children when he forcibly pushed her children into separate holding areas in the Rhode Island Avenue Youth Division police station, and when he repeatedly called the complainant threatening to arrest her without probable cause. The complainant also alleged that throughout the police encounter, the officer used insulting, demeaning and humiliating language and conduct during the same conversation with her. Because the subject officer did not put forward any reliable evidence contesting the uncontroverted sworn statements of the complainant and several witnesses, I ruled without a hearing that the officer's conduct constituted harassment in violation of Metropolitan Police Department Orders.

5. QPC Merits Determination Case No. 03 – 0202 (March 2, 2007).
Opinion supplied.

The complainant alleged that the subject officer used excessive and unnecessary force when the officer entered the complainant's apartment uninvited, without a warrant, and at night while the complainant was not fully dressed, in response to a report that the complainant was playing loud music. I presided over a day-long evidentiary hearing where sworn testimony of several witnesses was taken and photographic evidence was introduced. I issued a written opinion finding that the officer used excessive force and harassed the complainant when he entered and stayed in the complainant's apartment for an extended period of time without a warrant or the complainant's consent to enter. Further, I found that the officer's continued presence in the complainant's home while she was not fully dressed provoked an unnecessary heated argument. Consequently, I also found that the officer engaged in insulting and demeaning conduct in violation of Metropolitan Police General Orders.

6. OPC Merits Determination Case No. 05 – 0228 (February 23, 2006).
Opinion supplied.

The complainant, a 15 year-old high school student, alleged that the Metropolitan Police officer assigned to her high school used profane, insulting or demeaning language in violation of the Metropolitan Police Department General Orders when he yelled "I'll break your f---ing arm," and other similar profanities during a scuffle while subduing the complainant. Because the officer did not dispute his having used profanity during the encounter, I found without a hearing that the officer used insulting, demeaning or humiliating language while arresting the complainant. I noted that although the officer had been engaged in a violent and charged situation, the General Orders do not permit the use of profanity under any circumstances or for any reason.

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

Because of the sensitive nature of these proceedings, the names of the litigants and their counsel are confidential.

1. OPC Merits Determination Case No. 09 – 0533 (March 18, 2011).
Opinion previously supplied in response to Question 13c.

2. OPC Merits Determination Case No. 06 – 0359 (May 20, 2010).
Opinion previously supplied in response to Question 13c.

3. OPC Merits Determination Case No. 08 – 0123 (October 16, 2009).
Opinion previously supplied in response to Question 13c.

4. *OPC Merits Determination Case No. 05 – 0274* (June 17, 2007).

Opinion previously supplied in response to Question 13c.

5. *OPC Merits Determination Case No. 03 – 0202* (March 2, 2007).

Opinion previously supplied in response to Question 13c.

6. *OPC Merits Determination Case No. 05 – 0228* (February 23, 2006).

Opinion previously supplied in response to Question 13c.

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

None.

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

None.

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

None of my opinions were published in a reporter. However, they are available online at www.policecomplaints.dc.gov.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

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

I have 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.

Other than acting as a Complaint Examiner for the District of Columbia Office of Police Complaints, I have never served in any judicial capacity. I reviewed the complaints on a case-by-case basis to ensure that there were no conflicts of interest.

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 had any unsuccessful candidacies for elected office nor unsuccessful nominations for appointed office.

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

I have never held an office in any political party, nor have I held a position, volunteered 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 August 1997 through August 1998, I was a judicial law clerk to the Honorable Diana Gribbon Motz, Circuit Judge for the United States Court of Appeals for the Fourth Circuit.

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

I have never practiced alone.

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

1998 – 2011
Office of the Federal Public Defender for the District of Maryland
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770
Assistant Federal Public Defender (1998 – 2011)
Director of Training (2006 – 2011)
Research and Writing Supervisor (2008 – 2011)

2011 – Present
Murphy, Falcon & Murphy
One South Street, Suite 2300
Baltimore, Maryland 21201
Senior Trial Attorney (2011 – 2013)
Partner (June 2013 – Present)

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

I have not served as a 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 1998 through 2011, I was an assistant federal public defender where I represented hundreds of clients charged with felonies in federal court. I have been lead or sole counsel on an array of complex federal criminal cases, including multi-defendant, fraud and death penalty-

eligible offenses. I assumed primary responsibility for several hundred felony cases at every stage of the proceedings, from initial appearances and detention hearings through direct appeals to the United States Court of Appeals for the Fourth Circuit and petitions for *certiorari* to the United States Supreme Court. From 2006 to 2011, I also was the director of training, and from 2008 to 2011, I assumed the additional responsibility of managing the office's research and writing attorneys who were responsible for cases on appeal and litigation support on complex trial issues.

In November 2011, I joined the law firm of Murphy, Falcon & Murphy as senior trial counsel and became partner in June 2013. Over the past three years, I have handled predominantly civil matters. I act as lead and co-chair trial attorney on complex federal civil rights violations, toxic torts, class actions and mass actions in Maryland and throughout the United States.

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

During my time at the Office of the Federal Public Defender, I represented indigent criminal defendants. I handled every kind of federal criminal case at every phase of the criminal process, from arrest or investigation through trial and appeal. In the beginning of my career, I concentrated primarily on misdemeanor and simple felonies. By my second year with the office, I was handling narcotics, firearms and fraud offenses. For a large part of my tenure, I concentrated on white collar financial crimes and other complex matters.

While at Murphy, Falcon & Murphy, I have represented individuals in multi-plaintiff complex litigation involving violations of federal civil rights, as well as state constitutional and common law torts. I have also represented smaller businesses and individuals in both the civil and criminal contexts related to their business activities.

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

100% of my practice has been in litigation. As an assistant federal public defender from 1998 to 2011, I appeared in the United States District Court for Maryland in the Greenbelt and Baltimore divisions three or four days a week. At Murphy, Falcon & Murphy, I appear in state and federal court on average two or three times per month.

- 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: 30%
- 2. criminal proceedings: 70%

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

I have tried approximately 16 cases to verdict or dismissal after contested hearings. I was either sole counsel or chief counsel in 14 trials and second chair in two trials.

i. What percentage of these trials were:

- 1. jury: 70%
- 2. non-jury: 30%

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

In my capacity as an assistant federal public defender and when I oversaw the research and writing attorneys, I wrote and/or edited petitions for *certiorari* on behalf of our clients. None of those petitions were granted. Below are those petitions for which I am counsel of record.

Myron Tereshchuk v. United States, 549 U.S. 1070 (2006). Petition supplied.
Under Seal v. United States, 541 U.S. 901 (2004). Petition supplied.
Robert Cole v. United States, 537 U.S. 871 (2002). Petition supplied.

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

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

- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- 1. *Harris v. Kennedy Krieger Institute, Inc.*, Case No. 24-C-12-006682, Circuit Court, Baltimore City

I shared lead counsel responsibilities representing the plaintiff Mr. Harris in a six-week civil trial involving Mr. Harris' participating as an infant and toddler in the Lead Paint Repair and Maintenance Study (R&M Study) conducted by the Kennedy Krieger Institute. The R&M study (the subject of a landmark Maryland Court of Appeals' case, *Grimes v. Kennedy Krieger Institute, Inc.* 366 Md. 29 (2001)) was designed to evaluate the effectiveness of partial lead paint repair in Baltimore City row homes through testing the blood lead levels of the infants and toddlers who lived in those homes. During Mr. Harris' participation in the R&M study, he consistently tested with an elevated blood-lead level that increased over time, resulting in permanent cognitive deficits. I argued roughly 40 motions *in limine*, and challenged the validity of lead-dust vacuum sampling methods during a day and a half *Frye-Reed* hearing where I examined and cross examined experts in industrial hygiene and biostatistics. At trial, I delivered the first half of opening statement and closing argument, examined several key witnesses to the plaintiff's case, and cross-examined both lay and expert witnesses during the defense case. After five days of deliberation, the jury returned with a defense verdict. The case is currently on appeal.

Dates of Representation: April 4, 2014 – Present

Judge: The Hon. Lawrence P. Fletcher-Hill

Co-counsel: Mary McNamara Koch
William H. Murphy, Jr.
Murphy, Falcon & Murphy
One South Street, Suite 2300
Baltimore, Maryland 21202
(410) 951-8765

Opposing Counsel: Michael Brown, Esq.
Michael Blumenfeld, Esq.
Miles & Stockbridge, P.C.
100 Light Street
Baltimore, Maryland 21202
(410) 727-6464

Barry Goldstein, Esq.
Jonathan Sly, Esq.

Warnach & Brown, LLP
1301 York Road
Suite 300
Lutherville, Maryland 21093
(410) 821-3500

2. *Coker and Dozier v. Bray & Gillespie LLC, d/b/a Plaza Ocean Club*, Case No. 2008-31467-CICI, Seventh Judicial Circuit, Volusia County, Florida

Mr. Coker and Mr. Dozier were poisoned by carbon monoxide while vacationing at the Plaza Ocean Club, which caused profound brain damage. The carbon monoxide had escaped into their hotel room because of foreseeable and preventable malfunctions of the hotel's hot water heating system. I represented the Plaintiffs Messrs. Coker and Dozier and was the lead attorney for the liability phase of the trial. My responsibilities included reviewing thousands of pages of subpoenaed documents in connection with structural damage that led to the carbon monoxide incident, deposing several liability witnesses, and preparing and working closely with forensic engineers, accountants and economists, as well as preparing and defending the depositions of our clients, experts, and numerous lay witnesses. I also authored all substantive pleadings. After extensive mediation, the case settled short of trial.

Dates of Representation: November 2011 – April 2013

Judge: The Hon. William Parsons

Co-counsel: Mary McNamara Koch
Murphy, Falcon & Murphy
One South Street, Suite 2300
Baltimore, Maryland 21202
(410) 951-8765

Opposing Counsel: Jay Train
Lawrence Burkhalter
Weinberg Wheeler Hudgins & Dial
3344 Peachtree Road, NE
Suite 2400
Atlanta, Georgia 30326
(404) 832-9511

3. *United States v. Modanlo*, Case No. 8:10-cr-295-PJM-1, United States District Court, District of Maryland

At the close of my tenure with the Office of the Federal Public Defender, I was lead counsel for one of the largest and most complex white collar cases

handled in the office's history – defending a former satellite engineer accused of violating the Iran Trade Embargo by brokering an agreement between Russia and Iran for the design, construction and launch of Iran's first low orbit satellite system. I was lead counsel responsible for coordinating massive discovery productions from roughly ten related civil cases, a government seizure of scores of computers, and documentary evidence amassed from Russia, Iran, Switzerland, and the United States. I also developed an international investigative plan, which included locating, identifying and examining key expert and lay witnesses and preparing for international criminal depositions as well as the domestic trial. The case was tried in late 2013 by my former colleagues at the Office of the Federal Public Defender. After a six-week trial, Mr. Modanlo was convicted of conspiring to violate the Iranian Trade Embargo and sentenced to eight years' imprisonment.

Dates of Representation: June 2010 – November 2011

Judge: The Hon. Peter J. Messitte

Opposing Counsel: David I. Salem
Office of the United States Attorney
for the District of Maryland
6406 Ivy Lane, Suite 800
Greenbelt, Maryland 20770
(301) 344-4433

4. *United States v. D.A.P.*, Case No. 08-cr-0299-PJM, United States District Court, District of Maryland (entire case placed under seal)

D.A.P., a longtime government contractor, had been charged with accepting bribes in connection with a \$3 million dollar construction contract. I represented D.A.P. during much of her 45-month period of cooperation with the government. D.A.P. had devoted roughly 600 hours to assisting the National Institute of Health in criminal and civil investigations involving public waste and graft. I engaged in substantial negotiations, authored all written pleadings, and conducted a day-long contested sentencing hearing where the government was seeking over three years' incarceration. D.A.P. received a sentence of four months' imprisonment and three years' supervised release with four months in a halfway house placement. D.A.P. successfully completed her sentence and currently maintains gainful employment with a private commercial construction corporation as a project manager.

Dates of Representation: November 2007 – August 2010

Judge: The Hon. Peter J. Messitte

Opposing Counsel: Michele Sartori

(former Assistant United States Attorney)
Hogan Lovells US LLP
Columbia Square
555 13th Street, NW
Washington, D.C. 20004
(202) 637-5600

David I. Salem
Office of the United States Attorney
for the District of Maryland
6500 Cherrywood Lane
Greenbelt, Maryland 20770
(301) 344-4433

5. *United States v. Blackmon*, Case No. 1:06-cr-00129-CCB-1, United States District Court, District of Maryland

Mr. Blackmon was charged as an armed career criminal with being in possession of a firearm after having been convicted of a crime punishable by greater than one year. As sole counsel in this matter, I handled all phases of Mr. Blackmon's case. During this time, I also initiated and handled all phases of Mr. Blackmon's state post-conviction proceedings in Baltimore City Circuit Court regarding the constitutionality of his prior state guilty plea in an effort to vacate one of his three prior convictions, which served as the predicate for the federal mandatory minimum imprisonment term. However, the plea agreement was upheld in state court. In pre-trial proceedings, I successfully challenged the government's use of a ballistics expert to testify regarding the presence of gunshot residue on Mr. Blackmon at the time of the offense, precluding the government from introducing this forensic evidence at trial. I researched and argued all motions, handled voir dire and jury selection, delivered opening statement and closing argument, and cross examined all government witnesses. Mr. Blackmon was convicted after trial and received the mandatory minimum sentence of 15 years' imprisonment.

Date of Representation: March 2006 – April 2007

Judge: The Hon. Catherine C. Blake

Opposing Counsel: Tonya Kelly
(former Assistant United States Attorney)
Biran Kelly LLC
201 North Charles Street, Suite 2001
Baltimore, Maryland 21201
(410) 625-2500

The Hon. Stephanie Gallagher

(former Assistant United States Attorney)
 United States Magistrate Judge
 United States District Court
 for the District of Maryland
 101 West Lombard Street
 Baltimore, Maryland 21201
 (410) 962-7780

6. *United States v. Hinds*, Case No. DKC 8:03-cr-0235, United States District Court, District of Maryland

Ms. Hinds was charged with two counts of wire fraud stemming from her operation of a temporary nursing placement service. Ms. Hinds' offense involved altering the licenses and certificates of roughly 45 credentialed nurses whose license to practice had lapsed. She altered their licenses and certifications and presented them to nursing homes and adult care facilities as a coordinator of the nurses' temporary placement. Ms. Hinds' sentencing proceedings spanned several hours over three days, with both the government and defense calling and examining numerous lay and expert witnesses. At issue was whether her offense placed patients at risk of physical injury and whether it involved any monetary loss to the nursing care facilities where the temporary nurses had been placed. As lead counsel, I was responsible for retaining and preparing expert witnesses, negotiating with the government, writing and editing all substantive pleadings, and examining witnesses at the sentencing hearing and oral argument. At the conclusion of Ms. Hinds' contested sentencing, she received six months' incarceration, three years' supervised release and a \$5,000 fine.

Dates of Representation: May 2003 – April 2005

Judge: The Hon. Deborah K. Chasanow

Co-Counsel: Joseph Evans
 Office of the Federal Public Defender
 for the District of Maryland
 100 South Charles Street
 Ninth Floor
 Baltimore, Maryland 21201
 (410) 962-3962

Opposing Counsel: Gina Simms
 (former Assistant United States Attorney)
 Ober Kaler
 1401 H Street, NW
 Suite 500
 Washington, D.C. 20005

7. *United States v. Hawkins*, Case No. 8:04-cr-0421-RWT-1, United States District Court, District of Maryland

Mr. Hawkins was charged with possession of a firearm after a conviction of a crime punishable by greater than one year incarceration. The charges stemmed from police officers finding a firearm under his driver seat after having stopped him for suspected driving while under the influence of alcohol. Although at the time of trial, Mr. Hawkins was in his forties and gainfully employed, he had three very old prior convictions for battery and assault that triggered a 15-year mandatory minimum prison sentence if convicted of the firearm offense, as well as a mandatory guideline range of 22 years' incarceration after trial. The firearm had been found in his vehicle after three other individuals had been in the car with him. I was responsible for drafting and arguing the major pretrial motions, cross examining the primary government witnesses, direct examination of Mr. Hawkins and closing argument. After a three-day jury trial, during which time the defense demonstrated that Mr. Hawkins' brother had been seen with a firearm identical in appearance shortly before the brother was in Mr. Hawkins' vehicle, Mr. Hawkins was acquitted of the firearm charge and convicted of misdemeanor driving under the influence of alcohol. He was sentenced to a probationary term for the alcohol-related misdemeanor.

Dates of Representation: September 2004 – May 2005

Judge: The Hon. Roger W. Titus

Co-counsel: Kobie Flowers
(former Assistant Federal Public Defender)
Flowers Law Firm
1750 K Street, NW
Suite 200
Washington, D.C. 20006
(202) 742-5969

Opposing Counsel: Hollis Weisman
Office of the United States Attorney
for the District of Maryland
6500 Cherrywood Lane
Greenbelt, Maryland 20770
(301) 344-4433

8. *United States v. Lee*, Case No. 8:03-cr-0552-AW, United States District Court, District of Maryland

At the time Dr. Lee faced felony charges of theft of government property, he was a post-doctoral fellow employed at the National Institute of Health's (NIH's) National Heart Lung and Blood Institute as a visiting scholar from Ehwa Women's University in Seoul, Korea. The charges stemmed from Dr. Lee having attempted to take four large footlockers of equipment and materials from NIH in the United States to Ehwa Women's University upon his return to Korea to complete his military service. As lead counsel, I wrote or reviewed and edited all substantive legal memoranda and spearheaded an intensive investigation on Dr. Lee's behalf. I, along with an investigator and interpreter, also spent one week in Korea gathering military and university documents, as well as fact and character witnesses who would testify at trial via closed circuit television. The witnesses and evidence located in Korea all demonstrated that Dr. Lee, upon his return to Ehwa University, intended to use the materials and equipment at the center of the criminal charges to complete important research on the effects of selenium to reduce heart disease. Further, this investigation revealed that Dr. Lee's research would benefit both NIH and Ehwa Women's University because the institutions were acting in partnership and were jointly collaborating on this and many other research projects. After three days of motions hearing and trial, the court granted the defendant's motion for judgment of acquittal, which I had briefed along with my co-counsel, and which I had argued before the Honorable Alexander Williams, Jr. As a result, Dr. Lee was acquitted without having to present his defense case to the jury.

Dates of Representation: November 2003 – August 2004

Judge: The Hon. Alexander Williams, Jr.

Co-counsel: Kelly McTaggart
(former Assistant Federal Public Defender)
Vice President, Associate General Counsel
Time Warner, Inc.
Time Warner Center
New York, New York 10019
(212) 484-7752

Opposing Counsel: Hollis Weisman
Office of the United States Attorney
for the District of Maryland
6500 Cherrywood Lane
Greenbelt, Maryland 20770
(301) 344-4433

9. *United States v. Reevey*, Case No. 1:02-cr-00146-WDQ-1, United States District Court, District of Maryland

Mr. Reevey was charged with armed carjacking, kidnapping and possession of a firearm in furtherance of a crime of violence after abducting an acquaintance at gunpoint, taking the acquaintance's vehicle and traveling with the acquaintance restrained in the car over several state lines and into Baltimore, Maryland. The incident ended with Mr. Reevey being shot several times by police. The case presented evidentiary issues regarding the extent to which the jury would hear testimony regarding Mr. Reevey being shot and his own firearm's inoperability. I was second chair trial counsel to my former colleague, Assistant Federal Public Defender Joseph Balter. I drafted and argued pretrial motions *in limine*, participated in voir dire and jury selection, delivered opening statements to the jury, and examined secondary witnesses. The jury found Mr. Reevey guilty on all counts and he was sentenced to a total term of 210 months' imprisonment. On appeal, the United States Court of Appeals vacated Mr. Reevey's sentence based on impermissible double counting under the United States Sentencing Guidelines and he was resentenced to 181 months. I did not handle the appeal.

Dates of representation: August 2002 – October 2002

Judge: The Hon. Frederick N. Smalkin (Ret.)

Co-counsel: Joseph Balter
Office of the Federal Public Defender
for the District of Maryland
100 South Charles Street
Ninth Floor
Baltimore, Maryland 21201
(410) 962-3962

Opposing Counsel: Christine Manuelian
Office of the United States Attorney
for the District of Maryland
36 South Charles Street, 4th Floor
Baltimore, Maryland 21201
(410) 209-4800

10. *United States v. Ugorji*, Case No. JFM 01-0103, United States District Court, District of Maryland

This was a four-week real estate mortgage fraud trial, where I acted as second chair trial counsel. We represented Mr. Ugorji, a real estate appraiser charged in a multi-defendant real estate flipping scheme. The offense involved real-estate appraisals at the center of sales for approximately 42 Baltimore properties. I was responsible for drafting pleadings, presenting the opening statement, examining witnesses, and arguing jury instructions and other contested legal issues. The jury initially announced that it was deadlocked, but

after further court instruction to continue, the jury ended four days of deliberations with a split verdict. Mr. Ugorji was acquitted of seven counts of fraud and convicted of seven counts of fraud. I was solely responsible for Mr. Ugorji's sentencing hearing after which he received 33 months' incarceration.

Dates of Representation: March 2000 – January 2001

Judge: The Hon. J. Frederick Motz

Co-Counsel: Barry Pollack
(former Assistant Federal Public Defender)
Miller and Chevalier Chtd.
655 15th Street, NW
Suite 900
Washington, D.C. 20004
(202) 626-5801

Opposing Counsel: Joseph Evans
(former Assistant United States Attorney)
Office of the Federal Public Defender
for the District of Maryland
100 South Charles Street
Ninth Floor
Baltimore, Maryland 21201
(410) 962-3962

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

In addition to my litigation responsibilities at the Office of the Federal Public Defender for the District of Maryland, I also was extensively involved in training. As the director of training for the Office of the Federal Defender from 2006 until 2011, I oversaw all in-house and Criminal Justice Act panel training programs for the felony and misdemeanor panel attorneys. Along with a training committee composed of three or four other assistant federal public defenders, I set training agendas and recruited speakers for twice-yearly felony training seminars available to the District of Maryland's nearly 200 felony Criminal Justice Act attorneys. I also would coordinate similar training programs for the misdemeanor Criminal Justice Act panel. With respect to the Office of the Federal Public Defender's in-house training, I was responsible for managing and providing a week-long, "new hire" training for recent additions to the office, which provided a substantive and procedural overview of federal criminal practice. Additionally, for the year prior to my

departure, I coordinated monthly brown bag training sessions for assistant federal public defenders and Criminal Justice Act panel attorneys on discrete sentencing topics, ranging from effective sentencing presentation to thorny Sentencing Guideline issues.

Throughout my legal career, I have also enjoyed teaching law students and other attorneys. In 2000, I was an adjunct professor at the University of Maryland School of Law where I taught a mandatory legal writing and oral argument course to first-year law students. For nearly 15 years, I have also lectured seasoned and novice federal practitioners on a wide variety of topics on federal criminal law, sentencing, and incarceration. I have been an invited speaker at nearly 30 local, regional and national training programs on behalf of individual Offices of the Federal Public Defender as well as for the Administrative Office of the United States Courts, Defender Services Training Branch.

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.

Written and Oral Appellate Advocacy, University of Maryland School of Law, Spring Semester 2000. I taught a mandatory appellate writing and oral argument course for second-semester first-year students. Each week students submitted substantive written papers and prepared for a final "moot court" style oral argument. All classes were built around a hypothetical case which provided the backbone for each class and assignment. I no longer have any of the materials from this course.

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

As a partner with Murphy, Falcon & Murphy, upon my resignation from the firm, I may receive payment of accrued discretionary bonuses based on the fees generated by the firm and on those matters for which I assumed responsibility.

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

I have no plans to pursue outside 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 recuse myself from any case through which I have gained knowledge as an assistant federal public defender or through my law practice with Murphy, Falcon & Murphy. Also, for a reasonable period of time after my confirmation, I would recuse myself from any case handled by attorneys from my current firm. In all of these cases, I would handle any matters involving actual or potential conflicts in conformity with the Code of Conduct for United States Judges, and any other relevant statutes, ethical canons and rules.

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

If confirmed, I would strictly adhere to the Code of Conduct for United States Judges and any other relevant statutes, ethical canons and rules regarding resolution of potential or actual conflicts of interest. Further, should I learn of any situation which may be perceived through a party or observed as an actual or potential conflict, I would alert the parties to the situation in question and solicit their views.

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

As an assistant federal public defender for 14 years, I represented indigent clients charged with the most serious of federal crimes. During the course of my career I represented hundreds of such individuals. While in private practice, I have maintained my pro-bono service through representing indigent defendants as a Criminal Justice Act panel attorney.

I also have participated in an outreach program at the Empowerment Temple Church through Murphy, Falcon & Murphy. Along with several members of our firm, I have provided an evening of free legal advice and, where appropriate, followed up with church members with limited income who needed legal assistance.

In 2005, I also joined a formal mentoring program through the House of Ruth, a non-profit organization providing shelter for battered women and residential drug abuse treatment for women and children. I was assigned to mentor an 11 year-old who has become like a second son to me. While he was growing up, we met every weekend, and for the past several years, he has spent most weekends and many days in a row with us. We have visited museums, colleges, courthouses and cities. I have attended all of his awards ceremonies and performances at his school, and he has spent many holidays and birthday celebrations with us. Today, he works full time and is looking forward to a bright future.

26. **Selection Process:**

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

On March 11, 2013, I submitted an application to Senator Barbara Mikulski's Office. On March 18, 2013, I was interviewed by a panel of attorneys convened by Senators Mikulski and Cardin in Baltimore, Maryland. On May 20, 2013, I was interviewed by Senators Mikulski and Cardin in Baltimore, Maryland. In June 2013, I was informed by Senator Mikulski that my name was among those submitted to the White House for consideration. On January 14, 2014, I was informed by Senator Mikulski that my name was again submitted to the White House for consideration for another vacancy. Since January 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice, including two in-person meetings with attorneys from the White House Counsel's Office on February 26, 2014 and March 18, 2015 in Washington, DC. On March 26, 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 for the Record of Cono R. Namorato
Before the Senate Judiciary Committee
July 22, 2015**

Thank you, Chairman Grassley, Ranking Member Leahy, and distinguished Members of this Committee.

It is a great honor to appear before you today, and I thank you for considering my nomination. I appreciate the trust and confidence that both the President and the Attorney General have shown in me.

I was born and raised in Brooklyn, New York, in the Greenpoint neighborhood. I grew up in a large Italian-American family with wonderful parents and grandparents. I attended Bishop Loughlin High School in Brooklyn and then Iona College in New Rochelle. After graduating from college, to the puzzlement of my father, I turned down a higher paying job with a national accounting firm to accept a position as a Special Agent with what was then known as the Internal Revenue Service Intelligence Division, now called the Criminal Investigation Division. Since then, I have spent my entire career in some aspect of tax enforcement.

For 6 years with the IRS, I investigated all kinds of tax fraud in the New York area. While serving as an agent, I attended Brooklyn Law School at night and when I graduated, I moved to Washington to first join the Tax Division of the Department of Justice in 1968. There, I prosecuted criminal tax cases as a Trial Attorney, an Assistant Chief and then Chief of the Criminal Section, and later as Deputy Assistant Attorney General. After 10 years, I decided to enter private law practice and joined Caplin & Drysdale, a firm founded by Mortimer Caplin, who served as Commissioner of Internal Revenue for Presidents John F. Kennedy and Lyndon Johnson, and who turned 99 years old this month.

I spent many years there representing clients in criminal tax matters, speaking and writing on various subjects relating to tax enforcement, and participating in senior bar association positions. During my time in private practice, I have been most interested in tax enforcement, and have supervised two American Bar Association reports addressing various policy and enforcement issues.

As one might imagine given my professional background, I believe firmly in the importance of a vigorous and aggressive criminal and civil tax enforcement program to foster and promote voluntary compliance and deter wrongdoing. For this reason, in 2003 I left my firm to become Director of the IRS Office of Professional Responsibility. This was at a time when there were growing revelations that a number of tax professionals, some at very reputable law and accounting firms, were designing abusive tax shelters and helping clients break the law. My priority as the OPR Director was to invigorate the enforcement of the agency's longstanding ethical regime and educate tax practitioners on their professional obligations.

At the request of the Commissioner, I also led the joint effort between the IRS and the Justice Department to resolve a series of major criminal cases involving high dollar, abusive tax shelters, where we achieved some great results for the government. In 2006, I returned to private practice, but I have maintained my abiding interest in a strong tax enforcement system.

The Tax Division shaped the formative years of my practice. I was lucky to have many outstanding mentors, and my work there also gave me many close and lifelong friends and

colleagues. I have always had enormous respect for the Department of Justice, especially the career professionals who have given some or all of their lives to public service. The Department is rightly considered the finest law firm in the world, which operates with the utmost good faith to help protect Americans from wrongdoing and to enforce the nation's laws dispassionately and vigorously. A strong Tax Division is critical to tax enforcement, and I would look forward to serving my country again in helping to lead this effort.

If I am fortunate enough to be confirmed, I will focus on advancing the mission of the Tax Division and zealously representing the United States in all of its activities, while adhering to the law, promoting integrity, listening to all sides of an issue, providing candid advice, treating everyone I encounter with fairness and respect, and honoring, supporting, and advancing the efforts of the career professionals who are the core of the Division.

Finally, I am fundamentally a family man, and I would like to honor my family for their love and support over the years. I met my wife Fran just out of college. She has been a school teacher and has helped raise our three wonderful children, Susan, Regina and Jim, all of whom are here today. I am blessed with the closeness of their spouses, and all the more so by the six grandchildren Fran and I treasure.

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

**Senator Grassley
Questions for the Record**

**Cono Namorato
Nominee, Assistant Attorney General for the Tax Division
July 31, 2015**

1. In the past, you have expressed concern about both the complexity of the tax code and the lack of transparency for certain types of transactions. In what ways do these two issues impact the current tax system? What can be done to diminish the risk of tax fraud?

Answer: The complexity of the tax code and the lack of transparency for certain types of transactions enable tax cheats to manipulate the system. Reducing the complexity of the tax code and requiring more transparency would certainly help to diminish the risk of tax fraud. I also assure you that if confirmed, in this and in all areas, I would work on advancing the core mission of the Tax Division: enforcing the nation's tax laws fully, fairly, and consistently, through both civil and criminal litigation, in order to promote voluntary compliance with the tax laws, maintain public confidence in the integrity of the tax system, and promote the sound development of the law.

2. I have misgivings regarding the way the Earned Income Tax Credit or EITC is being administered. The EITC is a magnet for tax fraud. According to a recent GAO Report, the EITC alone improperly paid out \$17.7 billion in the last year. What is the best approach to address this massive misallocation of taxpayer funds and widespread fraud?

Answer: I share your concern regarding misuse of the EITC. As you may know, the Internal Revenue Service (the IRS) refers fraud cases involving EITC to the Tax Division and the Tax Division properly evaluates and vigorously prosecutes as warranted. I assure you that if confirmed, I would look forward to ensuring that the Tax Division continues to take appropriate enforcement action in these matters.

3. In the past, you have been critical of the IRS for failing to enforce speech restrictions on religiously affiliated 501(c)(3) organizations. Under the Code, religiously affiliated 501(c)(3) organizations are prevented from engaging in certain types of political activity. First, they may not have a "substantial part" of their activities dedicated to influencing legislation. Second, they may not participate or intervene in political campaigns for or against a candidate for public office.

- a. If confirmed, to what extent will you focus on enforcing the ban against politicking and lobbying for religiously affiliated 501(c)(3) tax-exempt organizations?

Answer: The Tax Division has no role in administering the rules against politicking and lobbying by religiously affiliated 501(c)(3) tax-exempt organizations. If I am confirmed and the IRS were to determine that a church or pastor violated the restrictions on political activity and referred the matter to the Tax Division, I would ensure that the matter was evaluated based on the available evidence and the applicable law, and litigated if warranted.

- b. If confirmed, what guidance will you offer to the IRS concerning whether or not it should be monitoring the content of sermons?

Answer: The Tax Division's role is limited on this issue. If I am confirmed, I would ensure that any case referred by the IRS for litigation on this matter would be evaluated based on the available evidence and the applicable law, and litigated if warranted.

4. You have written extensively about Circular 230's potential to facilitate enforcement of the Tax Code. Circular 230 sets forth the regulations, sanctions, and disciplinary rules that apply to attorneys, CPAs, and other tax professionals when practicing before the IRS. The statute provides the IRS with the ability to censure, suspend, disbar, and fine those who fail to comply with the requirements.

- a. If confirmed, what role will you have in the enforcement of provisions under Circular 230?

Answer: The enforcement of provisions under Circular 230 is within the jurisdiction of the IRS. The Tax Division's only role would be to litigate disciplinary action in Federal District Court after a practitioner exhausts all of his or her administrative remedies. In my experience, this type of litigation is extremely rare. However, if I am confirmed, supporting the disciplinary actions taken by the Office of Professional Responsibility would be a priority.

- b. How concerned are you about violations of Circular 230? Please elaborate.

Answer: As a former Director of the IRS Office of Professional Responsibility (IRS OPR), I believe that all practitioners who practice before the IRS should comport with the rules promulgated by the Treasury Department. I believe that the IRS OPR plays a vital role in educating practitioners and holding accountable those who fail to meet their obligations as outlined in Circular 230.

5. A series of recent court decisions have limited the IRS's statutory authority to promulgate regulations under Circular 230 pursuant to the Administrative Procedures Act ("APA").¹ Recently, the APA was applied to the practitioner standard in *Ridgely v. Lew*. In *Ridgely*, the court determined the IRS could only regulate the "practice" of tax professionals such as CPAs as representatives of persons before the Service. The court held that a "representative" is one with "authority to bind others" and "practice" only encompasses "an investigation, adversarial hearing, or other adjudicative proceeding." In your view, what impact do these decisions have on the use of Circular 230?

Answer: In light of the decisions in *Loving* and *Ridgely*, the scope of Circular 230 is uncertain at this point. While I have not closely monitored this issue, I am aware of proposals to amend 31 U.S.C. § 330 to clarify the scope of Circular 230.

6. On September 8, 2008, you co-authored a letter to the Internal Revenue Service (IRS) expressing concerns regarding "Pulpit Freedom Sunday," an initiative launched by the Alliance Defense Fund (ADF). The letter was directed to the IRS's Office of Professional Responsibility (OPR) and requested that the office: "(i) investigate whether, in the course of promoting and conducting the Pulpit Initiative, those lawyers working for ADF on the Pulpit Initiative have violated Circular 230, and (ii) take immediate and appropriate action to address this flagrant disregard of the ethical rules for practice before the IRS."

ADF launched the Pulpit Freedom Sunday to encourage pastors and other religious leaders to speak openly about political candidates to their congregants once per year. The goal of the initiative is "to generate test cases [to] carry to the U.S. Supreme Court" in order to challenge the constitutionality of the political activity ban on First Amendment grounds.

The letter you co-authored asserted that "ADF, through its staff, designed the Pulpit Initiative to assist churches in violating section 501(c)(3) which expressly prohibits charities from intervening on behalf of, or in opposition to, any candidate for public office. ADF's Pulpit Initiative openly incites religious leaders at churches to transgress this rule by preaching sermons on September 28, 2008 that constitute outright political campaign intervention." The letter expressed concern that "[t]his activity—coordinating mass violation of Federal tax law—is clearly 'incompetent and disreputable conduct' defined in and subject to sanction under Circular 230."

- a. What prompted you to coauthor this letter to the IRS?

Answer: I was prompted to write because I believe the conduct being advocated was a violation of federal law and Circular 230.

- b. What client interest, if any, were you representing when you contacted the IRS?

Answer: I was not representing any client interest when we contacted the IRS.

¹ See The Administrative Procedure Act, Pub. L. 79-404, 60 Stat. 237 (1946); see also 5 U.S.C. § 706(2)(C) (1966).

- c. Have you written any additional letters to the IRS concerning limitations on religiously affiliated 501(c)(3) organizations? If so, please provide them.

Answer: I have not written any other letters to the IRS concerning limitations on religiously affiliated 501(c)(3) organizations.

- d. To date, the IRS has not appeared to investigate pastors and churches participating in the Pulpit Initiative. If confirmed, how will you view the Pulpit Initiative and any similar initiatives?

Answer: If I am confirmed and the IRS were to determine that a church or pastor violated the restrictions on political activity and referred the matter to the Tax Division, I would ensure that the merits of the litigation were evaluated in the same manner as any other referral.

- e. What policies, if any, will you set for churches who discuss political issues, including political candidates, during sermons, if confirmed?

Answer: The Tax Division does not set policy in this area. The policy is set by Congress and the Treasury Department.

7. In this 2008 letter, you contended that “[b]ecause ADF’s lawyers are advising churches about their rights, privileges and liabilities under the Code and planning to assist in the presentation of that information to the IRS, the individuals affiliated with ADF are clearly practicing before the IRS and thus subject to Circular 230.” This appears to be a quite broad view of the scope of Circular 230.

- a. In light of the recent court decisions regarding the APA and Circular 230, do you maintain that the ADF’s actions in the Pulpit Initiative constitute practice within the meaning of Circular 230?

Answer: All practitioners, regardless of their affiliation, who practice before the IRS should comport with the rules of practice promulgated by the Treasury Department.

It is my belief that rendering tax advice should be subject to regulation. Whether this can be done under Circular 230 is uncertain in light of the *Loving* and *Ridgely* decisions discussed above.

- b. Do you believe the IRS should pursue sanctions and or disbarment against attorneys affiliated with ADF?

Answer: As noted above, all practitioners, regardless of their affiliation, who practice before the IRS should comport with the rules of practice promulgated by the Treasury Department.

8. In this same letter you also wrote: “In the course of organizing and publicizing this project, ADF’s staff of attorneys is inducing churches to engage in conduct designed to violate Federal tax law in a direct and blatant manner. This activity—coordinating mass violation of Federal tax law—is clearly ‘incompetent and disreputable conduct’ defined in and subject to sanction under Circular 230.” Pulpit Freedom Sunday encouraged pastors and other religious leaders to speak openly about political candidates to their congregants once per year. ADF stated the goal of this movement is “to generate test cases [to] carry to the U.S. Supreme Court” in order to challenge the constitutionality of the political activity ban.

In 2000, the Supreme Court decided *Legal Services Corp. v. Velazquez*, where it held that rules which effectively impair the advocacy of constitutional claims or which are intended to “distort” the process of constitutional adjudication run afoul of the First Amendment. In *Velazquez*, the Court evaluated the constitutionality of prohibitions on the expenditure of federal funds in “litigation, lobbying, or rulemaking, involving an effort to reform a Federal or State welfare system,” imposed on Legal Services Co. (“LSC”).

The Court characterized the efforts by LSC attorneys to engage in structural reform litigation as “private” speech, even though their speech was publicly funded. The Court held that government restrictions attempting to circumscribe constitutional litigation amounted to regulation of private speech. The majority was particularly concerned with the potential for the Act to “foreclose advice or legal assistance to question the validity of statutes under the Constitution of the United States,” which the Court read to forbid LSC attorneys from challenging or questioning laws as inconsistent with the constitutional rights of their clients. The Supreme Court held that the restriction violated the principle of speech neutrality, and importantly, undermined the adjudicative function of the federal courts. The majority held that a lawyer’s advocacy to contest the constitutionality of government laws and policies was “inherent in the nature of the medium” of speech, and that the challenged restrictions impermissibly “alter[ed] the traditional role of attorneys” and “distort[ed] [the] usual functioning” of the legal system. The Court characterized the provision, without further elaboration, as “inconsistent with accepted separation-of-powers principles.”

In light of the Court’s decision in *Velazquez*, do you still believe the conduct by the attorneys at ADF is actionable, either criminally or through administrative procedures such as disbarment?

Answer: I never believed the conduct of the ADF attorneys was criminal. As far as administrative disciplinary action is concerned, I see a difference in the conduct of the LSC attorneys and the ADF attorneys. The LSC attorneys were representing their clients in an ongoing proceeding. In my opinion, this situation is very different from the ADF attorneys who were advocating in advance of any proceeding that the law be violated.

9. Usually, when attempting to revoke the tax-exempt status of religious organizations the IRS is required to comply with an extensive review process under the Church Audit Procedures Act (“CAPA”).² Complying with CAPA demands considerable time and resources, and an inquiry may only be initiated if “an appropriate high-level Treasury official reasonably believes (on the basis of facts and circumstances recorded in writing) that the church . . . may not be exempt.” CAPA has the effect of “making it more difficult for the IRS to initiate an examination of a church even if there is clear evidence of impermissible activity on the part of the church.” These procedures have historically shielded churches from the revocation of § 501(c)(3) status. In your letter to the IRS concerning the ADF, you urged the IRS to investigate attorneys under Circular 230, to prevent them from establishing a test case for religious organizations. Arguably, by advocating this approach, the protections and administrative requirements contained in CAPA are effectively side-stepped. Does this approach render illusory the protections provided in CAPA?

Answer: For the reasons set out in #8 above, I do not believe the approach we advocated in our 2008 letter renders the CAPA protections illusory.

² See Church Audit Procedures Act, 26 U.S.C. § 7611(a)(1)-(3) (2006).

**Senator Grassley
Follow-Up Questions for the Record**

**Cono Namorato,
Nominee, Assistant Attorney General for the Tax Division
August 14, 2015**

1. In your 2008 letter to the IRS you advocated that the IRS investigate the Alliance Defense Fund's ("ADF") Pulpit Initiative. This initiative encouraged churches who maintained 501(c)(3) non-profit status, to "preach from the pulpit a sermon that would address the candidates for government office in light of the truth of the Scripture," the goal of which was "to generate test cases [to] carry to the U.S. Supreme Court" in order to challenge the constitutionality of the political activity ban as applied to churches.¹ In order to determine whether any churches violated the ban on "politicking" the Internal Revenue Service would have to monitor the content of sermons. Do you believe this is an appropriate role for the Service? Please explain in detail.

Answer: The IRS is charged with administering a complex and wide ranging federal income tax law that requires a strategic deployment of resources. The allocation of IRS resources is a matter determined by the Department of Treasury and the IRS. In my view, monitoring the content of sermons would not be a wise use of those resources.

2. In your responses to my Questions for the Record, in Question 4 you noted that the "Tax Division's only role would be to litigate disciplinary action in Federal District Court after a practitioner exhausts all of his or her administrative remedies." You then observed this scenario is extremely rare. However, if the Service were to more vigorously pursue action against attorneys under Circular 230—a policy you have expressly supported in the past²—wouldn't you expect the number of disciplinary actions the Tax Division litigates to increase?

Answer: In my experience as both the former Director of the IRS Office of Professional Responsibility (OPR) and as an attorney representing practitioners before OPR, I have found that it is rare for a practitioner to litigate the disciplinary action taken by OPR in federal district court. To provide more context, in the past several years, I am aware of only two cases filed by practitioners in federal court and litigated by the Tax Division.

¹ See Alliance Defending Freedom, *Speak Up: Pulpit Freedom Sunday Frequently Asked Questions* 1-2, http://www.adfmedia.org/files/ChurchFAQ_PulpitFreedom.pdf (last visited Oct. 17, 2014).

² Cono Namorato, *Update of the IRS's Office of Professional Responsibility: The Importance of Firm Responsibility*, 57 *Tax Executive* 43 (2005); Cono Namorato, *U. Va. Tax Institute—Various Topics: Circular 230, Preparer Standards, Voluntary Disclosure and Criminal Investigations*, (2008)(prepared text)(on file with the Committee); Cono Namorato, *UCLA Tax Institute—Current Enforcement Priorities of the IRS*, (2006)(prepared text)(on file with the Committee).

On the other hand, the IRS routinely publishes lengthy lists of practitioners who have been sanctioned by OPR for misconduct. If I am confirmed as Assistant Attorney General for the Tax Division, I would make the defense of disciplinary actions taken by OPR a priority regardless of the number of actions brought by practitioners.

3. Given the developments in *Loving*³ and *Ridgely*⁴, in your view, what constitutes practice under Circular 230? Please provide specific examples about the scope of behavior you believe Circular 230 appropriately governs.

Answer: As noted in my responses to Questions 5 and 7 submitted on July 31, 2015, in light of the decisions in *Loving* and *Ridgely*, the scope of Circular 230 is uncertain at this time. Examples of practice still governed by Circular 230 after *Loving* and *Ridgely*, include, in my view, the representation of: a taxpayer during the examination or appeals process; a taxpayer who is the subject of a criminal investigation; and a taxpayer in a collection or offer-in-compromise proceeding.

4. In your response to Question 6, you explained that your justification for writing to the IRS concerning the “Pulpit Initiative” was that you believed the actions of the ADF violated federal law and Circular 230. You also indicated this is the only letter you have written to the IRS on this issue. Aside from your time working for the Service, have you ever heard of or witnessed other practices that you believe violate the Code or Circular 230? If so, why did you decline to author a letter to the IRS with respect to those matters?

Answer: Yes. Over the course of my career, clients have disclosed prior misconduct to me in the context of their seeking legal advice. The information provided and legal advice given occurred in confidence and, therefore, as an attorney subject to the Rules of Professional Conduct, the attorney-client privilege and the duty of confidentiality would prohibit me from disclosing such information. As a result, I authored no letters to the IRS with respect to those matters.

5. In light of the case law developments on Circular 230, do you still maintain that the conduct of the ADF attorneys violates Circular 230, as you originally alleged in your 2008 letter?

Answer: As noted in my response to Question 3, in light of the decisions in *Loving* and *Ridgely*, the scope of Circular 230 is uncertain at this point. I am not in a position to speculate further as to how Circular 230 might apply to these facts. If confirmed as

³ *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014).

⁴ *Ridgely v. Kew*, 55 F. Supp.3d 89 (D.D.C. 2014).

Assistant Attorney General, I commit to approaching all matters fairly, with utmost respect for controlling law on any issue.

6. Implicit in your response to Question 8 is the notion that ADF attorneys do not have a First Amendment right to encourage religious 501(c)(3) organizations to challenge unconstitutional statutes or regulations. How do you reconcile this position with the Supreme Court opinion in *Legal Services Corp. v. Velazquez*⁵? In particular, please address the majority's underlying concern in *Velazquez*, that limiting the action of attorneys would "foreclose advice or legal assistance to question the validity of statutes under the Constitution of the United States."

Answer: I firmly believe in an individual's right to retain counsel to challenge laws that he or she believes to be unconstitutional. My concern with regard to the ADF attorneys was the active solicitation of clients for the purpose of assisting them in committing a violation of law. For this reason, I believe that the facts of *Velazquez*, which involved LSC attorneys representing clients in an ongoing proceeding, are distinguishable from the ADF situation.

7. In Question 7b, I asked whether the IRS should pursue sanctions or disbarment against attorneys affiliated with ADF. You responded that "all practitioners, regardless of their affiliation, who practice before the IRS should comport with the rules of practice promulgated by the Treasury Department." Please clarify your response to this question. In particular, do you believe that the scope of Circular 230 properly includes the conduct of ADF attorneys? Specifically, do you currently believe that the attorneys mentioned in your 2008 letter concerning the "Pulpit Initiative" are practitioners for purposes of Circular 230?

Answer: As noted above, in light of the decisions in *Loving* and *Ridgely*, the scope of Circular 230 is uncertain at this point. I am not in a position to speculate further as to how Circular 230 might apply to these facts. If confirmed as Assistant Attorney General, I commit to approaching all matters fairly, with utmost respect for controlling law on any issue.

8. The answer you provided to Question 9 was non-responsive. Please explain, in detail, why the CAPA protections would not be rendered illusory under your proposed application of Circular 230 for those who were seeking to establish a test case as part of a broader litigation strategy designed to collaterally attack the "politicking ban," as applied to religiously affiliated 501(c)(3)'s on First Amendment grounds?

⁵ *Legal Services Corp. v. Velazquez*, 531 U.S. 533 (2001).

Answer: In my view, the protections of CAPA provide important safeguards to ensure a fair examination of the facts and circumstances of a matter involving the tax status of a religious organization. The concern raised in the September 8, 2008, letter involved reports of ADF attorneys counseling clients to violate the law, not the rights of a religious organization to all of the safeguards contained in CAPA.

9. In your responses to my written questions, you seemed to imply that you would treat cases involving religiously affiliated tax-exempt organizations in the same manner you would treat 501(c)(3) organizations with no religious affiliation. Traditionally, however, cases that involve the revocation of a religious affiliated organization's 501(c)(3) status are afforded additional procedural safeguards, such as CAPA. Cases that involve religious organizations raise core First Amendment concerns as they implicate both freedom of speech and freedom of religion rights. With this in mind, would you in fact evaluate any cases referred to you by the IRS implicating religiously affiliated 501(c)(3) organizations the same way you would any other 501(c)(3)? Please explain.

Answer: In my experience as both a prosecutor and a defense attorney, all cases should be evaluated based on the facts and the evidence. This evaluation should include a consideration of the unique characteristics of the entity involved, including, a religious organization. If I am confirmed as Assistant Attorney General, I will ensure that Tax Division attorneys are sensitive to issues involving religious organizations and act at all times in full accordance with the law.

10. As you know, the requirements contained in Circular 230 were designed to address substantial policy and budgetary issues resulting from practitioners involved in the development, marketing, and encouragement of abusive tax shelters and, in particular, abusive foreign tax shelters.⁶ Why do you not recognize a meaningful distinction between attorneys engaged in the aforementioned practices and the conduct of the ADF attorneys who were seeking to establish a test case, as part of a broader litigation strategy designed to collaterally attack the "politicking ban," as applied to religiously affiliated 501(c)(3)'s on First Amendment grounds?

Answer: The written advice provisions of Circular 230 were amended during my tenure as the IRS OPR Director to address the increase in poorly reasoned tax opinions designed to support abusive tax shelters. These provisions were added to the existing Circular 230, which also addresses tax compliance by tax practitioners, conflicts of interest and a variety of other ethical issues. In my experience, misconduct can involve a range of behavior, from a practitioner's failing to meet his or her federal tax

⁶ See, Dep't of the Treasury, Advance Notice of Proposed Rulemaking, 65 Fed. Reg. 30,375 (May 11, 2000).

obligations, to counseling clients to violate the law. As Director of IRS OPR, I imposed the entire range of discipline permitted by Circular 230, from reprimand to disbarment from practice before the IRS. Each decision was based on the specific facts and circumstances of each particular case, and the discipline imposed was calibrated to the offense. While it is certainly true that meaningful distinctions can and should be made between different types of conduct, it does not necessarily follow that conduct that may not be the most egregious should not be subject to appropriate inquiry by OPR.

Senator Vitter
Questions for the Record

John Michael Vazquez,
Nominee, U.S. District Judge for the District of New Jersey

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 majority's ruling in NLRB v. Canning, 134 S. Ct. 2550 (2014) is binding precedent which must be followed by all lower federal courts. As to the allowable time frame between *pro forma* sessions before the President can exercise his recess appointment power, the recess must be of "substantial length." Id. at 2561. A period of 3 days or less is not sufficient. Id. at 2566. In addition, a recess of more than 3 days but less than 10 days is "presumptively too short to fall within the [Recess Appointments] Clause." Id. at 2567. This presumption can only be overcome in a "very unusual circumstance – a national catastrophe, for instance, that renders the Senate unavailable but calls for an urgent response." Id.

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: To my knowledge, neither the Supreme Court of the United States nor the Court of Appeals for the Third Circuit has addressed this issue. Cognizant of the legal and ethical responsibility to not pre-judge matters and to not offer a final opinion until having heard the factual evidence and reviewed all necessary legal sources, I can say that if presented with such a case, I would follow the analysis required by the Supreme Court of the United States as set forth in Planned Parenthood v. Casey, 505 U.S. 833 (1992) and its progeny.

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, as well as later Supreme Court decisions that modified it (such as Casey, cited in the previous response, and Gonzales v. Carhart, 550 U.S. 124 (2007)), is binding precedent on all lower courts.

4. **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 a trial judge must faithfully apply binding Supreme Court precedent as well as controlling law from his or her Circuit. If fortunate enough to be confirmed, I am fully committed to following the precedents established by the Supreme Court and the Court of Appeals for the Third Circuit regardless of whether I agree or disagree with them.

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: In McDonald v. City of Chicago, 130 S. Ct. 3020 (2010), the Supreme Court of the United States held that the Second Amendment was fully applicable to the states by way of the Fourteenth Amendment. In doing so, the Supreme Court cited to its prior opinion in District of Columbia v. Heller, 554 U.S. 570 (2008), which interpreted the scope of the Second Amendment and found that “the Second Amendment protects the right to keep and bear arms for the purpose of self-defense[.]” McDonald, 130 S. Ct. at 3026. This fundamental right includes the ability “to possess a handgun in the home for the purpose of self-defense.” Id. at 3050. As to the scope of the Second Amendment, the Supreme Court in Heller observed that “nothing in our opinion 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. If fortunate enough to be confirmed, I would apply binding precedent from the Supreme Court and the Third Circuit to all cases, including those relating to the Second Amendment.

**Senator Grassley
Questions for the Record**

**John Michael Vazquez,
Nominee, U.S. District Judge for the District of New Jersey**

- 1. What role, if any, do you believe a federal judge should play in both seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.**

Response: I believe that a federal judge must apply the relevant constitutional provisions and statutes, in light of binding precedent, in dealings with both victims and offenders. As to victims of crime, I would follow the Crime Victims' Rights Act, 18 U.S.C. § 3771. The Act requires, among other things, that victims be treated "with fairness and with respect for the victim's dignity and privacy." As to punishment and rehabilitation, those are two of the several factors that judges are required to consider by statute, 18 U.S.C. § 3553(a), when rendering a sentence.

- 2. 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." I realize you may not be aware of the specific context of this statement, but do you agree with that statement?**

Response: I am not familiar with the statement by the President or the context in which the quoted statements were made. From my perspective, a federal judge in every case must be impartial, even-handed, and apply the binding law to the facts of the particular matter before him or her.

- 3. What do you anticipate will be the most difficult part of transitioning from being a practicing attorney to federal judge? What steps are you taking to prepare yourself?**

Response: If I am fortunate enough to be confirmed, I anticipate that the most difficult part of the transition will be learning how to effectively manage a large docket of cases. I believe that a critical part of a judge's role is to not only render fair decisions but also to render timely decisions. I am hopeful that I can draw upon my prior experience as First Assistant Attorney General, in which I was responsible for managing the daily operations of an office consisting of numerous divisions with of over 9,000 employees. In addition I would seek guidance and advice from my colleagues on the bench to learn how they effectively manage their dockets.

- 4. 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 an extension of the word itself: judgment. Subsumed within sound judgment are a litany of qualities, including integrity, fairness, patience, respect, obedience to the law, humility, and diligence. I do

believe that I have good judgment as demonstrated by my experience as a practicing attorney, both for the government and in private practice.

- 5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe that an appropriate judicial temperament consists of patience, respect, and humility. Respect extends to not only respect for the law but also respect for all those who appear in court. I believe that I meet this standard.

- 6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I completely agree that a trial judge must faithfully apply binding Supreme Court precedent as well as controlling law from his or her Circuit. If fortunate enough to be confirmed, I am fully committed to following the precedents established by the Supreme Court and the Court of Appeals for the Third Circuit regardless of whether I agree or disagree with them.

- 7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In a case of first impression involving a statute, I would first look to the plain language of the statute itself. If the language of the statute were clear, it would end my inquiry. If not, I would apply the binding canons of statutory interpretation. If I still did not have a definitive answer, I would look to analogous cases decided by the Supreme Court of the United States and the Court of Appeals for the Third Circuit. Lastly, I would look to analogous cases decided by other federal courts for persuasive authority.

- 8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the decision of the Supreme Court or the Court of Appeals.

- 9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A federal judge must respect and follow the separation of powers among the three branches of government. Congress has the power to enact laws, and its laws are

presumed constitutional. Accordingly, a judge should not reach a constitutional question if there is another avenue on which to base his or her decision. However, a federal judge is required to strike down a statute if Congress exceeded its authority in passing the statute or if the statute violates the Constitution.

- 10. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.**

Response: I do not believe that a judge should rely upon foreign law or world community views in determining the meaning of the Constitution of the United States of America.

- 11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I treat the oath of office with utmost sincerity and respect. If fortunate enough to be confirmed and upon taking the oath, I am committing myself to following the text of the law and binding precedent. In addition, I believe that my record as a practicing attorney reflects a respect for, and adherence to, the rule of law.

- 12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I assure the Committee that I would act with integrity and fairness in all matters, and that I would administer the law and justice even-handedly without regard to any personal views.

- 13. If confirmed, how do you intend to manage your caseload?**

Response: I intend to manage my caseload as expeditiously as possible. In doing so, I would use all available tools for effective case management, set fair and reasonable deadlines by which the parties had to abide, and work with the magistrate judges. I would seek guidance and advice from my colleagues on the bench as to how they effectively manage their dockets. I also intend to draw upon my prior experience as First Assistant Attorney General, in which I was responsible for the daily operations of an office with many divisions and over 9,000 employees.

- 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 do believe that judges have such a role. Reaching a fair and correct decision is crucial, but so is rendering a timely decision. To do so, a judge must be active in case management from the inception of a matter. For example, at the outset of a case, a judge should discuss with the parties the potential complexities of a case as well as anticipated issues. A judge should provide the parties with adequate and reasonable time to prepare

their cases, but a judge must also ensure that the parties abide by a fair and reasonable timetable.

15. Do you believe there is a right to privacy in the U.S. Constitution?

a. Where is it located?

Response: The Supreme Court of the United States has held that there is a right to privacy, in certain contexts, in the Constitution. For example, in Katz v. United States, 389 U.S. 347 (1967), the Supreme Court decided that there is a right against unreasonable searches and seizures pursuant to the Fourth Amendment.

b. From what does it derive?

Response: The Supreme Court of the United States has determined that the right to privacy stems from the Constitution, such as the Fourth Amendment as discussed above.

c. What is your understanding, in general terms, of the contours of that right?

Response: My understanding is that the Supreme Court of the United States has viewed the right of privacy in light of protection from certain governmental action and has defined the contours through its precedent. In my practice as an attorney, both as a federal prosecutor and defense counsel, this issue has arisen most often in connection with the Fourth Amendment, specifically as to when law enforcement need, or need not, obtain a warrant.

16. Please describe with particularity the process by which these questions were answered.

Response: I received these questions from the Department of Justice, Office of Legal Policy (OLP) on July 29, 2015. I reviewed the questions, thought about them, and drafted my responses. I then submitted my responses to OLP and after some discussion with OLP, I finalized my responses and authorized their submission to the Committee on my behalf.

17. Do these answers reflect your true and personal views?

Response: Yes.

Senator Thom Tillis
Questions for the Record
United States Senate Judiciary Committee

Questions for Justice Wilhelmina Marie Wright

1. Do you believe the Supreme Court ruled correctly in *Shelby County v. Holder* that certain states and local governments should no longer be subject to the preclearance provisions of the Voting Rights Act?

Response: The Supreme Court's decision in *Shelby County v. Holder*, 133 S. Ct. 2612, 2631 (2013), held that the coverage formula of Section 4(b) of the Voting Rights Act is unconstitutional. This decision is binding precedent. Accordingly, if confirmed, I will faithfully follow this decision as I would follow all binding precedent of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit without regard to any personal beliefs that I may have regarding any decision.

2. Similarly, do you believe there is a need for certain states to be subject to the preclearance provisions of the Voting Rights Act before administering their election laws while other states have no such requirement?

Response: The Supreme Court's decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), explicitly reaffirmed the "fundamental principle of *equal* sovereignty among the States." *Id.* at 2623 (emphasis in original) (quotation omitted). The Supreme Court relied on this fundamental principle to declare that the coverage formula outlined in Section 4(b) of the Voting Rights Act was unconstitutional. *Id.* at 2630-31. Accordingly, if confirmed, I will faithfully follow this binding precedent.

3. In North Carolina, an elected majority crafted comprehensive election reform designed to thwart voter fraud, streamline efficiency, save state resources, and restore voter confidence in the electoral process. These reforms were done even-handedly to ensure all qualified voters have a meaningful opportunity to participate in the electoral process. However, these reforms were challenged by politically motivated organizations, and the state of North Carolina has now spent millions of dollars defending

commonsense election law reform. A part of these reforms is a voter identification requirement that will go into effect next year. Do you believe voter ID laws are constitutional when their purpose is to protect the integrity of elections?

Response: In *Crawford v. Marion County (Indiana) Election Board*, 553 U.S. 181, 204 (2008), the Supreme Court held that Indiana's interests for its voter identification law were both neutral and sufficiently strong to reject the facial attack to the statute and that the application of the statute was "amply justified by the valid interest in protecting 'the integrity and reliability of the election process.'" If confirmed, I will faithfully follow this decision and all binding precedent from the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit when deciding such issues.

**Senator Grassley
Questions for the Record**

**Wilhelmina Marie Wright
Nominee, U.S. District Judge for the District of Minnesota**

1. **A lot of factors go into sentencing defendants, including prior criminal history and type of crime. Generally, what role should other factors play in deciding a sentence? And specifically, what weight would you give to a defendant who has children at home, who is a small business owner, or who is active in a local church?**

Response: A district court judge shall impose a sentence “sufficient, but not greater than necessary,” to comply with the purposes set forth in 18 U.S.C. section 3553. Factors to be considered under 18 U.S.C. section 3553(a) include: the nature and circumstances of the offense; the defendant’s history and characteristics; the deterrence of future criminal conduct; and the need to protect the public. The United States Sentencing Guidelines were created to eliminate sentencing disparities and to guide district court judges so that the sentence imposed is a fair and appropriate one that fulfills the purposes of sentencing. During my experience as a federal prosecutor, I advocated for sentences, including both upward and downward departures from the Sentencing Guidelines, based on the applicable law. If confirmed, I would apply 18 U.S.C. section 3553, the Sentencing Guidelines, and the precedents of the United States Supreme Court and the Eighth Circuit to determine the appropriate sentence.

2. **You called *Gideon v. Wainwright* a “heroic Davis vs. Goliath legal challenge.” What is your view regarding whether there should be a right to representation in civil cases?**

Response: The United States Constitution guarantees a right to counsel in criminal cases. That right does not extend to civil cases. Although I encourage and commend attorneys who provide pro bono legal services to civil litigants who cannot afford a lawyer, I am committed to fulfilling my responsibility to decide each case as a fair and impartial decision-maker without regard to whether a party in a criminal or civil case is represented by an attorney.

3. **In a speech you gave, you wrote “Judiciary must reflect the diversity of society. So that the judgement and insight that come from diverse experiences can assist in the development of the law and the reality and perception of fairness and impartiality” (These comments can be found on page 1781 of your Senate attachments.)**

- a. **How does diversity assist in the “development of the law?”**
- b. **Please explain what you meant by diversity? What kinds of diversity should be excluded from the bench?**

Response: It has been my experience as a Justice on the Minnesota Supreme Court and as a Judge on the Minnesota Court of Appeals, in which jurists engage in collegial decision-making, that regional diversity and practice-area diversity in different jurisdictions

throughout state have enriched our deliberations regarding rules and procedures governing the practice of the law.

Similarly, in light of the number of highly qualified women lawyers and lawyers of color, for example, it would undermine the public's trust and confidence in the judiciary if there were no judges who are women or judges of color. I am unaware of any type of diversity that should be excluded from the bench, provided an attorney is learned in the law and has the ethical and moral fitness to serve as a judge. My comments reflect my belief that people of all backgrounds with the qualifications, experience and desire to be a judge should be encouraged to seek the opportunity to be considered for judicial appointment or election (in those jurisdictions, such as Minnesota, that elect judges).

4. **In another speech you gave, your notes indicated that you discussed “harsh penalties—the good, the bad” under the “United States Attorney’s Office” heading. (These comments can be found on page 1802 of your Senate attachments.) Please elaborate on what you believe to be harsh penalties.**

Response: My notes relate to a comparison of the nature of the United States Sentencing Guidelines during my tenure as a federal prosecutor, which in certain circumstances called for more severe penalties than the Minnesota Sentencing Guidelines for the same offense. My reference to harsh penalties was used merely for purposes of comparison. If confirmed, I would apply 18 U.S.C. section 3553, the Sentencing Guidelines and the precedents of the United States Supreme Court and the Eighth Circuit to determine the appropriate sentence.

5. **What role, if any, do you believe a federal judge should play in both seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.**

Response: The goals of sentencing include punishment, rehabilitation and deterrence. I believe that a judge must be an impartial decision maker who imposes a just sentence that is guided by 18 U.S.C. section 3553(a) and the United States Sentencing Guidelines.

6. **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. It is the foundation on which a commitment to the rule of law is built, and I do 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?**

Response: The appropriate temperament for a judge is one that demonstrates respect for the court as an institution, the rule of law, the parties and their attorneys, the witnesses, and the jurors. This respect is shown by conducting an orderly proceeding and rendering a

timely and impartial decision based on the applicable law. I believe I have demonstrated the appropriate judicial temperament throughout my 15 years of judicial service.

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 confirmed as a district judge, I will faithfully apply the precedents of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit, even if I personally disagree with such precedents.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If faced with a case of first impression involving the construction of a statutory provision, I would begin my analysis by applying the plain and ordinary meaning of the words. If the words of the statute render the statute's meaning ambiguous, then I would apply traditional canons of construction to determine the meaning of the statute. If necessary, I then would consider cases from other circuit courts and district courts that have addressed the same legal issue or an analogous legal issue for persuasive authority.

10. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If confirmed as a district court judge, I would apply the precedents of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit, even if I believed the court seriously erred in rendering a decision.

11. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Only in very limited circumstances is it appropriate for a federal court to declare a statute enacted by Congress unconstitutional. If confirmed as a district court judge, I would reach the constitutionality of a statute only if necessary for the disposition of a case. In those limited circumstances, my analysis would begin with the presumption that the statute, which has been enacted by Congress and signed into law by the President, is constitutional. A statute should not be declared unconstitutional unless it is clear that the statute is contrary to the text of the Constitution or when it is clear that Congress has exceeded its authority by passing the statute.

- 12. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.**

Response: No, it is never proper for a district judge to rely on foreign law, or the views of the “world community” when determining the meaning of the United States Constitution. If confirmed as a district judge, I would not apply foreign law or the views of the “world community” when determining the meaning of the Constitution. Instead, I would apply the precedents of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit.

- 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: If confirmed as a district judge, my decisions will be grounded in precedent and the text of the law. As demonstrated during my 15 years as a judge on three different courts, I would not render a judicial decision that is grounded in any political ideology or motivation.

- 14. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: If confirmed as a district judge, I would set aside any personal views and treat all who appear before me respectfully. I have done so throughout my 15-year judicial tenure on three courts: the Minnesota Supreme Court, the Minnesota Court of Appeals and the Ramsey County District Court.

- 15. If confirmed, how do you intend to manage your caseload?**

Response: I believe that active case management is critical to the timely adjudication of cases. If confirmed, I would use all means available to avoid delays in the process. These include scheduling orders, status conferences, timely adjudication of motions, as well as orderly and efficient trial proceedings.

- 16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, judges play a large role in controlling the pace and conduct of litigation. If confirmed, I would use the methods identified in question 15 to control my docket.

- 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?

Response: The Supreme Court has not held that there is a general constitutional right to privacy. But the Supreme Court has held that certain provisions of the Bill of Rights, the First, Third, Fourth and Fifth Amendments, along with the Fourteenth Amendment, reflect privacy rights and interests. For example, the Supreme Court has found a privacy interest in the First Amendment right of association in *NAACP v. Alabama*, 357 U.S. 449, 462 (1958). In addition, the Supreme Court has described the Fourth Amendment as protecting “privacy interests.” *Kentucky v. King*, 563 U.S. ___, 131 S.Ct. 1848, 1867 (2011).

If confirmed as a district court judge, I would carefully apply the precedents of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit to the facts of any case in which the constitutional right to privacy is raised.

- 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.” I realize you may not be aware of the specific context of this statement, but do you agree with that statement?**

Response: I am not familiar with this statement or the context in which it is made. I believe that deciding cases – regardless of difficulty – requires adherence to binding precedent and application of the pertinent law to the facts of a case.

- 19. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on July 29, 2015. After preparing my responses, I emailed them to the U.S. Department of Justice. I finalized my responses after speaking with a Justice Department official and authorized the Department of Justice to submit my answers to the Senate Judiciary Committee.

- 20. Do these answers reflect your true and personal views?**

Response: Yes, these answers reflect my true and personal views.

Senator Cruz Questions for the Record:
Nomination Hearing for Wilhelmina Marie Wright, Wednesday, July 22, 2015

I. The U.S. Constitution and Private Property Rights

- At your nomination hearing, Senator Jeff Sessions (R-Alabama) asked you about your written opinions in an article while you were in law school.¹ Your writings about racial issues make the following verbatim statements:
 - “The practice of American racism is based on two principles: the sanctity of property and the belief in the hierarchy of races. The first of these principles is firmly protected by the words and action of the Constitution; the second is proscribed by the words of the instrument, but not by its effect. History shows that when these two principles are juxtaposed (which happens constantly), property rights are given absolute priority.”²
 - “The failure of today’s racial discourse is its reliance on the notion that property is neutral, that the deed to a suburban home is ‘property’ while the opportunity to move out of a slum is not. The fungibility of property can be no better exemplified than it is by slavery. The fact that our Constitution once recognized one person’s very life and liberty as another’s property should teach us the danger of letting property determine liberty rather than looking to liberty to define property.”³

1. Please provide the following:

a. A more detailed explanation of the two above quotations from the below-cited article.

Response: This writing was an assignment as part of a class in which I was enrolled. I do not recall the precise class assignment or question to which this reflection responded. However, my writing reflects my effort as a law student to describe two concepts: first, how the right to own people as property (slavery) could have been justified in the United States despite constitutional guarantees of freedom and equality and, second, how racially restrictive covenants were used to thwart the fair housing laws such as the Fair Housing Act, 42 U.S.C. §3601, *et seq.*, that were enacted to combat racial discrimination and to effectuate the property rights of owners who wished to exercise their right to free alienation of property.

b. Yes or no answers to the following questions, with explanations of your yes or no answers:

¹ See generally Derrick Bell, Tracy Higgins, and Sung-Hee Suh, *Racial Reflections: Dialogues in the Direction of Liberation*, 37 UCLA L.Rev. 1037, 1053-1054 (1989-1990).

² *Id.* at 1053.

³ *Id.* at 1054.

Senator Cruz Questions for the Record:
Nomination Hearing for Wilhelmina Marie Wright, Wednesday, July 22, 2015

i. Do you think the United States Constitution establishes positive rights?

Response: The United States Constitution generally enumerates negative rights establishing that which the government must not do rather than affirmative duties that the government must perform. Consistent with this principle, for example, the Supreme Court has stated “the Due Process Clauses generally confer no affirmative right to governmental aid, even where aid may be necessary to secure life, liberty or property interests of which the government itself may not deprive the individual.” *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 196 (1989). A judge must render a decision based on an application of the controlling precedent to the facts of the case. If confirmed as a federal district judge, I will faithfully follow all relevant precedent from the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit when deciding the case at hand.

ii. Do you think the United States Constitution provides private property protections beyond the one enumerated in the Fifth Amendment, which provides that private property shall not “be taken for public use, without just compensation?”

Response: The Fifth Amendment provides a clear example of private property protection. Although arguments have been advanced that other provisions of the United States Constitution provide other degrees of private property protection, experience has taught me that I should not judge any case or argument presented until I have fully researched and considered all of its issues. This includes a thorough review of the briefs, supporting materials, arguments of counsel, and research of the applicable law, statutes and legal precedent. Such preparation also incorporates the maxim of constitutional interpretation enunciated in *District of Columbia v. Heller*, that a judge should look to the normal and ordinary meaning of words as they were understood at the time of ratification to decide constitutional questions. 554 U.S. 570 (2008). If confirmed as a federal district judge, I will use this process and faithfully follow all relevant precedent from the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit.

iii. Do you think the United States Constitution provides a right to federally subsidized housing?

Senator Cruz Questions for the Record:
Nomination Hearing for Wilhelmina Marie Wright, Wednesday, July 22, 2015

Response: The United States Constitution generally establishes that which the government must not do, rather than prescribe duties that the government must perform. *See, e.g., DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.* 489 U.S. 189, 196 (1989). I am not aware of any Supreme Court precedent interpreting the United States Constitution to provide a substantive right to subsidized housing. Should such an argument be made, I would engage in the robust process that I described above in response to question ii. and follow all relevant precedent from the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit.

iv. Do you think the concept of private property ownership is inherently racist?

Response: No, it was not my intent to convey in my writing that the concept of private property ownership is inherently racist. Indeed, Congress has enacted legislation such as the Fair Housing Act, 42 U.S.C. §3601 *et seq.*, which prohibits discrimination in the sale, rental and financing of dwellings, based on race, color, national origin, religion, sex, familial status and disability.

**Responses of Justice Wilhelmina M. Wright
Nominee, United States District Court for the District of Minnesota
to Questions for the Record of Senator David Vitter**

1. In a panel on Global Rule of Law, you said “Judiciary must reflect the diversity of society so that judgment and insight that come from diverse experiences can assist in development of the law and the reality and perception of fairness and impartiality.” By referring to “diverse experiences” providing insight into the development of law, then speaking of fairness and impartiality in the latter part of the quote, you seem to indicate that fairness and impartiality to all parties, especially ones that don’t fit the prerequisites of your particular agenda, are an afterthought and that the concepts of true fairness and impartiality are ones that you do not hold particularly dear despite the oath you took when you became a judge.
 - a. Please explain your philosophy on impartiality and fairness in the judicial process, with particular emphasis on parties you may personally disagree with, but who still may have a meritorious claim or defense.

Response: Fairness, impartiality, respect for the rule of law, and respect for all litigants are fundamental requirements for a judge. These are the values on which my oath as a judge is founded. Indeed, I have no agenda as a judge other than these values. In my nearly 15 years of service as a Justice on the Minnesota Supreme Court and as a Judge on the Minnesota Court of Appeals and the Ramsey County District Court, these values have been my lodestar, and I give no consideration to whether I agree or disagree with a party.

I also appreciate the opportunity to clarify my statement quoted above. I define diverse experiences broadly. It has been my experience as a Justice on the Minnesota Supreme Court and as a Judge on the Minnesota Court of Appeals, in which jurists engage in collegial decision-making, that regional diversity and practice-area diversity in different jurisdictions throughout Minnesota have enriched the deliberations regarding rules and procedures for the practice of law. Similarly, in light of the number of highly qualified women lawyers and lawyers of color who are learned in the law and have the ethical and moral fitness to serve as a judge, I believe it would undermine the public’s trust and confidence in the judiciary if there were no judges who are women or judges of color.

- b. 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: In my 15 years of service on the bench, I have prided myself on my impartiality and fairness to all parties and my commitment to faithfully applying legal precedent. If I am confirmed as a district judge, I will faithfully apply the precedents of

the United States Supreme Court and the Eighth Circuit, even if I personally disagree with such precedents.

2. **Under Minnesota law, when domestic abuse between the parties is not at issue, there is a presumption that joint legal custody is in the best interests of the child. In *Kellen v. Kellen*, you upheld a district court grant of sole legal custody of a child to one spouse when domestic abuse was not an issue, ignoring state law. Has your philosophy changed on respecting the legislative branch's authority to make law?**

Response: Under Minnesota law enacted by the Minnesota Legislature, a custody decision must be made by applying several factors, including “the best interests of the child.” In *Kellen v. Kellen*, under the governing Minnesota statute, there was a rebuttable presumption that joint legal custody was in the best interests of the child. The district court applied that presumption of joint legal custody and found, based on the evidence presented to the district court, that the presumption in favor of joint legal custody had been rebutted. The legal standard of review for an appellate court in this case is abuse of discretion. Based on the application of this legal standard, the evidence in the record supported the district court’s decision. For this reason, the Minnesota Court of Appeals unanimously affirmed the district court’s decision.

3. **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: As a decision of the United States Supreme Court, *NLRB v. Canning, et al.*, 134 S. Ct. 2550 (2014), is binding precedent on all inferior courts. The Supreme Court concluded, “in light of historical practice, that a recess of more than 3 days but less than 10 days is presumptively too short to fall within the [Recess Appointment] Clause.” *Id.* at 2567. However, the term “presumptively” used by the Court was used to leave open the possibility that a “very unusual circumstance” — such as “a national catastrophe...that renders the Senate unavailable but calls for urgent response — could demand the exercise of the recess-appointment power during a shorter break.” *Id.* If confirmed, I would faithfully apply all decisions of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit.

4. **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 having admitting privileges at one of the hospitals in the state to protect women’s health and, as a result, all aborting clinics in the state are shut down?**

Response: In every case, a judge must apply the law of any binding precedent to the particular facts that have been developed through the presentation of evidence by all parties. The plurality decision of *Planned Parenthood v. Casey*, 505 U.S. 833 (1992),

reasoned that only when a state regulation of abortion imposes an “undue burden” on a woman’s ability to decide whether to terminate her pregnancy “does the power of the State reach into the heart of the liberty protected by the Due Process Clause.” *Id.* at 874. A regulation imposes an undue burden if its purpose or effect places a substantial obstacle in the path of a woman who seeks abortion of a nonviable fetus. *Id.* at 877. Nevertheless, a regulation that has an incidental effect that makes it more difficult or more expensive to procure an abortion is not enough to invalidate the regulation. *Id.* at 874. Moreover, regulations that are designed to foster the health of a woman who seeks an abortion are valid when they do not constitute an undue burden. *Id.* at 878. My research indicates that the facts described in this question have not been presented in a case decided by the United States Supreme Court or the Eighth Circuit. If a case of this nature were presented to me, I would conduct a thorough examination of all relevant evidence and faithfully follow the precedents of the United States Supreme Court and the Eighth Circuit.

5. The Court’s ruling on the right of privacy in *Griswold v. Connecticut* laid the foundation for *Roe v. Wade*. From your perspective, is *Roe v. Wade* settled law?

Response: As a decision of the United States Supreme Court, *Roe v. Wade*, 410 U.S. 113 (1973), is binding precedent until the United States Supreme Court decides to overrule it. However, the rule of law established in *Roe v. Wade* must be applied in the context of other subsequently decided cases of the United States Supreme Court, such as *Planned Parenthood v. Casey*, 505 U.S. 883 (1992), and *Gonzales v. Carhart*, 550 U.S. 124 (2007).

6. How would you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to the states under the 14th Amendment in *McDonald v. City of Chicago* with the more recent crop of lower federal 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 United States Supreme Court reiterated its analysis in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and held that the Fourteenth Amendment makes the Second Amendment right to bear arms fully applicable to states under the Due Process Clause, and this right is a substantive guarantee that is fundamental to our scheme of ordered liberty. The *McDonald* court also reiterated that citizens must be permitted to use handguns for the core lawful purpose of self-defense, which is a deeply rooted tradition. 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. In doing so, the Supreme Court reversed the Seventh Circuit decision that affirmed a ban on the possession of firearms for the stated purpose of protecting Chicago’s residents from loss of property and from death from firearms. The Supreme Court in *Heller* also indicated that its opinion should not “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.” 544 U.S. at 626-27. If confirmed, I would apply *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *District of Columbia v. Heller*, 554 U.S. 570 (2008), and any other applicable precedents of the United States Supreme Court and the Eighth Circuit to any case with the facts described in the question presented here.

Senator Cruz Questions for the Record (Second Round):
Nomination Hearing for Wilhelmina Marie Wright, Wednesday, July 22, 2015

Responses of Justice Wilhelmina M. Wright
Nominee, United States District Court for the District of Minnesota

I. Follow-Up Questions Regarding the U.S. Constitution and Private Property Rights

- In my first round of questions for the record,¹ I asked you about opinions you expressed in a previously published law journal article.² Your opinions raise important questions about your view of the U.S. Constitution generally and its impact on private property rights specifically. You provided the following answers to my original questions:

- When asked about your published materials, you stated that “[t]his writing was an assignment as part of a class in which I was enrolled,” and “I do not recall the precise class assignment or question to which this reflection responded.”

1. Do the opinions you expressed in your published materials reflect your views on the nature and basis of private property today?

Response: No. The opinions expressed in the published materials to which you refer do not reflect my views on the nature and basis of private property. Moreover, if confirmed as a United States District Judge, I would adhere to the precedent of the United States Supreme Court and the Eighth Circuit.

- When asked whether you believe the United States Constitution establishes positive rights, you stated that “[t]he United States Constitution *generally* enumerates negative rights establishing that which the government must not do rather than affirmative duties that the government must perform” (emphasis added).

2. Given your position that the United States Constitution “generally” enumerates negative rights, can you please provide specific examples of the positive rights you believe the Constitution establishes or guarantees.

Response: In *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 196 (1989), the United States Supreme Court stated that “the Due Process Clauses generally confer no affirmative right to governmental aid, even where aid may be necessary to secure life, liberty or property interests of which the government may not deprive the individual.” I am not aware of any United States Supreme Court precedent that specifically articulates positive rights that the United States Constitution establishes or guarantees. If confirmed as a United States District Judge, I will faithfully follow all binding precedent from the United States Supreme Court and the Eighth Circuit.

¹ My original questions and your original responses are incorporated by reference.

² See generally Derrick Bell, Tracy Higgins, and Sung-Hee Suh, *Racial Reflections: Dialogues in the Direction of Liberation*, 37 UCLA L.Rev. 1037, 1053-1054 (1989-1990).

Senator Cruz Questions for the Record (Second Round):
Nomination Hearing for Wilhelmina Marie Wright, Wednesday, July 22, 2015

3. Do you think the Supreme Court of the United States has the authority to establish positive rights, via case law, based upon the language of the United States Constitution?

Response: The source of our constitutional rights is the United States Constitution. I am not aware of any case in which the United States Supreme Court has established positive rights based on the language of the United States Constitution.

- When asked about the private property protections provided by the United States Constitution beyond those in the Fifth Amendment, you acknowledged that “arguments have been advanced that *other provisions* of the United States Constitution provide other degrees of private property protection” (emphasis added).

4. Based upon the above statement, please indicate the “other provisions” of the United States Constitution that arguably provide private property protection.

Response: In my original response, I noted that “[t]he Fifth Amendment provides a clear example of private property protection. Although arguments have been advanced that other provisions of the United States Constitution provide other degrees of private property protection, experience has taught me that I should not judge a case or argument presented until I have fully researched and considered all of its issues.”

Certain clauses of the United States Constitution expressly address rights that relate to private property protections. For example, Article I, section 10, provides that no State shall pass any law “impairing the obligation of contracts,” and many contracts have some nexus to private property. The Third Amendment states that “[n]o soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.”

Although I cannot predict every circumstance in which issues of private property protection under the United States Constitution may be presented in a case, if confirmed as a United States District Judge, I will carefully consider the arguments presented and faithfully follow the legal precedents of the United States Supreme Court and the Eighth Circuit and apply them to the particular facts of the case.

5. Based upon the above statement, do you agree with any of these “arguments”?

Response: Although I acknowledge such arguments may be presented, I cannot predict the facts and circumstances of cases in which issues of private property protections of the United States Constitution may be presented to me or the specific arguments that will be raised. If confirmed as a United States District Judge, I will carefully consider the arguments presented and faithfully follow the legal precedents of the United States Supreme Court and the Eighth Circuit.

Senator Cruz Questions for the Record (Second Round):
Nomination Hearing for Wilhelmina Marie Wright, Wednesday, July 22, 2015

- When asked if you think the United States Constitution provides a right to federally subsidized housing, you stated that you were “not aware of any Supreme Court precedent interpreting the United States Constitution to provide a substantive right to subsidized housing.”

6. Based on your current reading of the United States Constitution, do you think there is a constitutional right to federally subsidized housing?

Response: No. The text of the United States Constitution does not articulate such a right, and I am not aware of any case in which the United States Supreme Court has determined that such a right exists.

- When asked if you think the concept of private property ownership is inherently racist, you stated that “it was not my intent to convey in my writing that the concept of private property ownership is inherently racist,” but you then go on to imply that the existence of the Fair Housing Act is the reason why private property ownership is not inherently racist.

7. Based on the above statement, do you think that, in the absence of the existence of the Fair Housing Act, private property ownership would be “inherently racist” in the United States?

Response: No. My response to this question in the earlier Questions for the Record was not intended to imply that without the Fair Housing Act, private property ownership would be “inherently racist” in the United States.

- In your published materials, you also appear to take issue with the “notion that property is neutral, that the deed to a suburban home is ‘property’ while the opportunity to move out of a slum is not.”

8. Do you think the United States Constitution guarantees a right to own property?

Response: No. The text of the United States Constitution does not articulate such a right, and I am not aware of any case in which the United States Supreme Court has determined that such a right exists.

9. Do you think the United States Constitution guarantees a right to any type of housing?

Response: No. The text of the United States Constitution does not articulate such a right, and I am not aware of any case in which the United States Supreme Court has determined that such a right exists.

10. Do you think the United States Constitution guarantees a right to relocate one’s residence or domicile to a place of one’s choosing, regardless of financial means or resources?

Senator Cruz Questions for the Record (Second Round):
Nomination Hearing for Wilhelmina Marie Wright, Wednesday, July 22, 2015

Response: No. The text of the United States Constitution does not articulate such a right, and I am not aware of any case in which the United States Supreme Court has determined that such a right exists.

11. Do you think the ability to “move out of a slum” is a property right?

Response: No. The text of the United States Constitution does not articulate such a right, and I am not aware of any case in which the United States Supreme Court has determined that such a right exists.

Senator Grassley
Questions for the Record

Paula Xinis,
Nominee, U.S. District Judge for the District of Maryland

1. **In a speech you gave in 2013, you expressed the opinion that “courts have not caught up with technology” after discussing a case in which the Court had held that police had committed trespass against a defendant when the officer installed a GPS on the defendant’s car. Please explain what you meant by this statement.**

Response: This statement was on a PowerPoint slide for a presentation to criminal defense attorneys regarding Fourth Amendment issues arising from electronic surveillance. It was designed to heighten audience awareness to rapidly changing surveillance technologies by impressing upon them that courts are seeing application of these technologies for the first time in criminal cases.

2. **A lot of factors go into sentencing defendants, including prior criminal history and type of crime. Generally, what role should other factors play in deciding a sentence? And specifically, what weight do you give to a defendant who has children at home, who is a small business owner, or who is active in a local church?**

Response: Application of the United States Sentencing Guidelines would be the starting point and principal tool for determining a defendant’s sentence. 18 U.S.C. § 3553(a) further states that the sentencing court shall consider such factors as the nature and circumstances of the offense, and the need for the sentence imposed to reflect the seriousness of the offense, to afford adequate deterrence to criminal conduct, to protect the public from further crimes 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 the Sentencing Guidelines, these statutory factors, and all relevant credible evidence when imposing any sentence.

3. **You once described the 4th Circuit as the most conservative in the country. What, in your view, makes a circuit conservative or liberal? And, if confirmed, will you make your court a more liberal or a more conservative one?**

Response: This statement was made in an interview regarding the impact of *Apprendi v. New Jersey*, 530 U.S. 466 (2000) on future criminal cases. The Supreme Court in *Apprendi* held that other than a defendant’s prior criminal conviction(s), all facts supporting a statutory mandatory minimum sentence must be plead and proven beyond a reasonable doubt. The statement was meant to highlight that the Fourth Circuit likely would narrowly construe *Apprendi*, and I used the term “conservative” inartfully. If confirmed, I would not consider whether my decisions would be characterized as “liberal” or “conservative.” Rather, I would apply all binding precedent to the facts of every case faithfully and without exception.

4. **What role, if any, do you believe a federal judge should play in both seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.**

Response: A judge must faithfully apply the United States Sentencing Guidelines and all statutory provisions related to sentencing. This includes consideration of the sentencing factors set forth in 18 U.S.C. § 3553(a) related to punishment and rehabilitation. A judge must also follow the laws applicable to protection of crime victims and participation of victims in sentencing proceedings (18 U.S.C. § 3771), and providing restitution to victims (18 U.S.C. §§ 3663 & 3663A).

5. **You have said that pre-sentencing reports are often “wrong.” If confirmed, what weight will you give to these reports when making sentencing decisions?**

Response: This statement related to the criminal history section of pre-sentence reports, and was part of a PowerPoint presentation I gave to criminal defense attorneys who represent indigent defendants. The statement was meant to highlight that defense attorneys must diligently obtain criminal history records to determine whether the records available to the pre-sentence report writer were complete and accurate. If confirmed, I would give the pre-sentence report the weight accorded to it by law and would follow the procedures set forth in Rule 32 of the Federal Rules of Criminal Procedure for using the pre-sentence report as a factual predicate for imposing sentence.

6. **What improvements, if any, do you believe need to be made to our criminal justice system?**

Response: Criminal justice reform involves important issues best addressed by our law and policy makers. If confirmed, I would faithfully apply all criminal laws to the facts of each case before me without regard to any personal views or beliefs.

7. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is a combination of faithful, unbiased, evenhanded application of the law to the facts of each case, while treating each litigant, lawyer or witness who appears before the Court with dignity and respect. I am committed deeply to these principles, and if confirmed, would adhere to them in every case.

8. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be respectful, patient, thoughtful and deliberate. Throughout my career as an attorney, I have treated all persons with dignity and respect. Further, during my years as an advocate, I have considered patience and thoughtful deliberation as the hallmarks of my professional reputation. If confirmed, I will follow these precepts in all of my interactions.

9. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: A judge's faithful application of the law and all binding precedent without regard to any personal views is of paramount importance. If confirmed, I will apply all binding precedent to the facts of every case faithfully and without exception.

10. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: First, I would ensure through exhaustive research that no controlling precedent could be applied to decide the matter or issue before me. Next, I would determine whether the plain language of the statute, rule or regulation as applied to the facts would dispose of the issue in question. If the language is ambiguous or not dispositive, I would apply the principles of statutory construction set forth in binding Supreme Court and Fourth Circuit precedent. I would also look to analogous cases in the Supreme Court and the Fourth Circuit, and if none exist, consult analogous cases in other Circuits for persuasive authority.

11. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I am deeply committed to *stare decisis* and would apply all binding precedent without regard to my personal views.

12. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes are presumptively constitutional. If a court can reasonably interpret a statute that allows the statute to survive constitutional challenge, that interpretation should be applied. A statute should be declared unconstitutional only where Congress has clearly exceeded its authority or a statute unequivocally violates a provision of the Constitution.

13. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: It is never appropriate for judges to rely on foreign law or views of the world community when interpreting the United States Constitution.

- 14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: No judge should ever be motivated by any political ideology or personal agenda. Rigorous application of precedent and the plain language of the law without regard to personal views are fundamental to the role of a judge. I assure this Committee of my deep commitment to fulfilling my oath and obligations as a neutral arbiter will be unaffected by personal views. My integrity, reputation for honesty, and unblemished record for faithful execution of my oaths and obligations provide further assurance that I would fully execute my duties of impartial, fair decision-making were I so fortunate as to be confirmed.

- 15. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: During my career as an attorney, which has included both criminal and civil practice, I have put aside all personal views when representing my clients and have faithfully executed my obligations as an advocate and officer of the court. Equally important has been my fair treatment of all individuals throughout my professional life. If confirmed, I would carry forward my deep commitment to treating all who appear before me fairly, impartially, and with dignity and respect.

- 16. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I would manage my caseload consistent with the procedures implemented in the United States District Court for the District of Maryland. Such procedures include electronic case management tools, working closely with United States Magistrate Judges to resolve civil discovery disputes, and holding case management conferences to ensure that cases are moving expeditiously and steadily toward resolution. I would also remain an active participant in the orderly administration of a case, issuing meaningful scheduling orders and requiring litigants to adhere to such orders absent exceptional circumstances.

- 17. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, judges play a vital role in controlling the pace and conduct of litigation. If confirmed, I would employ the procedures outlined in my previous answer. Additionally, I would require attorneys appearing before me to adhere to standards of professionalism and civility, and would encourage cooperative resolution of preliminary discovery and other non-dispositive matters to promote efficient resolution of cases.

- 18. Do you believe there is a right to privacy in the U.S. Constitution?**

a. Where is it located?

Response: Although the Constitution does not expressly include the phrase “right to privacy,” the United States Supreme Court has recognized a “right to privacy” in certain contexts. For example, the Court has recognized a privacy right in the freedom from unreasonable searches and seizures embodied in the Fourth Amendment. *See Missouri v. McNeely*, 133 S. Ct. 1552, 1558 (2013) and *United States v. Jones*, 132 S. Ct. 945, 950 (2012). The Court has similarly recognized a privacy right in such personal freedoms as the right to marry embodied in the Due Process Clause of the Fifth and Fourteenth Amendments, *see Washington v. Glucksberg*, 521 U.S. 702, 719-20 (1997), and to free association provided in the First Amendment. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

b. From what does it derive?

Response: Please see Response to Question 18(a).

c. What is your understanding, in general terms, of the contours of that right?

Response: My understanding of this right is based on relevant United States Supreme Court precedent. If I am confirmed and a party asserted a privacy interest, I would faithfully apply binding Supreme Court and Fourth Circuit precedent to determine the Constitutional provision at issue and apply the law to the facts and circumstances of the case before me.

- 19. 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.” I realize you may not be aware of the specific context of this statement, but do you agree with that statement?**

Response: I am not familiar with the context in which President Obama made this statement. A judge must faithfully apply the law to the facts of every case without regard to his or her personal views.

- 20. 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 July 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. I then finalized my responses, and permitted the Office of Legal Policy to submit these responses on my behalf.

- 21. Do these answers reflect your true and personal views?**

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Response: Yes.

Senator Vitter
Questions for the Record

Paula Xinis,
Nominee, U.S. District Judge for the District of Maryland

1. **What are some acceptable indicia of probable cause when conducting a safety pat down of an individual that would elicit a more probing legal search for contraband or weapons?**
 - a. **Would a small lump in the suspect's front pocket when looking for a weapon warrant a more exacting search?**
 - b. **Would the crackling sound of a plastic baggy along with feeling a rigid or semi-rigid substance inside the baggy in the suspect's pants pocket when looking for a weapon warrant a more exacting search?**

Response: In *Terry v. Ohio*, 392 U.S. 1, 24 (1968), the United States Supreme Court held that an officer may conduct a warrantless pat-down search of a suspect lawfully detained for questioning where the officer reasonably believes that the suspect may be carrying a weapon. In *Minnesota v. Dickerson*, 508 U.S. 366, 375-76 (1993), the Supreme Court further held that if an officer conducting a *Terry* authorized pat-down “feels an object whose contour or mass makes its identity immediately apparent” as contraband, the object may be lawfully seized. *Id. See also United States v. Swann*, 149 F.3d 271, 274-75 (4th Cir. 1998). If confirmed, I would faithfully apply controlling Supreme Court and Fourth Circuit precedent to the facts of every case in which this issue is presented.

2. **In your work as a criminal defense attorney, you have given many presentations on sentencing issues, and how to mitigate sentences. In these presentations, you recommended bringing in Bureau of Prison experts to attest to the prison systems “infirmities” and “help craft alternatives to prison.” What are the crimes that you deem worthy of alternatives to prison and what alternative would you suggest for each one?**

Response: For any federal criminal case, the starting point and primary tool to determine the appropriate sentence is the United States Sentencing Guidelines. Certain offenses are also subject to statutory mandatory minimum terms of imprisonment that a sentencing court must apply absent narrowly tailored exceptions set forth in 18 U.S.C. § 3553(e) and (f). This statute at 18 U.S.C. § 3553(a) further states that the court shall consider when imposing sentence the nature and circumstances of the offense, and the need for the sentence imposed to reflect the seriousness of the offense, to afford adequate deterrence to criminal conduct, to protect the public from further crimes 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 apply the Sentencing Guidelines, the statutory factors, and all relevant credible evidence when imposing any sentence.

3. 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: With regard to applying binding case law, I firmly believe that judges are duty bound to following the binding precedent of the United States Supreme Court and respective Courts of Appeals regardless of any personal views. If confirmed, I will faithfully apply all relevant and binding precedent without regard to any personal views.

4. 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*, 134 S. Ct. 2550, 2567 (2014), 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." *Id.* (internal citations and quotations omitted). If confirmed, I would faithfully apply all Supreme Court precedent, including *Canning*, as well as any other binding precedent from the Fourth Circuit.

5. 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 United States Supreme Court reaffirmed the holding of *Roe v. Wade*, but set a new standard for reviewing the constitutional validity of laws restricting abortions. The Court announced, in a plurality opinion, that if a state law imposes an "undue burden" or its "purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability," the law does not pass constitutional muster. *Id.* at 878. Because this issue is being litigated in various federal courts throughout the country and may be raised in future cases over which I may preside, I do not believe it prudent for me to address this issue further. If confirmed, I would faithfully follow all binding precedent of the Supreme Court and the United States Court of Appeals for the Fourth Circuit for all matters, including those involving abortion.

6. 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 affirmed, modified and clarified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) and *Gonzales v. Carhart*, 550 U.S. 124 (2007), is binding Supreme Court precedent.

7. How do you reconcile the 2nd Amendment rights 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), the Supreme Court held that individuals retain the right to keep and bear arms under the Second Amendment. The Court in *Heller* also noted the right to bear arms is not unlimited and that rational basis scrutiny would not be an appropriate level of review. *Id.* at 626, 628, n.27. The Fourth Circuit, applying *Heller*, has announced a two-pronged test to determine the constitutionality of a federal gun-control statute. *See United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010). Under *United States v. Chester*, a court must determine first whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guaranteed right to keep and bear arms. If the "challenged regulation burdens conduct that was in the scope of the Second Amendment," the Court must next determine what level of scrutiny it should apply in reviewing the constitutionality of the statute. *Id.* If confirmed, I will faithfully apply binding precedent in all cases, including those related to the constitutionality of firearms regulations.

November 5, 2015

The Honorable Charles Grassley
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley:

Thank you again for giving me the opportunity to appear before the Committee on July 22, 2015.

I understand that the Committee may have certain concerns about a 2008 letter I co-signed, relating to the so-called "Pulpit Initiative" of the Alliance Defense Fund (ADF). I thought it might be helpful to give you the full background and context of my involvement with that letter.

Initially, it should be noted that I am not an Exempt Organization (E.O.) tax attorney and have no particular expertise in that area. In 2008, however, I was approached by my colleague, Marcus S. Owens, who was then a senior member of my firm's E.O. practice group. Mr. Owens represented many churches across the country, and he had received a number of client inquiries regarding the legality of the "Pulpit Initiative." Mr. Owens had drafted the letter in issue, and he asked me, as a former Director of the IRS Office of Professional Responsibility (O.P.R.), and our colleague, former IRS Commissioner Mortimer Caplin, to co-sign it with him. We did.

I signed this letter because I believed the conduct of the ADF lawyers was inconsistent with their ethical obligations. Churches, like all organizations exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986, are prohibited from engaging in any partisan political activity. IRC § 501(c)(3). In the letter, I did not express any opinion as to whether the churches' conduct should, or should not, be a violation of the law; that is an issue for others to decide. But, it is the case that a lawyer who advocates an intentional violation of such federal tax law by a client or potential client commits a violation of the lawyer's ethical duties. Section 10.51(7) of the Regulations governing the practice of attorneys and C.P.A.'s before the IRS provides that a practitioner may be sanctioned for "willfully assisting, counseling, [or] encouraging a client or prospective client in violating, or suggesting to a client or prospective client, to violate, any Federal tax law..." Circular 230 (31 C.F.R.) §10.51(7). Based on the information available to me at the time, I concluded that the actions of the ADF were a violation of this provision.

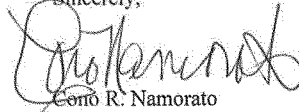
Thus, my principal interest in signing this letter was my concern for the integrity of our tax system. As a former Senior Department of Justice and IRS tax enforcement official, I believe that we should be concerned any time tax practitioners counsel the intentional disregard or outright violation of the tax law. That is why I agreed to sign the letter to O.P.R.

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The Honorable Charles Grassley
November 5, 2015
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If it would be helpful to meet with you or any members of the Committee to discuss this further, I am available to do so.

Sincerely,



Ron R. Namorato

CRN:pe

April 22, 2015

The Honorable Charles E. Grassley, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Cono Namorato to be Assistant Attorney General
for the Tax Division of the Department of Justice

Dear Chairman Grassley and Ranking Member Leahy:

We all served as U. S. Commissioner of Internal Revenue. We write to support the nomination of Cono R. Namorato of Virginia as Assistant Attorney General in charge of the Department of Justice Tax Division.

Mr. Namorato has a long and distinguished career in tax enforcement, and many of us know him well on a personal level. After graduating from college, he became a Special Agent for the Internal Revenue Service Criminal Investigation Division, which is the part of the IRS responsible for investigating criminal tax and related violations. After attending law school, Mr. Namorato joined the Justice Department's Tax Division and prosecuted criminal tax cases around the country. By virtue of his skills as both a litigator and a manager, he quickly rose through the ranks at the Tax Division, becoming an Assistant Chief and then Chief of the Division's Criminal Section, and then the Deputy Assistant Attorney General responsible for criminal tax matters. After leaving the DOJ, he entered private practice and joined the firm of Caplin & Drysdale, which is known not only for its expertise in tax enforcement cases and in tax litigation, but also for its commitment to sound tax administration. In this regard, while in private practice, Mr. Namorato served in many positions in the American Bar Association where he contributed to and advocated for vigorous and active tax enforcement.

Mr. Namorato interrupted his career in private practice to return to government, serving for two years as Director of the IRS Office of Professional Responsibility and as an acting Deputy Commissioner for certain tax enforcement matters. We note especially that when Mr. Namorato assumed this position, the IRS and the DOJ were actively engaged in enforcement actions on various fronts against tax shelters and the tax professionals who created, promoted and attempted to legitimize them. Mr. Namorato played a key role in the federal government

taking serious and aggressive action in these cases and in establishing the IRS's subsequent and now well-acknowledged role in policing ethical practices in the tax practitioner community.

We have a keen understanding of the relationship between the Tax Division and the IRS. We believe that Mr. Namorato does as well. He appreciates the need for efficient, non-partisan, independent and fair-minded but aggressive tax enforcement, aimed at punishing wrongdoers and deterring tax violations. He understands the respective roles of civil and criminal tax litigation in enforcing the tax laws and in promoting tax compliance. He will be sensitive to the need for the Justice Department to work with the various components that participate in the nation's tax administration, including the IRS, the congressional tax committees, and state revenue authorities. As he has significant experience in international tax controversy matters, he fully appreciates the Justice Department's role in helping to detect, prosecute and prevent Americans from engaging in tax violations involving offshore assets and tax havens.

We cannot imagine a more qualified nominee to head the Tax Division than Mr. Namorato. We urge the Senate to confirm him promptly and to give the Tax Division a leader with the talent, experience, and personal skills to help enforce the nation's tax laws to their fullest extent.

We appreciate your consideration of our views.

Mortimer M. Caplin
Commissioner 1961-1964

Fred Goldberg, Jr.
Commissioner 1989-1992

Sheldon S. Cohen
Commissioner 1965-1969

Margaret Milner Richardson
Commissioner 1993-1997

Lawrence B. Gibbs
Commissioner 1986-1989

Mark W. Everson
Commissioner 2003-2007

April 23, 2015

The Honorable Charles Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Building
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

We write to endorse the nomination of Cono Namorato to be Assistant Attorney General for the Tax Division, a position for which he is enormously – and uniquely – qualified. Each of us has known Mr. Namorato for a long time. He was, for a decade, a senior career lawyer in the Tax Division, rising to the level of Chief of the Criminal Section and then Deputy Assistant Attorney General. He then spent twenty-five years in private practice. He therefore understands tax law, tax litigation and tax controversies from both the public and private perspectives. In both private practice and public service, Mr. Namorato has enjoyed a stellar reputation as one of the most knowledgeable and fair-minded lawyers in the nation.

His respect for public service is further evidenced by his decision to leave private practice, from 2004 to 2006, for a job as Director of the Office of Professional Responsibility at the Internal Revenue Service. The work of that Office is to ensure that tax practitioners live up to their professional responsibilities and that there is rigor in the system. This is not a position one takes for glory. It is a position that one takes to make sure that government works as citizens should expect it to work.

It is for these reasons that we – former senior leaders of the Department – believe that Mr. Namorato will be a superb leader of the Tax Division if confirmed by the Senate. We urge you to act positively on his nomination.

Sincerely,

Paul K. Charlton
US Attorney for the District of Arizona, 2001-2007

Benjamin R. Civiletti
Attorney General, 1979-1981

James M. Cole
Deputy Attorney General, 2010-2015

The Honorable Charles Grassley
The Honorable Patrick J. Leahy
April 23, 2015
Page Two

Robert B. Fiske, Jr.
US Attorney for the Southern District of New York, 1976-1980

Jonathan L. Goldstein
US Attorney for the District of New Jersey, 1974-1977

Jamie S. Gorelick
Deputy Attorney General, 1994-1997

Richard L. Thornburgh
Attorney General, 1988-1991

Alan Vinegrad
US Attorney for the Eastern District of New York, 2001-2002

Seth P. Waxman
Solicitor General of the United States, 1997-2001

April 20, 2015

The Honorable Charles E. Grassley, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Cono Namorato to be Assistant Attorney General for the Tax Division
of the Department of Justice

Dear Chairman Grassley and Ranking Member Leahy:

We have served as Assistant Attorney General for the Tax Division (or Acting Assistant Attorney General for the Tax Division), as Deputy Assistant Attorney General for the Tax Division, as the Assistant Secretary for Tax Policy at the U.S. Department of the Treasury, or as the Chief Counsel for the Internal Revenue Service (or as Acting Chief Counsel for the Internal Revenue Service) in the administrations of Presidents Ronald Reagan, George H.W. Bush, William Clinton, George W. Bush and Barack Obama. We write in strong support of the nomination of Cono Namorato to be Assistant Attorney General for the Tax Division of the Department of Justice.

Some of us have worked alongside Cono Namorato as co-counsel; some have appeared opposite him in cases; some have worked with him in various professional organizations; each of us is personally familiar with and attest to his experience, integrity and strong capabilities to lead the Tax Division, his exceptional work ethic, his calm demeanor, and his well-deserved reputation as a leading member of the civil and criminal tax bar in the United States.

Cono Namorato can and, if confirmed, will carry out the crucial mission assigned to the Tax Division, chiefly to enforce the nation's tax laws fully, fairly, and consistently, through both criminal and civil litigation. His leadership will promote voluntary compliance with the tax laws, maintain public confidence in the integrity of the tax system, and promote the sound development of the law. Cono Namorato will encourage and maintain the integrity, credibility and traditions of the office that the Assistant Attorney General for the Tax Division leads. We each endorse and fully support the confirmation of Cono Namorato and urge the Senate to promptly confirm him appointment as the next Assistant Attorney General for the Tax Division.

Respectfully Submitted,

**THE FOLLOWING INDIVIDUALS HAVE SIGNED ON TO THIS LETTER IN THEIR
INDIVIDUAL CAPACITIES - CURRENT AND PRIOR LISTED AFFILIATIONS ARE
SOLELY NOTED FOR PURPOSES OF IDENTIFYING THEIR RELEVANT
BACKGROUND OR PROFESSIONAL EXPERIENCE**

Loretta C. Argrett

Assistant Attorney General, Department of Justice, Tax Division, 1993-1999

James A. Bruton III

Williams & Connolly

Acting Assistant Attorney General, Department of Justice, Tax Division, 1992-1993

Principal Deputy Assistant Attorney General, Department of Justice, Tax Division, 1989-1991

Ronald A. Cimino

Deputy Assistant Attorney General, Department of Justice, Tax Division, 2009-2014

John A. DiCicco

Acting Assistant Attorney General, Department of Justice, Tax Division, 2009-2010

Principal Deputy Assistant Attorney General, Department of Justice, Tax Division, 2010-2013

Michael C. Durney

Law Offices of Michael C. Durney

Acting Assistant Attorney General, Department of Justice, Tax Division, 1987-1988

Principal Deputy Assistant Attorney General, Department of Justice, Tax Division, 1986-1987

Kenneth W. Gideon

Skadden, Arps, Slate, Meagher & Flom, LLP

Assistant Secretary for Tax Policy, U. S. Department of the Treasury, 1989-1992

Chief Counsel, Internal Revenue Service, 1981-1983

Chair, ABA Section of Taxation, 2004-2005

Fred T. Goldberg, Jr.

Skadden, Arps, Slate, Meagher & Flom, LLP

Assistant Secretary for Tax Policy, U.S. Department of the Treasury, 1992

Commissioner, Internal Revenue Service, 1989-92

Chief Counsel, Internal Revenue Service, 1984-1986

Nathan J. Hochman

Bingham McCutchen LLP

Assistant Attorney General, Department of Justice, Tax Division, 2008-2009

Assistant U.S. Attorney, Central District of California, Criminal Division, 1990-1997

Paula M. Junghans

Zuckerman, Spaeder LLP

Acting Assistant Attorney General, Department of Justice, Tax Division, 1999-2001

Principal Deputy Assistant Attorney General, Department of Justice, Tax Division, 1998-1999

Kathryn Keneally

DLA Piper (US) LLP

Assistant Attorney General, Department of Justice, Tax Division, 2012-2014

Mark E. Matthews

Caplin & Drysdale, Chartered

Deputy Commissioner (Services & Enforcement), Internal Revenue Service, 2003-2006

Chief, Criminal Investigation Division, Internal Revenue Service, 2000-2002

Deputy Assistant Attorney General, Department of Justice, Tax Division, 1993-1998

Eileen J. O'Connor

Pillsbury Winthrop Shaw Pittman LLP

Assistant Attorney General, Department of Justice Tax Division, 2001-2007

Roger M. Olsen

Assistant Attorney General, Department of Justice, Tax Division, 1983-1987

Deputy Assistant Attorney General, Department of Justice, Tax Division, 1981-1983

Pamela F. Olson

PricewaterhouseCoopers LLP

Assistant Secretary for Tax Policy, U. S. Department of the Treasury, 2001-2004

Special Assistant to the Chief Counsel, Internal Revenue Service, 1984-1986

Chair, ABA Section of Taxation, 2000-2001

Emily A. Parker

Thompson & Knight, LLP

Acting Chief Counsel, Internal Revenue Service, 2003-2004

Deputy Chief Counsel, Internal Revenue Service, 2002-2003

Vice-Chair, ABA Section of Taxation, Professional Services, 2010-2011

B. John Williams, Jr.

Skadden, Arps, Slate, Meagher & Flom, LLP

Chief Counsel, Internal Revenue Service, 2002-2003

Judge, United States Tax Court, 1985-1990

Deputy Assistant Attorney General, Department of Justice, Tax Division, 1983-1984

Special Assistant to the Chief Counsel, Internal Revenue Service, 1981-1983

April 21, 2015

The Honorable Charles E. Grassley, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Cono Namorato to be Assistant Attorney General for the Tax Division
of the Department of Justice

Dear Chairman Grassley and Ranking Member Leahy:

We write in enthusiastic support of the appointment of Cono Namorato to be Assistant Attorney General for the Tax Division of the Department of Justice. We write as lawyers and practitioners who are deeply familiar with the work of the Tax Division and also with the exemplary career, strong reputation, personal integrity, work ethic and character of Cono Namorato. Some of us have worked jointly with him in cases, some of us have appeared opposite him in cases and others have participated alongside him in various professional organizations.

The Tax Division is charged with promoting public compliance with the internal revenue laws by ensuring strict and even-handed enforcement. This charge covers a broad spectrum of civil litigation in United States District Courts, United States Bankruptcy Courts, United States Court of Federal Claims and state courts. It also includes representation before the United States Courts of Appeals and the various state appellate courts as well as the criminal investigation and prosecution of individuals and corporations. Cono Namorato has a deep knowledge and understanding of the Internal Revenue Code, the Treasury Regulations and relevant case authorities involved in a wide range of civil and criminal tax related issues. He knows, understands and respects the history and traditions of the Tax Division and its relationship with the Internal Revenue Service. With his long, distinguished career in both civil and criminal tax controversies and litigation, Mr. Namorato is unusually experienced in the vast range of tax, criminal and legal issues for which the Tax Division is responsible.

The successful functioning of the Tax Division requires strong leadership skills and an ability to see the effects of particular arguments on the overall interests of the United States. Shaping arguments to respect those interests, and to protect the special credibility the Tax Division has acquired over the decades of its existence, while maintaining clarity and force in presentations, demands the entire range of knowledge, intelligence, judgment, and other capacities that Cono Namorato has in abundance. He is a quick study, careful listener, and acute judge of legal arguments. Mr. Namorato's approach to practicing law throughout his career - his meticulousness in understanding and presenting facts accurately and his insistence on coherently

providing the foundation for the positions he is urging - clearly demonstrate that he will appropriately and fully protect and promote the rule of law served by the Tax Division.

Mr. Namorato is open-minded and courteous while engaging in well-reasoned, thoughtful discussions on often complex, technical issues. His outstanding character and integrity, coupled with his extremely strong leadership and team-building skills, will serve the highest traditions of the Tax Division.

Finally, we take special note of Mr. Namorato's long-term efforts and strong desire to support the integrity of our system of tax administration by his diligent efforts to enhance the ethics, credibility and knowledge of both private and government practitioners throughout the United States. He gives his time and expends significant personal effort to participate in professional organizations and conferences. It is no exaggeration to state that Cono Namorato is one of our nation's leading practitioners regarding tax administration and tax litigation.

We anticipate that the Senate, after full inquiry, will see all the virtues that Mr. Namorato possesses which we know and appreciate from our firsthand experience. He is the consummate professional with a stellar personal and professional reputation. We urge the Senate to *promptly* confirm the appointment of Cono Namorato to serve as the next Assistant Attorney General for the Tax Division.

Respectfully Submitted,

**THE FOLLOWING INDIVIDUALS HAVE SIGNED ON TO THIS LETTER IN THEIR
INDIVIDUAL CAPACITIES - CURRENT AND PRIOR LISTED AFFILIATIONS ARE
SOLELY NOTED FOR PURPOSES OF IDENTIFYING THEIR RELEVANT
BACKGROUND OR PROFESSIONAL EXPERIENCE**

Frank Agostino

Agostino & Associates
Former District Counsel, Internal Revenue Service, Springfield, IL and Newark, NJ
Former Special Assistant U.S. Attorney, Springfield, IL and Newark, NJ

Joan Arnold

Pepper Hamilton LLP
President, American College of Tax Counsel
Vice-Chair, ABA Section of Taxation

David F. Axelrod

Axelrod Laliberte LLC
Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 1999-2001
Assistant U. S. Attorney, Southern District of Florida, 1987-1991
Trial Attorney, U.S. Department of Justice, Tax Division, 1984-1987

Megan L. Brackney

Kostelantz & Fink, LLP
 Council Director, ABA Section of Taxation
 Regent, American College of Tax Counsel
 Chair, ABA Section of Taxation, Individual Income Tax Committee, 2008-2010
 Assistant United States Attorney, Southern District of New York, 2000-2004

Thomas Callahan

Thompson Hine LLP
 Former Chair, American College of Tax Counsel
 Vice-Chair, ABA Section of Taxation
 Chair, ABA Section of Taxation, Administrative Practice Committee, 2005-2007

Larry A. Campagna

Chamberlain, Hrdlicka, White, Williams & Aughtry
 Regent, American College of Tax Counsel
 Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 2011-2013
 Former Chair, Subcommittee on IRS Investigations and Procedures
 Former Chair, ABA Section of Taxation, Employment Taxes

John M. Colvin

Colvin & Hallett, P.S.
 Vice-Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties
 Chair, ABA Taxation Section, Civil and Criminal Penalties Committee, Subcommittee for
 Legislative and Administrative Developments, 2008-2011
 Co-Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties,
 Subcommittee on Civil Penalties, 2010-2011

Ian M. Comisky

Blank Rome LLP
 Former Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties
 Assistant U.S. Attorney, Southern District of Florida, General Crimes, Fraud & Public
 Corruption Divisions, 1979-1980

Michael J. Desmond

Bingham McCutchen LLP
 Tax Legislative Counsel, U.S. Department of Treasury, 2005-2008
 Regent, American College of Tax Counsel
 Trial Attorney, Tax Division, U.S. Department of Justice, 1995-2000
 Law Clerk, U.S. District Court for the Central District of California, 1994-1995

Niles Elber

Caplin & Drysdale, Chartered
 Vice-Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties

W. Curtis Elliott, Jr.

Culp, Elliott & Carpenter, PLLC
 Former Regent, American College of Tax Counsel
 Former Chair, ABA Taxation Section, Committee on Court Practice and Procedure
 Former Chair, ABA Taxation Section, Committee on Appointments to the U.S. Tax Court

Lawrence S. Feld

Law Offices of Lawrence S. Feld
 Assistant U.S. Attorney, Southern District of New York, Assistant Chief Appellate Attorney,
 Criminal Division, 1972-1975

Robert S. Fink

Kostelantz & Fink, LLP
 Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 1983-1985

Miriam L. Fisher

Latham Watkins LLP
 Former Regent, American College of Tax Counsel
 Council Director, ABA Section of Taxation, 2010-2013
 Former Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties
 Special Assistant to the Assistant Attorney General, Department of Justice, Tax Division, 1989-1991

Gersham Goldstein

Stoel Rives LLP
 Former Regent, American College of Tax Counsel
 Former Chair, ABA Section of Taxation, Standards of Tax Practice Committee
 Former Council Director, ABA Section of Taxation

Robin L. Greenhouse

McDermott, Will & Emery
 Chair, ABA Taxation Section, Committee on Appointments to the U.S. Tax Court
 Former Chair, ABA Section of Taxation, Court Procedure and Practice Committee
 Former Trial Attorney, U. S. Department of Justice, Tax Division

Darrell D. Hallett

Colvin & Hallett, P.S.
 Special Trial Judge, United States Tax Court, 1980-1983
 Assistant District Counsel-Senior Trial Attorney, Internal Revenue Service, and Special
 Assistant U.S. Attorney, Seattle, WA, 1973-1980
 Trial Attorney, U.S. Department of Justice, Tax Division, 1968-1972

Lawrence M. Hill

Shearman & Sterling
Former Senior Trial Attorney, Internal Revenue Service
Former Special Assistant U.S. Attorney, Washington, DC
Former Chair, ABA Section of Taxation, Court Procedure and Practice Committee
Former Chair, ABA Section of Taxation, Standards of Tax Practice Committee

Lawrence S. Horn

Sills Cummis & Gross P.C.
Assistant U.S. Attorney, District of New Jersey, 1971-1978
Former Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties
Co-Chair, ABA Section of Criminal Justice, White Collar Crime Committee, Tax Enforcement Subcommittee

Jenny Johnson

Holland & Knight
Vice-Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties

Barbara T. Kaplan

Greenberg Traurig
Senior Trial Attorney, Internal Revenue Service, 1975-1979
Executive Committee, New York State Bar Association, Tax Section, 2001-2005

Robert E. McKenzie

Arnstein & Lehr LLP
Vice-President, American College of Tax Counsel
Vice-Chair, ABA Section of Taxation, 2003-2005
Council Director, ABA Section of Taxation, 1998-2001
Former Chair, ABA Section of Taxation, Employment Tax Committee

Charles M. Meadows, Jr.

Meadows Collier Reed Cousins Crouch & Ungerman, LLP
Chair, American College of Trial Lawyers, Federal Criminal Procedure Committee, 2008-2009

Fred Murray

Former Special Counsel to the Chief Counsel for the Internal Revenue Service
Chair, ABA Section of Taxation, Administrative Practice Committee, 2009-2011
Former Chair, Federal Bar Association Tax Section

Scott D. Michel

Caplin & Drysdale, Chartered
Council Director, ABA Section of Taxation, 2011-2014
Chair, ABA Section of Taxation, Standards of Tax Practice Committee, 2009-2011
Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 1997-1999
Law Clerk, U. S. District Court for the District of Columbia, 1980-1981

Charles J. Muller

Chamberlain, Hrdlicka, White, Williams & Aughtry
 Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 1991-1992
 Assistant United States Attorney, Western District of Texas, 1976-1977
 Former Trial Attorney, U.S. Department of Justice, Tax Division, 1970-1976

Jeffrey A. Neiman

Law Offices of Jeffrey A. Neiman
 Assistant U.S. Attorney, Southern District of Florida, 2008-2011
 Trial Attorney, U. S. Department of Justice, Criminal Division, Fraud Section, 2005-2008
 Trial Attorney, U. S. Department of Justice, Tax Division, 2002-2005

Kathleen Pakenham

Cooley, LLP
 Law Clerk, U.S. District Court for the Eastern District of New York, 1996-1997

Dennis L. Perez

Hochman, Salkin, Rettig, Toscher & Perez, PC
 Senior Trial Attorney, Internal Revenue Service, Los Angeles, CA, 1982-1986

Ellis Reemer

DLA Piper, LLP
 Former Senior Trial Attorney, Internal Revenue Service

Charles P. Rettig

Hochman, Salkin, Rettig, Toscher & Perez, PC
 Secretary/Treasurer, American College of Tax Counsel
 Council Director, ABA Section of Taxation
 Co-Chair, ABA Annual National Institutes on Criminal Tax Fraud and Tax Controversy
 Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 2009-2011
 Chair, California State Bar, Taxation Section, 1999-2000

Christopher S. Rizek

Caplan & Drysdale, Chartered
 Regent, American College of Tax Counsel
 Attorney-Advisor / Associate Tax Legislative Counsel Tax Legislative Counsel, U.S.
 Department of Treasury, 1995-1998
 Trial Attorney, Tax Division, U.S. Department of Justice, 1984-1988
 Chair, ABA Section of Taxation, Court Procedure and Practice Committee, 2009-2011

Edward M. Robbins, Jr.

Hochman, Salkin, Rettig, Toscher & Perez, PC
 Chief, Tax Division, United States Attorney's Office, Central District of California, 1994-2004

Avram Salkin

Hochman, Salkin, Rettig, Toscher & Perez, PC
Chair, Beverly Hills Bar Association, Taxation Committee, 1969

Richard J. Sapinski

Sills Cummis & Gross P.C.
Special Trial Attorney, Internal Revenue Service, Philadelphia, PA, 1985-1987
Trial Attorney, Internal Revenue Service, Newark, NJ, 1977-1984

Martin A. Schainbaum

Law Offices of Martin A. Schainbaum
Assistant U.S. Attorney, Tax Division, Northern District of California, 1969-1978
Trial Attorney, Internal Revenue Service, San Francisco, CA, 1964-1969

Bryan Skarlatos

Kostelantz & Fink, LLP
Former Regent, American College of Tax Counsel
Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 2007-200
Co-Chair, NYU Tax Controversy Forum

Victor S.O. Song

Former National Chief, IRS Criminal Investigation

Richard Speier

Former Deputy National Chief, IRS Criminal Investigation

Joseph H. Thibodeau

Former Trial Attorney, U.S. Department of Justice, Tax Division

Justin A. Thornton

Law Offices of Justin A. Thornton
Senior Trial Attorney, U.S. Department of Justice, Tax Division, 1979-1987

Steven Toscher

Hochman, Salkin, Rettig, Toscher & Perez, PC
Trial Attorney, U.S. Department of Justice, Tax Division, 1979-1983
Revenue Agent, Internal Revenue Service, 1974-1976
Past-Chair, Los Angeles County Bar Association, Taxation Section

Josh Ungerman

Meadows Collier Reed Cousins Crouch & Ungerman, LLP
Attorney-Advisor, U.S. Tax Court, 1990-1992
Senior Trial Attorney, Internal Revenue Service, 1992-1994
Special Assistant U.S. Attorney, Northern District of Texas, 1992-1994

Todd Welty

McDermott Will & Emery LLP

Past Chair, ABA Taxation Section, Standards of Tax Practice Committee, Subcommittee for
Summons Enforcement

John M. Youngquist

Chief, Tax Division, United States Attorney's Office, Northern District of California, 1969-1978

Trial Attorney, Tax Division, United States Attorney's Office, Northern District of California,
1964-1969

Trial Attorney, U.S. Department of Justice, Tax Division, 1962-1964

Thomas E. Zehnle

Miller & Chevalier Chartered

Chief, Criminal Enforcement Section (Southern), Tax Division, U.S. Department of Justice,
2001-2004

Counsel to Assistant Attorney General, Tax Division, U.S. Department of Justice, 2000-2001

Trial Attorney, Criminal Enforcement Section (Southern), Tax Division, U.S. Department of
Justice, 1990-2000

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Caplin & Drysdale, Chartered
One Thomas Circle, NW, Suite 1100
Washington, DC 20005
202-862-5000 202-429-3301 Fax
www.caplindrysdale.com

202.862.5082 Direct
mmatthews@capdale.com

June 11, 2015

Via Email
Via Facsimile

The Honorable Charles E. Grassley, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Cono Namorato to be Assistant Attorney General
for the Tax Division of the Department of Justice

Dear Chairman Grassley and Ranking Member Leahy:

This letter supplements a previous submission I joined on April 22, 2015, concerning the nomination of Cono R. Namorato of Virginia as Assistant Attorney General in charge of the Department of Justice Tax Division. I was a Deputy Commissioner of the IRS when Mr. Namorato served as the Director of the IRS Office of Professional Responsibility. I recently located two letters of commendation that were sent to Mr. Namorato regarding his service in that position and have attached them for the Committee's consideration. One was from Senators Charles E. Grassley and Max Baucus, the Chairman and Ranking Member of the Finance Committee during Mr. Namorato's service with the IRS, and the other is from the IRS Commissioner Mark W. Everson. I thought the Committee might find them of interest in evaluating Mr. Namorato's prior government service.

Sincerely,

Mark E. Matthews

Attachments

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH	MAX BAUCUS, MONTANA
TRENT LOTT, MISSISSIPPI	JOHN D. ROCKWELLER IV, WEST VIRGINIA
OLYMPIA J. SNOWE, MAINE	KEVIN CONRAD, NORTH DAKOTA
JON KYL, ARIZONA	JAMES M. JEFFORDS III, VERMONT
CHRIS THOMAS, WYOMING	JEFF KINGMAN, NEW MEXICO
RICK SANTORUM, PENNSYLVANIA	JOHN F. KERRY, MASSACHUSETTS
MIKE LEE, UTAH	BLANCHETT L. LINCOLN, ARKANSAS
GORDON SMITH, OREGON	RON WYDEN, OREGON
JIM BURNING, KENTUCKY	CHARLES E. SCHUMER, NEW YORK
MIKE CRAPO, IDAHO	

KORAH DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
 RUSSELL SULLIVAN, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

March 30, 2006

Mr. Cono Namorato
 Director, Office of Professional Responsibility
 Internal Revenue Service
 1111 Constitution Avenue, NW
 Washington, DC 20224

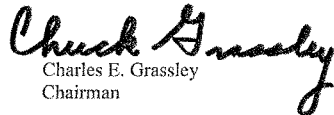
Dear Mr. Namorato:

We understand that you will resign soon as the Director of the Internal Revenue Service Office of Professional Responsibility. We would like to join with your family, friends, and colleagues in thanking you for your service to the American taxpayer and for the exceptional assistance you provided to the Committee on Finance during your tenure.

Since you joined the Office of Professional Responsibility, the IRS has pursued a number of important investigations into allegations of misconduct or negligence against tax practitioners and vigorously enforced the standards of practice for those who represent taxpayers before the IRS. You have worked closely with our Committee to address the erosion of professional standards among some attorneys and accountants and provided valuable insight to improving the rules governing tax practitioners. Your counsel and recommendations have helped to restore faith in the tax system.

You have accomplished much on behalf of the American taxpayer. We thank you for your service and wish you every success in your future endeavors.

Sincerely yours,


 Charles E. Grassley
 Chairman


 Max Baucus
 Ranking Member



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

March 22, 2006

Mr. Cono R. Namorato
Director, Office of Professional Responsibility
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Cono:

As you leave the IRS after two years as Director of the Office of Professional Responsibility, I want to extend my sincere thanks for the contributions you have made to the Internal Revenue Service, and to me personally. You brought the Office of Professional Responsibility into the mainstream of tax administration, taking a leading role in our effort to promote ethical behavior by tax professionals. The credibility and insight you brought to this effort made it possible for us to change the dialog and marshal the energies of the Service and tax professionals to achieve this important goal. In addition, your representation of the Service in our relationships with the Department of Justice and your unflagging pursuit of balanced civil and criminal enforcement strategies set new standards for what we can achieve in the broader fight against abusive tax shelters.

You came back to the Service after a distinguished career in both the public and private sectors. Your willingness to once again accept the call to public service, bringing to this important task your personal reputation and credibility, was in the highest traditions of public service. On behalf of your many colleagues and admirers, I thank you for a job well done, and wish you and your family all the best.

Sincerely,

Mark W. Everson

*Cono - You have been a major force
for the good guys! Thank you.
Mark*

The Honorable Charles Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

We write to endorse the nomination of Cono Namorato to be Assistant Attorney General for the Tax Division, a position for which he is enormously – and uniquely – qualified. Each of us has known Mr. Namorato for decades. He was, for a decade, a senior career lawyer in the Tax Division, rising to the level of Chief of the Criminal Section and then Deputy Assistant Attorney General. He then spent twenty-five years in private practice. He therefore understands tax law, tax litigation and tax controversies from both the public and private perspectives. In both private practice and public service, Mr. Namorato has enjoyed a stellar reputation as one of the most knowledgeable and fair-minded lawyers in the nation.

His respect for public service is further evidenced by his decision to leave private practice, from 2004 to 2006, for a job as Director of the Office of Professional Responsibility at the Internal Revenue Service. The work of that Office is to ensure that tax practitioners live up to their professional responsibilities and that there is rigor in the system. This is not a position one takes for glory. It is a position that one takes to make sure that government works as citizens should expect it to work.

It is for these reasons that we – former senior leaders of the Department – believe that Mr. Namorato will be a superb leader of the Tax Division if confirmed by the Senate. We urge you to act positively on his nomination.

Sincerely,

Andy Kucian

**OPENING STATEMENT OF SENATOR BENJAMIN L. CARDIN
CONFIRMATION HEARING FOR PAULA XINIS
TO BE U.S. DISTRICT JUDGE, DISTRICT OF MARYLAND
JULY 22, 2015**

Chairman Grassley, Ranking Member Klobuchar, thank you for the opportunity to appear before the committee today. I am pleased to join with Senator Mikulski in introducing Paula Xinis to be a United States District Judge for the District of Maryland.

The Constitution provides for lifetime appointments for federal judges, which is unique in our federal government. I know that both Senator Mikulski and I take this obligation very seriously in terms of the advice and consent role of the Senate.

Ms. Xinis was nominated to fill the vacancy created by the taking of senior status in October 2014 by former Chief Judge Deborah Chasanow. The President nominated Ms. Xinis in March 2015.

I am confident that Paula Xinis will make an excellent addition to the federal bench in Greenbelt. She is exceptionally well qualified and has a strong appreciation for the rights and responsibilities of each branch of government, having clerked in the Fourth Circuit and served as a Federal Public Defender. She has experience in the private sector at a law firm, serving as lead trial counsel on a wide variety of complex federal, state, civil and criminal matters. She has experience in both trial and appellate work, along with expertise in both jury and bench trials. With roots in Prince George's County, Ms. Xinis has given back to our community and the legal profession by teaching both law students and practitioners, as well as providing pro bono legal assistance. I know that she will make all Marylanders proud of her continuing public service. I am pleased but not surprised that the American Bar Association's Standing Committee on the Federal Judiciary gave her its highest rating of unanimously well qualified to be a federal district judge.

Ms. Xinis, of University Park, Maryland, currently serves as Senior Trial Attorney at the firm of Murphy Falcon Murphy Ravenell Koch in Baltimore, a position she has held since 2011. Ms. Xinis received her J.D. in 1997 from Yale Law School and her B.A. with highest honors in 1991 from the University of Virginia. She has been a member of the Maryland Bar since 1998.

Prior to her current position, Ms. Xinis served as an Assistant Federal Public Defender for the District of Maryland for thirteen years. She served as the Director of Training and the Research and Writing Staff Attorney Supervisor while at the Office of the Federal Public Defender. Upon graduation from law school, she clerked for Judge Diana Motz on the Fourth Circuit Court of Appeals.

In many ways Ms. Xinis represents the American success story. Her father came to America from Greece without any money in order to make a better life for himself and ultimately his family. And Ms. Xinis has not forgotten her roots or the importance of giving back to the community. As indicated in her committee questionnaire, she has participated in an outreach program at the Empowerment Temple Church through her law firm. She volunteered her time pro bono to give free legal advice and followed up with church members with limited income who needed legal assistance. She joined a formal mentoring program through the House of Ruth, and was assigned to a mentor to an 11-year-old that she describes as being like a second son, as they have attended many family and school events together. Ms. Xinis writes that he now works full time and is looking forward to a bright future.

In my discussions with Ms. Xinis and review of her background, I have gotten a sense of her demeanor. I believe that as a judge she will take great care in dealing respectfully with litigants in her courtroom. She knows that rulings from a court have a profound impact on a person's life, including how judges describe and explain their rulings to the parties of a case. Ms. Xinis has kept in touch with some clients who have lived beyond prison, and in some cases have successfully reentered society with gainful employment and a healed relationship with their families and communities. Ms. Xinis has said that some of her clients have praised the judges (more often than the lawyers) in terms of getting their sentences right, by helping them to "wake up," and ultimately "fly straight." I think Ms. Xinis will excel in this role as a trial judge.

All of our federal judges, including Supreme Court Justices, must take an oath to support the Constitution before taking the bench. But they also have to take an oath to “administer justice without respect to persons, and do equal right to the poor and to the rich.” I have no doubt that Ms. Xinis would faithfully live up to this judicial oath, if given the opportunity. I therefore recommend that the Committee favorably approve this nomination in a timely manner, so that the full Senate can take action to confirm her nomination and fill this important vacancy to better serve the people of Maryland.